

## REPRESENTING YOURSELF AND YOUR BUSINESS IN MAGISTRATE COURT

### I. INTRODUCTION

Business is rife with conflict. To succeed, a business owner must be adept at resolving these disputes quickly and efficiently. Sometimes, more than a simple phone call, refund or apology is needed. Some disputes must be resolved in court.

The American civil judicial system is designed to resolve disputes. Although the process works well, it is expensive and time consuming, sometimes taking several years and costing tens or even hundreds of thousands of dollars. For many smaller disputes, the time and cost associated with a traditional lawsuit makes litigation in these forums impractical. Mediation or arbitration are sometimes good options, but only if your adversary is of a similar mindset.

There is an alternative. Georgia's Magistrate Court is a court of limited jurisdiction, hearing civil claims involving disputes of \$15,000 and less. It is often described as "Small Claims Court." With the right judge, it might be more aptly called a "Court of Common Sense." The rules of procedure and evidence are relaxed. There is no jury. In the State and Superior Courts of Georgia, a corporation must by law be represented by an attorney. This is not true for Magistrate Court, where a business may be represented by an employee or owner. In short, Magistrate Court provides a forum in which it is often possible to secure justice quickly and inexpensively for smaller disputes. The purpose of this article is to provide a basic roadmap for representing yourself and your business successfully in Magistrate Court.

### II. PROS AND CONS

There are advantages and disadvantages to trying your case in Magistrate Court as opposed to the slower and more expensive State and Superior Courts of Georgia.

#### Advantages:

1. Informal Proceeding – Because the rules of evidence and procedure are more relaxed in Magistrate Court, parties can often more easily explain their case to the Judge without the need for a formal presentation that conforms to the rules of evidence and/or procedure.
2. Cost – Because it is possible to represent yourself, you can avoid hiring an attorney. Even if you do choose to hire a lawyer, Magistrate Court still costs far less than trying the same case in State or Superior Court.
3. Time – A Magistrate Court case is typically tried within 90 to 120 days of the filing of the Statement of Claim.

#### Disadvantages:

1. Lack of Discovery – In Georgia’s State and Superior Courts, you can compel information from your adversary and others before trial. This process, called “discovery,” can be very useful, but also expensive and time consuming. The Magistrate Court system emphasizes speed and cost effectiveness, and therefore, dispenses with discovery. If you have the information you need to make your case, this is not a problem. However, if you need information from others who are unwilling to share it, the lack of a compulsory discovery process can be a disadvantage.
2. Broad Appeal Rights – A much-criticized aspect of Georgia’s Magistrate Court system is that the loser has the right to appeal the judgment within 30 days. In other words, the losing party can try the case over again in State or Superior Court. That said, many unsuccessful litigants realize the implication of an initial defeat, and choose not to appeal. Alternatively, if you lose your case in Magistrate Court, you can try again in another court, perhaps with a lawyer, or at least an idea as to what went wrong the first time.

### III. FILING YOUR CASE

Choosing the Right Courthouse - The first step is to figure out the proper court in which to file suit. You must file in a county where one or more of the parties you want to sue lives, does business or is incorporated. Information on Georgia companies, their places of business and their registered agents can be found on the Georgia Secretary of State’s website: [www.sos.georgia.gov](http://www.sos.georgia.gov).

Filing the Paperwork - After determining the proper county, contact the clerk of the Magistrate Court in that county to obtain a “Complaint” or “Statement of Claim.” These forms are often available online. The Magistrate Clerk will also advise as to the court costs necessary to file the Statement of Claim (typically about \$50) as well as the costs for the sheriff or marshal to serve the lawsuit on the defendants (typically about \$25). For multiple defendants, expect multiple fees.

The Statement of Claim is a standardized form designed to extract basic information regarding the dispute, including the identity of the parties, the nature of the dispute and the damages sought.

Identity of the Parties – It is important the Statement properly identifies the full name and address of the plaintiff (you or your company) as well as that of the defendant(s) you are suing. Think carefully about who is suing and who is being sued. Is it a person or a company who was harmed? Is it a person or a company that caused the harm complained of? These are the proper parties to the case.

Nature of the Dispute - The Statement of Claim categorizes claim types in a check-the-box format. The categories included in the Statement are briefly described below. In completing the Statement, check all that apply.

Account – A suit on account is a claim to recover payment for goods or services provided to a client/customer on a routine basis.

Note – A suit on a note seeks to recover money loaned but not repaid.

Contract – This catch-all relates to any other dispute arising from a voluntary contractual relationship, such as purchase and sale agreements, service contracts, etc.

Tort – A tort is a civil wrong, which can be based on unintentional conduct, such as negligence (i.e. failure to exercise due care), or intentional conduct, such as fraud or defamation.

Trover – A claim for trover seeks monetary damages equal to the replacement value of the personal property taken from the plaintiff by the defendant.

Personal Injury – A personal injury claim is typically a tort/negligence claim, but in some instances may also constitute a breach of contract claim. The damages sought are typically for medical expenses and/or pain and suffering.

The Statement of Claim also provides a space to briefly describe the nature of the dispute. This is your opportunity, in a few sentences, to describe what the case is about. For example: “Quality Builder, LLC paid \$10,000.00 to Acme Supply, Inc. for 1,000 window frames. Acme only delivered 500.”

Damages – The Statement of Claim also provides a space for the amount of damages sought. This number should be a direct reflection of the harm suffered. In the example above, Quality Builder’s damages would be \$5,000.00 (the cost of the undelivered product), plus interest and court costs. It may also be possible to recover for the additional harm caused – i.e. Quality Builder was unable to complete a job on time because of the missing product and had to pay a penalty, etc. Remember, your cumulative damages claim must not exceed the \$15,000 jurisdictional limit of the Magistrate Court. If the Judge believes the damages exceed \$15,000 he is likely to transfer the case to another (more expensive and time consuming) court on the spot.

Once the Statement of Claim is filed, the sheriff or marshal will serve (hand deliver) a copy on the defendant. The defendant then has 30 days to file an Answer either admitting or denying the allegations. If the defendant fails to file an Answer, your claim(s) are deemed admitted as to liability. You will still need to go to Court to prove your damages.

A few weeks after the defendant files an Answer, the Court will send out a trial notice advising you of the trial date. You will need to appear in Court on this date ready to try your case.

## **B. Preparing for Trial**

Being prepared and organized for trial will greatly increase your likelihood of success.

Know the Territory - Knowing what to expect in court can relieve much of the anxiety associated with trying your case. Well before your trial date, consider sitting in on a session of Magistrate Court. Many are conducted in the evenings. Go to the same courthouse where your trial will be held. Watching others try their cases in Magistrate Court will give you a sense of what to expect, what works, and what does not.

Map Out Your Case – Determine what facts are essential for the Judge to know to decide in your favor. Then prepare a presentation that conveys that information quickly and credibly. Create a timeline of the facts and circumstances of the dispute. Make a list of witnesses with information relating to those facts and circumstances. Make another list of the tangible evidence, such as contracts, receipts, estimates, invoices, photographs, broken bolts, etc. that will help prove your case. Then talk to those witnesses and gather that evidence in an organized fashion.

Witnesses – If you have any witnesses whose testimony you need to prove your case, they must come to court to testify. The Judge will not consider written statements or affidavits. It is up to you to make sure that your witnesses show up and are prepared to testify. If you need testimony from someone who will not come to court voluntarily, you can compel their attendance via a subpoena, which you can obtain from the Magistrate Court Clerk. You can hand deliver the subpoena to the witness yourself before trial, or you may pay to have the marshal do so.

Exhibits - Bring all the evidence and exhibits you want the Judge to consider, such as contracts, repair estimates, photos, and receipts, along with extra copies. You will be required to allow the defendant to see and read your exhibits before your case is heard. Keep in mind that the Judge may keep the exhibits presented.

Hearsay – Hearsay is any statement, written or verbal, made outside the courtroom by anyone not a party to the case. Technically, hearsay is inadmissible in Georgia courts. In Magistrate Court, some judges will consider hearsay as evidence, others will not. Where this often creates a problem is with repair estimates or invoices introduced to establish or justify a claim for damages. The only way to ensure the Judge will consider such information is to have the contractor who gave the estimate testify in court.

Know What You Want – Think carefully about what you want the Judge to award you. Be ready to articulate precisely how you calculated your damages. The Judge will

require you to prove your damages. This evidence may come from testimony, repair invoices, estimates, receipts, etc. The more formal and credible your evidence, the more likely you will recover the damages you seek. Do not ask for more than your case is worth. You will lose credibility with the Judge instantly.

Try (Again) to Settle – Once you have prepared your case outline, you should have a better idea as to the strengths and weaknesses of your case, as well as its logistical challenges. With these factors in mind, consider making another attempt to resolve your dispute. If you think your case could be worth \$10,000, but realize that documents helpful to your case may have been lost or that the witnesses you need to prove your case are reluctant to testify, consider writing a letter to the defendant that offers to settle for \$7,500 (or some other reasonable sum). Send the letter by certified mail and be sure to keep a copy. This serves two important purposes. If your offer is accepted, you have saved yourself the time, energy and uncertainty of a trial. Even if your proposal is rejected, you will be able to show the Judge that you have made a good faith attempt to resolve the dispute yourself. Judges like (and often reward) reasonable people.

### **C. TRYING YOUR CASE**

Court Calendar – On the day of your trial, arrive a little early and report directly to the courtroom. Dress appropriately for court. Be respectful and polite to everyone in the courthouse, including your adversary. The Judge will expect civility in the courtroom.

When the Judge takes the bench, he or she will likely “call the calendar.” Basically, the Judge will take attendance to see who showed up for their court date. When the Judge gets to your case, announce that you are present and ready to proceed. The Judge will likely ask you how long it will take you to put on your case. You will likely have 5 to 20 minutes to present your case before the Judge gets impatient. After calling the calendar, the Judge will likely call the first case and send everyone else out in the hall to try and settle their cases again.

Presenting Your Case – When your case is called, introduce yourself to the Judge again and explain the basic nature of your case. The Judge will then either start asking questions, or may then give the defendant an opportunity to tell his side of the story.

If the Judge asks you questions, answer them honestly and succinctly. If the Judge simply gives you the floor, present your case concisely and in chronological order. If you have witnesses with you, have them do the same. The Judge might require you to question your witnesses to elicit their testimony. Be prepared to do so.

Have your evidence and exhibits organized in the order you intend to use them. Hand the Judge and the defendant a copy of each exhibit as you reference it. The Judge will appreciate that you respect his time. Keep your presentation brief and focused on the facts. The Judge does not care what you think of the defendant, so do not waste your

time on telling him. Simply tell the Judge what you want, why you deserve it, and how you arrived at that sum.

#### **D. DEFENDING YOURSELF IN MAGISTRATE COURT**

Much of the above applies equally to plaintiffs and defendants. However, there are a few key points that apply only to defendants. Remember that once you are served with a Complaint you have only 30 days to file an Answer. Also, confirm that the case was filed in a county where you reside, do business, or have an agent for service. Carefully consider any offer to settle made by the plaintiff, or consider making an offer yourself.

If the case proceeds to trial, challenge the sufficiency and credibility of the plaintiff's evidence. Is it hearsay? Do the witnesses have firsthand knowledge? Do they have a dog in the fight? Do you have witnesses or other evidence that contradicts the plaintiff's story? If so, by all means bring those people and documents to court with you.

#### **E. FINAL CONSIDERATIONS**

Trying a case in Magistrate Court requires diligence, objectivity and adaptability. Some business owners find it useful to hire a lawyer to help them get their case ready for trial but then try it themselves without worry about the procedural minutia. After attempting to prepare for trial on their own, others decide that they would be more comfortable with an attorney representing them. Still others are able to prepare and try their case themselves. Regardless of which route you chose, understanding the process and preparing well for trial will greatly enhance your chances of success and your overall satisfaction with the process.

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