

White County Magistrate Court

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

General Guidelines

October 28, 2005

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.

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 \$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 \$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 \$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 \$10.00 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 \$10.00 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.