

# White County Magistrate Court

## ***DEPOSIT ACCOUNT FRAUD, O.C.G.A. 16-9-20***

General Guidelines

September 19, 2012

***NOTICE:*** *This information is only for the purpose of explaining the general processes of actions in Magistrate Court. It is not exhaustive and is not to be substituted for competent legal counsel. If you are in doubt or unsure how to proceed or respond, you should consult an attorney.*

**Court personnel are NOT authorized to provide legal advice. The Clerks will be happy to explain the various procedures if you do not understand the information in this pamphlet. Judges CANNOT discuss a case unless both parties are present.**

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### **What Does The State Of Georgia Require Me To Do Before I Can Prosecute A Bad Check?**

When a business accepts a check as payment for goods or services rendered, it is submitted to the bank for collection. Once a check has been returned by the bank for Insufficient Funds or Account Closed, it is up to the merchant to send a Ten Day Notice letter by certified mail to the maker of the check.

The Georgia Legislature requires the Ten Day Notice letter to be sent certified mail, return receipt requested, before criminal bad check prosecution is commenced in White County. The letter should be sent immediately if the check is returned marked Account Closed or No Account. If you receive a check marked Insufficient Funds, the letter may be sent after the first time the check is returned or you may re-present the check and wait until after the second time the same check is returned. The law requires you to send the letter within ninety (90) days from the time you discovered the check was bad, or a Warrant and/or Citation may not issue.

The purpose of the letter is to let the customer know that his/her check is not good. Accordingly, you need to send the letter to the address that is listed on the check. If you know of another address for the customer, you should send the letter to both addresses. Make an actual copy of each letter you send to use as evidence in obtaining a Warrant or Citation. You are required to use the exact wording in the letter. This letter is accepted in all 159 counties in Georgia. Should the maker not respond to the Ten Day Notice letter, the merchant is then entitled to process this item through the judicial system for collection.

The option to issue a Bad Check Citation, as opposed to a Warrant, depends upon:

- The amount of the dishonored check. Citations may be issued only when the check amount is less than \$1,500.
- Whether or not the bad check offender has an existing Warrant and/or a criminal record, in which case he/she is not eligible for a Citation.
- The offender is located in a County in Georgia other than White County.
- Reason for the check being dishonored.

If the amount of the insufficient check is \$1,500 or more, or written on an out-of-state bank account, a pre-warrant hearing will be scheduled, and upon finding of probable cause, a felony warrant will issue. If the insufficient check is less than \$1,500, and written on an in-state bank and in-state address, a misdemeanor Citation may issue (unless the offender has an existing Warrant and/or a criminal record or resides outside of White County.) The merchant must present the collection item along with the Ten Day Notice letter to the Magistrate's Office in order to have a Criminal Warrant or Citation issued. A processing fee of \$20.00 is charged. The fee is reimbursed to the merchant by the offender upon collection of the debt by the Magistrate Court.

### **What Hours Can You Apply For A Bad Check Citation or Warrant?**

All Bad Check Citations and Warrants are processed through the Magistrate Court Warrant Office, which is open Monday - Friday, 8:30 a.m. to 5:00 p.m.

### **Fees to Apply For a Bad Check Citation or Warrant**

A \$20.00 fee is charged for each Warrant or Citation Application (up to three (3) bad checks per offender on an Application). The fee is reimbursed to the merchant by the offender upon collection of the debt by the Magistrate Court.

### **Fees to Dismiss a Bad Check Citation or Warrant**

If the merchant wants to dismiss a Citation or Misdemeanor Warrant for some reason, the merchant will be responsible for a \$72.50 dismissal fee. Dismissal fees apply after the Magistrate's Office has received the Application for the Bad Check Citation or Misdemeanor Warrant. If the merchant recommends dismissal, the case will probably be ended. However, the final decision rests with the Magistrate Court.

## **How Do You Recognize When You Have a “Criminal” Bad Check?**

Not all checks returned from the bank can be prosecuted in Criminal Court. The following is a guideline in making a determination of whether you should apply for a Criminal Warrant, Citation, or pursue the claim in civil court.

1) Was the check given for present consideration or wages? If not, you must sue in Civil Court. Present consideration generally means that services or goods are delivered at the same time that the check is received. It also includes rent, a debt of state taxes, and child support payments where there is a written court order. A payment on a credit account would not be present consideration.

2) Did the person who accepted the check know the check was not good at the time it was given? If you know the check would not be honored when you accepted it, then you cannot prosecute the person who gave it to you. Examples of this would be when a customer asks you to hold a check until a specific day or when you accept a postdated check. In both instances you have extended credit even if it is only for a few days. When you extend credit it is no longer considered a criminal bad check offense.

3) Was the check returned for the reasons of No Account (includes Account Closed and Cannot Locate) or Insufficient Funds? If the check was returned for any reason other than No Account or Insufficient Funds, you probably do not have a check that can be prosecuted in Criminal Court. However, if the check is stamped “Refer to Maker” you should inquire with the bank to see if the account was closed or if there were insufficient funds on the date the check was passed. If this was the case you may be able to proceed with a criminal action. You should get the bank to verify this information by letter or by putting the information on the face of the check and having the bank official then initial it.

4) Did you accept a partial payment as restitution for the bad check? If so, the check can no longer be considered for criminal prosecution. You may be able to proceed with a Civil Action.

5) A “Stop Payment” cannot be a violation of the criminal bad check statute (except in the rarest cases). Even though a bad check warrant would not be proper, a Magistrate may determine that some other type of crime has occurred. Each case would be different and a decision could not be reached without hearing all the facts and circumstances surrounding the occurrence.

## What Evidence Do You Need?

- 1) The Bad Check;
- 2) A copy of the actual Ten Day Notice letter sent to the customer;
- 3) The Green Card, which is the certified mail receipt (make sure you have waited 10 days after the letter was signed for or 10 days after the letter was returned by the post office);
- 4) Name of person who accepted the check (initials of this person should be noted on the check face upon acceptance of the check; and,
- 5) Any other information you think may be important, including telephone calls you made, and any oral or written response from the maker of the check. This information is to be provided on the "Application for Bad Check Citation."

## Other Things To Know About Filing For A Bad Check Citation or Warrant

- 1) **YOU ARE NOT ALLOWED TO RECEIVE ANY PAYMENTS ON THE CHECKS AFTER YOU APPLY TO THE MAGISTRATE OFFICE FOR A CRIMINAL WARRANT OR CITATION.** If you do, you will need to provide the Magistrate Court a receipt showing the amount of payment you accepted from the issuer of the dishonored check, fill-out an "Affidavit to Dismiss Citation or Warrant", and pay the \$72.50 dismissal fee.
- 2) The Sheriff's Office serves all Warrants/Citations.
- 3) The crime occurred in the county in which the act happened. You must prosecute the bad check in the county where the giving and receiving of the check took place.
- 4) The Georgia Legislature writes the bad check laws. The Georgia Court of Appeals and The Georgia Supreme Court interpret these laws. The statute and the cases determine whether the Magistrate Court can issue a Warrant or Citation on a particular check. The Magistrate Court makes this final decision.
- 5) You may be able to pursue a Civil Action even if a Magistrate turns down your request for a Criminal Warrant or Citation.
- 6) There is a two-year statute of limitations on misdemeanor bad checks and a four-year statute of limitations on felony bad checks.

**16-9-20. Deposit account fraud.**

(a) A person commits the offense of deposit account fraud when such person makes, draws, utters, executes, or delivers an instrument for the payment of money on any bank or other depository in exchange for a present consideration or wages, knowing that it will not be honored by the drawee. For the purposes of this Code section, it is prima-facie evidence that the accused knew that the instrument would not be honored if:

(1) The accused had no account with the drawee at the time the instrument was made, drawn, uttered, or delivered;

(2) Payment was refused by the drawee for lack of funds upon presentation within 30 days after delivery and the accused or someone for him or her shall not have tendered the holder thereof the amount due thereon, together with a service charge, within ten days after receiving written notice that payment was refused upon such instrument. For purposes of this paragraph:

(A) Notice mailed by certified or registered mail or statutory overnight delivery evidenced by return receipt to the person at the address printed on the instrument or given at the time of issuance shall be deemed sufficient and equivalent to notice having been received as of the date on the return receipt by the person making, drawing, uttering, executing, or delivering the instrument. A single notice as provided in subparagraph (B) of this paragraph shall be sufficient to cover all instruments on which payment was refused and which were delivered within a ten-day period by the accused to a single entity, provided that the form of notice lists and identifies each instrument; and

(B) The form of notice shall be substantially as follows:

"You are hereby notified that the following instrument(s)			
<b>Number</b>	<b>Date</b>	<b>Amount</b>	<b>Bank</b>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
<p>drawn upon _____ and payable to _____, (has) (have) been dishonored. Pursuant to Georgia law, you have ten days from receipt of this notice to tender payment of the total amount of the instrument(s) plus the applicable service charge(s) of \$_____ and any fee charged to the holder of the instrument(s) by a bank or financial institution as a result of the instrument(s) not being honored, the total amount due being _____ dollars and _____ cents. Unless this amount is paid in full within the specified time above, a presumption in law arises that you delivered the instrument(s) with the intent to defraud and the dishonored instrument(s) and all other available information relating to this incident may be submitted to the magistrate for the issuance of a criminal warrant or citation or to the district attorney or solicitor-general for criminal prosecution."; or</p>			

(3) Notice mailed by certified or registered mail or statutory overnight delivery is returned undelivered to the sender when such notice was mailed within 90 days of dishonor to the person at the address printed on the instrument or given by the accused at the time of issuance of the instrument.

(b) (1) Except as provided in paragraphs (2) and (3) of this subsection and subsection (c) of this Code section, a person convicted of the offense of deposit account fraud shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as follows:

(A) When the instrument is for less than \$500.00, a fine of not more than \$500.00 or imprisonment not to exceed 12 months, or both;

(B) When the instrument is for \$500.00 or more but less than \$1,000.00, a fine of not more than \$1,000.00 or imprisonment not to exceed 12 months, or both; or

(C) When more than one instrument is involved and such instruments were drawn within 90 days of one another and each is in an amount less than \$500.00, the amounts of such separate instruments may be added together to arrive at and be punishable under subparagraph (B) of this paragraph.

(2) Except as provided in paragraph (3) of this subsection and subsection (c) of this Code section, a person convicted of the offense of deposit account fraud, when the instrument is for an amount of not less than \$1,000.00 nor more than \$1,499.99, shall be guilty of a misdemeanor of a high and aggravated nature. When more than one instrument is involved and such instruments were given to the same entity within a 15 day period and the cumulative total of such instruments is not less than \$1,000.00 nor more than \$1,499.00, the person drawing and giving such instruments shall upon conviction be guilty of a misdemeanor of a high and aggravated nature.

(3) Except as provided in subsection (c) of this Code section, a person convicted of the offense of deposit account fraud, when the instrument is for \$1,500.00 or more, shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 nor more than \$5,000.00 or by imprisonment for not more than three years, or both.

(4) Upon conviction of a first or any subsequent offense under this subsection or subsection (c) of this Code section, in addition to any other punishment provided by this Code section, the defendant shall be required to make restitution of the amount of the instrument, together with all costs of bringing a complaint under this Code section. The court may require the defendant to pay as interest a monthly payment equal to 1 percent of the amount of the instrument. Such amount shall be paid each month in addition to any payments on the principal until the entire balance, including the principal and any unpaid interest payments, is paid in full. Such amount shall be paid without regard to any reduction in the principal balance owed. Costs shall be determined by the court from competent evidence of costs provided by the party causing the criminal warrant or citation to issue; provided, however, that the minimum costs shall not be less than \$25.00. Restitution may be made while the defendant is serving a probated or suspended sentence.

(c) A person who commits the offense of deposit account fraud by the making, drawing, uttering, executing, or delivering of an instrument on a bank of another state shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years or by a fine in an amount of up to \$1,000.00, or both.

(d) The prosecuting authority of the court with jurisdiction over a violation of subsection (c) of this Code section may seek extradition for criminal prosecution of any person not within this state who flees the state to avoid prosecution under this Code section.

(e) In any prosecution or action under this Code section, an instrument for which the information required in this subsection is available at the time of issuance shall constitute prima-facie evidence of the identity of the party issuing or executing the instrument and that the person was a party authorized to draw upon the named account. To establish this prima-facie evidence, the following information regarding the identity of the party presenting the instrument shall be obtained by the party receiving such instrument: the full name, residence address, and home phone number.

(1) Such information may be provided by either of two methods:

(A) The information may be recorded upon the instrument itself; or

(B) The number of a check-cashing identification card issued by the receiving party may be recorded on the instrument. The check-cashing identification card shall be issued only after the information required in this subsection has been placed on file by the receiving party.

(2) In addition to the information required in this subsection, the party receiving an instrument shall witness the signature or endorsement of the party presenting such instrument and as evidence of such the receiving party shall initial the instrument.

(f) As used in this Code section, the term:

(1) "Bank" shall include a financial institution as defined in this Code section.

(2) "Conviction" shall include the entering of a guilty plea, the entering of a plea of nolo contendere, or the forfeiting of bail.

(3) "Financial institution" shall have the same meaning as defined in paragraph (21) of Code [Section 7-1-4](#) and shall also include a national bank, a state or federal savings bank, a state or federal credit union, and a state or federal savings and loan association.

(4) "Holder in due course" shall have the same meaning as in Code [Section 11-3-302](#).

(5) "Instrument" means a check, draft, debit card sales draft, or order for the payment of money.

(6) "Present consideration" shall include without limitation:

(A) An obligation or debt of rent which is past due or presently due;

(B) An obligation or debt of state taxes which is past due or presently due;

(C) An obligation or debt which is past due or presently due for child support when made for the support of such minor child and which is given pursuant to an order of court or written agreement signed by the person making the payment;

(D) A simultaneous agreement for the extension of additional credit where additional credit is being denied; and

(E) A written waiver of mechanic's or materialmen's lien rights.

(7) "State taxes" shall include payments made to the Georgia Department of Labor as required by [Chapter 8 of Title 34](#).

(g) This Code section shall in no way affect the authority of a sentencing judge to provide for a sentence to be served on weekends or during the nonworking hours of the defendant as provided in Code [Section 17-10-3](#).

(h) (1) Any party holding a worthless instrument and giving notice in substantially similar form to that provided in subparagraph (a)(2)(B) of this Code section shall be immune from civil liability for the giving of such notice and for proceeding as required under the forms of such notice; provided, however, that, if any person shall be arrested or prosecuted for violation of this Code section and payment of any instrument shall have been refused because the maker or drawer had no account with the bank or other depository on which such instrument was drawn, the one causing the arrest or prosecution shall be deemed to have acted with reasonable or probable cause even though he, she, or it has not mailed the written notice or waited for the ten-day period to elapse. In any civil action for damages which may be brought by the person who made, drew, uttered, executed, or delivered such instrument, no evidence of statements or representations as to the status of the instrument involved or of any collateral agreement with reference to the instrument shall be admissible unless such statements, representations, or collateral agreement shall be written simultaneously with or upon the instrument at the time it is delivered by the maker thereof.

(2) Except as otherwise provided by law, any party who holds a worthless instrument, who complies with the requirements of subsection (a) of this Code section, and who causes a criminal warrant or citation to be issued shall not forfeit his or her right to continue or pursue civil remedies authorized by law for the collection of the worthless instrument; provided, however, that if interest is awarded and collected on any amount ordered by the court as restitution in the criminal case, interest shall not be collectable in any civil action on the same amount. It shall be deemed conclusive evidence that any action is brought upon probable cause and without malice where such party holding a worthless instrument has complied with the provisions of subsection (a) of this Code section regardless of whether the criminal charges are dismissed by a court due to payment in full of the face value of the instrument and applicable service charges subsequent to the date that affidavit for the warrant or citation is made. In any civil action for damages which may be brought by the person who made, drew, uttered, executed, or delivered such instrument, no evidence of statements or representations as to the status of the instrument involved or of any collateral agreement with reference to the instrument shall be admissible unless such statements, representations, or collateral agreement shall be written simultaneously with or upon the instrument at the time it is delivered by the maker thereof.

(i) Notwithstanding paragraph (2) of subsection (a) of this Code section or any other law on usury, charges, or fees on loans or credit extensions, any lender of money or extender of other credit who receives an instrument drawn on a bank or other depository institution given by any person in full or partial repayment of a loan, installment payment, or other extension of credit may, if such instrument is not paid or is dishonored by such institution, charge and collect from the borrower or person to whom the credit was extended a bad instrument charge. This charge shall not be deemed interest or a finance or other charge made as an incident to or as a condition to the granting of the loan or other extension of credit and shall not be included in determining the limit on charges which may be made in connection with the loan or extension of credit or any other law of this state.

(j) For purposes of this Code section, no service charge or bad instrument charge shall exceed \$30.00 or 5 percent of the face amount of the instrument, whichever is greater, except that the holder of the instrument may also charge the maker an additional fee in an amount equal to that charged to the holder by the bank or financial institution as a result of the instrument not being honored.

(k) An action under this Code section may be prosecuted by the party initially receiving a worthless instrument or by any subsequent holder in due course of any such worthless instrument.

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