

Preparing for Civil Cases

This information provides both the Plaintiff and the Defendant with some basic tips to assist them in preparing for a hearing in the Magistrate Court. Basic procedures are covered, BUT SHOULD YOU HAVE ANY QUESTIONS concerning procedural steps, PLEASE CALL THE MAGISTRATE COURT before the hearing date. IT IS ILLEGAL FOR THE CLERK OR THE JUDGE TO GIVE YOU LEGAL ADVICE. Should you need legal advice, please see an attorney.

PREPARING FOR THE HEARING

Please DO NOT ask to discuss your case with the Judge. It is unlawful for a Judge to discuss a case unless both the Plaintiff and Defendant are present.

If you should move, it is your responsibility to inform the Court in writing of your new address. The Court is not responsible for a party who does not receive their hearing notice because they did not inform the Court of a new address. The Court may issue a default judgment against a Defendant who does not appear at the hearing. If the Plaintiff fails to provide the Court with their new address, and does not appear at the hearing, the Court may dismiss the case.

The Plaintiff must prove the Defendant is indebted to the Plaintiff, and must also prove the amount of damages in detail. The Magistrate Court is required to apply “the rules of evidence.” The Court CANNOT AND WILL NOT accept estimates, letters, affidavits, or statements which are considered “hearsay” for the purpose of proving damages. This means that if the person who wrote the letter or statement is not at the hearing to testify, the document will not be admissible. The party introducing such evidence must have the maker of these writings in court so that the other party may cross examine (question) that person. Just as you may not introduce a writing without having its maker in court, you cannot tell the Judge what someone said who is not at the hearing and available for cross examination (questioning). In some cases, you may need to seek the advice of an attorney to determine which evidence to introduce. It is illegal for the Judge or any of the Court’s employees to tell you what to introduce or how to try your case.

You should gather all of your documents (receipts, warranties, etc.) and organize them before the hearing. You will need to notify your witnesses of your Court date. The Court is not responsible for witnesses who do not show up at the hearing unless they are properly subpoenaed. You may obtain subpoenas from the court and serve them yourself or you may use a process server. If you or a process server effects service, the witness must be served a minimum of 24 hours before their appearance is scheduled and a return of service must be filed with the Court in order for the Court to enforce the witness’ appearance. A witness that lives outside of Murray County must also be paid the statutory witness fee and mileage in order for the Court to enforce their appearance. However, the court will have witnesses subpoenaed if you file a written request for it to do so. The written request must include the witness(es) name(s), address(es), and phone number(s). There is a ten dollar (\$10.00) service fee to subpoena a witness.

ATTORNEYS. If you decide to hire an attorney after you file your claim, make sure the attorney files a Notice of Appearance with the Court in advance. If such a notice is not filed, the Court may refuse to allow the attorney to represent you unless the other party has no objections. If you choose to hire an attorney, please do so as soon as possible. Waiting until the last minute puts everyone at a disadvantage.

PRIOR TO THE HEARING

You will receive notice of your hearing by mail. If after receiving your hearing notice you discover that you have a conflict, you should immediately request a continuance from the Court. This request must be in writing and state the reason a continuance is needed. DO NOT wait until near or on the trial date to ask for a continuance where there are no legal grounds to support it. One continuance may be granted at the Judge's discretion. A second continuance will be much harder to obtain.

COURT DAY

After the calendar is called on Court day, an opportunity will be provided for the Plaintiff and Defendant to discuss their positions in an attempt to settle the case without a trial. The Court is mandated by Georgia Law to require the parties to attempt to reach a settlement. The Court will not ask anyone to accept any unreasonable or unfair offer, but only that the parties try to reach an agreement.

The Judge will handle all of the settled cases first and then the trials will begin. The cases with the fewest witnesses will be tried first because they will take the least amount of time.

The Judge will explain the trial procedures before the hearing begins. All persons (parties and witnesses) that will testify at the hearing will be sworn or affirmed. If there is an attorney involved, the court will give them the option of swearing or affirming their own witness(es).

The Plaintiff has the burden of proving the Defendant's liability as well as the amount of damages. For this reason, the Plaintiff will have the first opportunity to tell the Court his/her side of the case and present evidence on his/her behalf. After the Plaintiff has finished, the Defendant is allowed to cross-examine the Plaintiff (ask the Plaintiff questions about his/her testimony). The Defendant should not make any additional statements or comments at this time. The Plaintiff may also offer the testimony of witnesses if there are any. This will be done by the Plaintiff asking questions of the Witness(es) and the Witness(es) directing their answers to the Court. The Plaintiff should not ask leading questions. These are questions suggesting an answer and can often be answered with a yes or no. This only affirms what the Plaintiff has stated in his/her question. The witness(es) adds nothing to the case by answering leading questions on direct examination. The witness(es) testimony is more credible when he/she testifies in response to the question. After the Plaintiff completes his/her questioning of each witness, the Defendant may cross-examine (ask questions) the witness(es). Leading questions are permitted during cross-examination.

Any physical evidence (pictures, receipts, documents, etc.) presented to the Court must be shown to the opposing party before it is handed to the Judge (showing evidence to the opposing side before the hearing is ideal). Before the Plaintiff rests his/her case, the Judge will ask which exhibits (evidence) are to be entered into evidence. The Judge will ask the opposing party if it objects to any of the submitted evidence. If there is an objection, the Judge will decide which evidence will be accepted according to the law. Once an item is accepted into evidence, it becomes part of the Court's file and will not be returned. You are responsible for making copies of your documents ahead of time.

Once the Plaintiff has rested his/her case, the Defendant will begin his/her case following the same procedures as the Plaintiff. After the Defendant has rested his/her case, each party will be given 5 minutes for closing arguments. At this time, each side will try to convince the Court to rule in their favor by pointing out the highlights of the evidence that is most favorable to their position, but no additional question can be asked nor can any further evidence be submitted.

The Judge may make a decision at this time or may take the case under advisement and let the parties know of his/her decision through the mail. A written judgment will be sent to each party in the mail as soon as it is prepared. Please **DO NOT** call the Court and ask for its decision. This information will not be provided over the phone. If you wish, you may return to the clerk's office and review the docket to learn of the Court's decision. After a decision has been entered, the Judge will not explain his/her decision unless both parties are present. If you are unhappy with the outcome and feel you have sufficient merit for an appeal, you may do so. Therefore, **NO FI FA WILL ISSUE UNTIL THE 30 DAY APPEAL PERIOD HAS EXPIRED.**

APPEALS

Either party has the right to appeal the judgment of the Magistrate Court. A Civil case **MUST** be appealed within 30 days from the date of Judgment. The appeal must be made in writing and appeal forms may be obtained from the Clerk of the Magistrate Court. The appeal will go to the Superior Court of Murray County. The party filing the appeal must pay the Superior Court's filing fee.

Appeals from dispossessory actions **MUST** be filed within 7 days from the date of judgment, and also requires, in addition to the appeal costs, that any amounts of rent determined due by the Magistrate Court be paid into the registry of the Superior Court at the time of appeal, and all future rents must also be paid into the registry of the Superior Court at the time they are due.

If a Defendant fails to show at trial, a default judgment is issued and there is no appeal. If the defendant fails to answer a civil claim within 30 days, the case is in default and the Defendant has 15 days in which he/she may open the default by paying court cost and filing an answer. No fi fa will be issued on a default judgment for 15 days.

**THE MAGISTRATE COURT IS DESIGNED TO ASSIST THE GENERAL PUBLIC;
THEREFORE IF THERE IS LANGUAGE THAT YOU DO NOT UNDERSTAND, PLEASE
CONTACT THE MAGISTRATE COURT FOR AN EXPLANATION. FOR LEGAL ADVICE
CONTACT AN ATTORNEY.**