

BAD CHECK WARRANTS IN THE MAGISTRATE COURT OF CHEROKEE COUNTY

Welcome to the Magistrate Court of Cherokee County. We are here to serve you and to assist you with the procedures of this Court. This information is provided 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.

The clerks will be happy to explain the various procedures if you do not understand the information in this document. **The clerks and other court personnel are NOT authorized to provide legal advice.**

Our Judges CANNOT discuss a case with you unless BOTH parties are present.

Bad check applicants must first complete an application with this Court, provide the Court with the original check, copy of the notice letter sent according to law, and proof that the letter was sent (either the green card or the returned envelope).

Bad check cases are called "deposit account fraud" cases. This law also applies to debit card sales receipts, drafts, and orders for the payment of money. Checks written on an out-of-state bank or for \$500 or more are felony cases and are prosecuted in the Superior Court. Checks written on in-state banks for less than \$500 are misdemeanor cases and are prosecuted in the State Court. The Magistrate Court issues the warrants for both felony and misdemeanor bad check cases.

A processing fee of \$10.00 is charged for each warrant or citation application. Notice of the citation must be personally served upon the defendant. O.C.G.A. § 15-10-202(c). Service is completed by the Sheriff's office and the fee is \$25.00. Please note that there is a limit of up to two (2) bad checks per offender, per application. The processing fee and the service of process fee are reimbursed to the merchant or vendor by the maker upon collection of the check by the Magistrate Court.

WHAT IS A BAD CHECK?

Not all checks returned from the bank can be prosecuted in a criminal proceeding. The following is a guide in making a determination of whether you should apply for a criminal warrant.

(1) *Was the check given for present consideration or wages?* If not, you must file a civil suit to collect. 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 when 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 knew 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, you do not have a bad check offense, but you could still file a civil suit to collect.

(3) *Was the check returned because of "No Account" or "Nonsufficient Funds" (NSF)?* 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 as a criminal offense. A check marked "Closed Account" or "Unable To Locate" or "Refer To Maker" may fall under the "No Account" provision. However, you should inquire with the bank to see if the account was closed or there were insufficient funds on the date the check was passed. If this was the case, you may prosecute. 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) *Was the check marked "Stop Payment?"* A stop payment cannot be a violation of the criminal bad check statute.

HOW TO PROCEED WITH A CASE

In order to prosecute a bad check case the prosecutor must be able to prove that the maker of the check intended to defraud the merchant or person receiving the check. This is difficult to do. To lessen this burden, the Deposit Account Fraud Statute provides that 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 financial institution at the time the instrument was made or delivered, or

(2) payment was refused by the financial institution for insufficient funds when deposited or presented within 30 days after delivery to the holder (merchant) and the accused does not pay the holder the amount of the instrument plus a service charge within ten days after receiving written notice that payment was refused by the bank.

The required form of the Ten Day Notice is provided in the Statute. You are required to use the exact wording provided in the Statute. This notice is accepted

in all 159 counties in Georgia. A sample copy is provided at the end of this brochure, or a copy may be obtained from the Magistrate Court.

When a check is dishonored and returned, you must send the Ten Day Notice by certified or registered mail, return receipt requested, within ninety (90) days from the time you discovered the check was bad. If you fail to meet this deadline you may not seek a criminal warrant.

The notice should be sent to the address shown on the check, and if you know of another address for the customer, you should send it to both addresses, certified or registered mail. The object is to get your money, so every notification increases your chances of recovery without having to resort to the court system.

Make a copy of each letter you send to use as evidence in obtaining a warrant. If the money plus the service charge is not paid, you can then seek a warrant for the maker's arrest.

THE EVIDENCE YOU NEED

To file your application for a bad check warrant, you need to bring to the Magistrate Court:

1. The Bad Check.
2. A copy of the Ten Day Notice sent to the customer.
3. The U.S. Post Office return receipt (the green card). If the letter was not accepted by the addressee, bring the original letter in the original envelope as returned by the post office. 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. The name of the person who accepted the check. And,
5. Any other information you think may be important, including any response, whether oral or written, from the maker of the check. This information is to be provided on the Application for Bad Check Warrant.

ISSUANCE OF WARRANT

Your application must be filed in person so you can certify under oath that the information provided in your application is true. The Court will then schedule a hearing to determine whether there is probable cause to arrest the accused.

In a misdemeanor case, a citation will be issued as well. The citation will be sent to the Warrant Division of the Cherokee County Sheriff's Office to be served personally on the accused. If the accused appears in the Clerk's office before

the hearing date and pays off the check plus any bad check fee and court costs, his case will be dismissed without a criminal conviction. Otherwise he must appear for the hearing before the Magistrate.

A citation will not be issued in a felony case. A felony case will proceed directly to a probable cause hearing.

You must appear for the probable cause hearing to prosecute your application for an arrest warrant. If you are successful, an arrest warrant will issue against the accused, and the case will be forwarded to the appropriate court for trial. You will be contacted by the Solicitor General's office or the District Attorney's office for more information about the trial of your case in State or Superior Court.

Magistrate Court of Cherokee County
The Honorable James E. Drane, III, Chief Magistrate
90 North Street, Suite 150
Canton, Georgia 30114-2786
Phone: 678-493-6431
Internet: www.cherokeega.com

RETURNED CHECK NOTICE

FROM: _____ NOTICE REQUIRED BY LAW
O.C.G.A. SECTION 16-9-20

TO: _____ CERTIFIED MAIL NO. _____

You are hereby notified that the following instrument(s)

CHECK NO.	CHECK DATE	CHECK AMOUNT	NAME OF BANK
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

drawn upon _____ and payable to _____
(has/have) been dishonored. Pursuant to Georgia Law, you have **TEN (10) 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 instruments(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**.

Signed

Dated

AFFIDAVIT FOR ISSUANCE OF CRIMINAL WARRANT

In order to apply for a criminal warrant for the issuance of a bad check, you must complete the following affidavit in its entirety. If the case goes to trial or hearing, you should bring with you any evidence required by Georgia Law, including a copy of the statutory letter that you sent to the offender, if the same was required. If a warrant is issued and you later decide to drop the case, or you accept payment (partial, or full) you will be charged court cost of up to \$72.50 for a misdemeanor charge and up to \$215.00 for a felony charge. **Please print below.**

APPLICANT'S INFORMATION

MERCHANT/VICTIM'S INFORMATION

NAME _____

NAME _____

DAYTIME TELEPHONE NUMBER _____

DAYTIME TELEPHONE NUMBER _____

STREET ADDRESS _____

STREET ADDRESS _____

CITY, STATE & ZIP _____

CITY, STATE & ZIP _____

CHECK WRITERS NAME _____

DAYTIME TELEPHONE NUMBER _____

STREET ADDRESS _____

DATE OF BIRTH _____

CITY, STATE & ZIP _____

S.S.N. OR DRIVERS LICENSE NO. _____

Check Number _____ Check Amount _____ Date Written _____

Account Number _____ Bank Name _____ Svc. Chg. _____

Bank charges _____ (copy of bank records showing charges must be attached)
(additional checks may be listed on back)

Reason Check Returned: NSF No Account Closed Account

Please note: If the check was returned stamped "PAYMENT STOPPED", "REFER TO MAKER", or "ENDORSEMENT CANCELLED", you will have to proceed in civil court in the county in which maker of the check resides. If the check is stamped "REFER TO MAKER", you may want to consult the bank if: the account had insufficient funds or was closed on the day it was passed, you will be able to proceed with a criminal action. The bank must furnish this information to you. OCGA § 11-3-508(3).

1. Was this check, draft or order for payment of money given for:
Wages, Rent, Child Support, or Current Consideration, if so what was purchased or exchanged? _____
2. Yes or No; Was the check given at the same time as the exchange above? _____

3. Yes or No; Was the check given for payment on an installment loan or account? _____
4. Yes or No; Was this instrument given in Cherokee County, Georgia, within the previous 2 years? _____
5. Yes or No; Was this instrument given on the date which appears on its face? _____
6. Yes or No; Was there an agreement to hold the check before presenting for payment? _____
7. Yes or No; Was the check presented for payment within thirty days of receipt? _____
8. Yes or No; Was proper legal notice sent within 90 days of dishonor? _____
9. Date you sent certified letter: _____
10. Status of letter: Unclaimed _____ Received _____
11. If letter was signed for, what was the date of signature? _____
12. Yes or No; Was the check presented to the bank within 30 days of being received by the victim? _____
13. Yes or No; Have you accepted any payment for the full or partial amount of the returned check? _____
14. Yes or No; _____

WARNING: False statements made on the application may subject you to criminal and civil liability.

Date: _____ Your Signature _____

ADDITIONAL CHECKS

Check Number _____ Check Amount _____ Date
Written _____
Account Number _____ Bank
Name _____ Svc. Chg. _____
Bank charges _____ (copy of bank records showing charges **must**
be attached)

Check Number _____ Check Amount _____ Date
Written _____
Account Number _____ Bank
Name _____ Svc. Chg. _____
Bank charges _____ (copy of bank records showing charges **must**
be attached)

Check Number _____ Check Amount _____ Date
Written _____
Account Number _____ Bank
Name _____ Svc. Chg. _____
Bank charges _____ (copy of bank records showing charges **must**
be attached)

Check Number _____ Check Amount _____ Date
Written _____
Account Number _____ Bank
Name _____ Svc. Chg. _____
Bank charges _____ (copy of bank records showing charges **must**
be attached)

Check Number _____ Check Amount _____ Date
Written _____
Account Number _____ Bank
Name _____ Svc. Chg. _____
Bank charges _____ (copy of bank records showing charges **must**
be attached)
