

## **Magistrates Court**

**WARNING:** You are strongly encouraged to seek the advice of an attorney in any legal matter. If you move forward without an attorney, it may negatively affect your legal rights. If you have questions about your legal rights or the law that affects your case, please talk with an attorney.

**DISCLAIMER:** The general information provided in these FAQs is not legal advice, cannot be cited as legal authority, and cannot replace the advice of an attorney licensed in South Carolina. The information in these FAQs is accurate as of the date of publication. If you decide to bring a lawsuit in a South Carolina court without an attorney, you are responsible for researching the law on your own. Please note that the presiding judge in each case decides what law applies in that case.

## **Magistrates Court Questions:**

### **What is Magistrates Court?**

Magistrates Court is a court of law with civil and criminal jurisdiction. **These FAQs cover only civil proceedings in Magistrates Court.**

You may file a civil lawsuit in Magistrates Court if:

- You believe that you or your property has been injured or damaged; and
- The value of that injury or damage is **\$7,500 or less**.

If you believe that you have been injured or damaged in an amount greater than \$7,500, then you should file your lawsuit in Circuit Court.

## How do I file a lawsuit in Magistrates Court?

To file your claim in Magistrates Court, follow these steps:

- Begin by estimating how much your claim is worth. Not all claims can be brought in Magistrates Court. Only claims valued at \$7,500 or less can be brought in Magistrates Court.
- You must file your lawsuit in the applicable county. If your claim is against a person, file your lawsuit in the county where the person lives. If your claim is against a company, file your lawsuit in the county where the company has its principal place of business. You may also file your lawsuit in the county where the most substantial part of the cause of action arose. Review [Magistrate Rule 4](#) for more information.

If you do not know the name of the county, please contact your local courthouse or public library. You can also visit <http://www.sciway.net/maps/cnty/>.

- There are Magistrates Courts in each county. You can find the telephone number for Magistrates Courts in the “County Government” section of your phone book. You may also find this information on the South Carolina Judicial Department’s website at [www.sccourts.org](http://www.sccourts.org).
- You must explain to the Magistrates Court what you are claiming and why. You may write a short explanation. If you appear at the Magistrates Court in person, you can explain to the court or court staff what you are claiming and why. The court staff will help you write your explanation if they determine that you need help. Once written, your explanation or statement will be known as a *Complaint*. [Magistrates Rule 5\(a\)](#). An example of a Complaint is found at [Magistrates Rule 24, Form 2](#).
- In your Complaint, you must identify who you claim injured you or your property. You can identify an individual(s), an organization(s), or a business(es). Every party you identify

must be related in some way to the injury or damage that you are claiming.

- You must include in your Complaint a valid mailing address where the court can mail documents to you concerning your case.

**NOTE:** It is your responsibility to update your mailing address in writing if you move or your address changes.

- You should attach to the Complaint copies of any documents or papers that support your claim (examples include photographs, deeds, contracts, receipts, lease agreements, bank statements, cancelled checks, etc.). You should attach copies of these documents to the Complaint and bring the originals to trial with you in case you need to use them during your presentation.
- You must pay a filing fee when you file your claim in Magistrates Court. The amount of the fee is uniform throughout the State. A schedule of civil filing fees in Magistrates Court is found in the attached [memorandum](#) at [Attachment K](#).
- Once you have properly filed a Complaint in Magistrates Court, you will be called the *Plaintiff*.

## **What if I cannot afford to pay the filing fee?**

If you wish to file an action in Magistrates Court but are unable to pay the filing fee, you must file a “Motion for Leave to Proceed *In Forma Pauperis*”. You must attach to your motion the Complaint that you want to file along with an Affidavit (or sworn statement) stating that you are unable to pay the filing fee. [Magistrates Rule 5\(c\)](#).

If the Magistrate Judge grants your *In Forma Pauperis* motion, then you will not have to pay filing fees, but you are still responsible for other court costs. If the Magistrate Judge does not grant your motion, you will have to pay the filing fee.

## How do I “serve” my opponent?

When you have properly filed your Complaint, the Magistrates Court will issue a *Summons*. A copy of the original Summons, along with a copy of the Complaint and any attachments, must be served on **each** person you are suing.

Serving these papers on the opposing party is known as *service of process*. Service of process is important because it lets the opposing party know that you are suing him or her.

You can serve your opponent using one of the following four methods. [Magistrates Rule 6\(c\)](#):

1. **Sheriff’s Department.** The Sheriff’s Department in the county where your opponent lives or works can serve the papers for you. There may be a fee for this and the sheriff or deputy who serves the papers should provide you with a notarized affidavit that your opponent was or was not served.
2. **Private Process Server.** You can use the telephone book to find a private process server who will charge you a fee to serve papers. If the process server successfully serves your opponent, you should have him or her prepare a notarized affidavit that they completed service of process.
3. **Certified Mail.** You can also serve the papers through the mail. You should send the papers using certified mail with restricted delivery and request a return receipt. When you receive the return receipt back from the post office, you should complete an affidavit in front of a notary that indicates the address where you sent the papers and the date you mailed the papers.

Attach the return receipt to the notarized affidavit and file it with the Magistrates Court.

If you do not receive a return receipt or it is returned unsigned, you can try another method to serve your opponent.

4. **Publication.** If you have been unable to serve your opponent through all of the above methods (Sheriff's Department, private process server, and certified mail) you can serve him or her by publication.

To serve by publication, you must first file a "Petition for Order by Publication" with the Court. By filing the petition, you are asking the court to allow you to put a notice in the newspaper that will let your opponent know you have tried to serve papers on him or her by all three of the previous methods.

If the Court determines that you have used "due diligence" or did a good job attempting service, then the Court will sign an "Order for Service by Publication" that allows you to announce your suit in a specific newspaper.

**NOTE:** Sunday service is permissible under the Magistrates Court Rules as long as the person you are serving is not served while going to, attending, or leaving a church or religious service.

## **Will I have to serve a party again after the Complaint?**

No. Unless the Magistrate Judge orders otherwise, the Magistrates Court will deliver all additional court documents to the parties. [Magistrates Rule 8.](#)

The Magistrates Court can deliver court documents to you by any of the four following methods:

1. Physically handing you the document;
2. Leaving the document at your office with a clerk or other person in charge of the office;

3. Leaving the document at your residence with someone living there who is “of suitable age and discretion;” or
4. Mailing it to your last known address. Once the court document is placed in the mail, it is considered delivered.

## **How will I know if I have been sued in Magistrates Court?**

You will know that you have been sued in Magistrates Court when you are served with a Summons and Complaint. If you are served with a Summons and Complaint, you will be known as the *Defendant*. The Defendant is the person who is being sued by the Plaintiff.

## **What should I do if I am sued in Magistrates Court?**

If you receive a Complaint, you are the *Defendant*. You may take certain actions to defend your position:

- You may explain your position to the Magistrates Court. You can do this in writing or orally. If you choose to explain your position to the Magistrates Court, your explanation is called the *Answer*. [Magistrates Rule 7\(a\)](#).
- If you wish to defend your position, you must explain your position to the Magistrates Court (either in writing or in person) within **30 days** after you receive service of the Complaint. [Magistrates Rule 7\(b\)](#).

To determine when the thirty-day period ends, count 30 days beginning the day after you receive the Complaint. In other words, if you receive the Complaint on a Monday, day one of the thirty-day period will be Tuesday.

- You may file a written Answer in a form approved by the Magistrates Court. A copy of the approved Answer form may be found at the following link: [Magistrates Rule 24, Form 4](#).

If you come to the Magistrates Court within the time period to explain your Answer in person, the court staff can help you write your explanation if they determine you need assistance.

- In your Answer you can deny allegations or parts of allegations made against you in the Plaintiff's Complaint. You can also describe any defense(s) that you have.
- You do not have to serve your Answer on the Plaintiff. The Magistrates Court will deliver a copy of the Answer to the Plaintiff. [Magistrates Rule 8](#).
- If you believe that you have a claim against the Plaintiff that relates to his or her claims against you, you may explain to the Magistrates Court what you are claiming and why. This is called a *Counterclaim*.

A Counterclaim is a short written statement describing why you think you have been injured or damaged by the Plaintiff. You may file your Counterclaim in writing or orally. [Magistrates Rule 9](#). A copy of the approved Counterclaim form can be found at the following link: [Magistrates Rule 24, Form 6](#).

- Remember, not all claims can be brought in Magistrates Court. Only claims valued at \$7,500 or less can be brought in Magistrates Court.

The maximum amount of money you can recover in Magistrates Court is \$7,500. If the value of your counterclaim is more than \$7,500, you must agree to accept no more than \$7,500 if you bring the claim in Magistrates Court.

**NOTE:** If you file a counterclaim in Magistrates Court, you cannot sue the opposing party for an amount over \$7,500 at a later time.

## **How do I calculate time limits in Magistrates Court?**

When you are calculating any time period in Magistrates Court (under a Rule, a judge's order, or a statute), **do not include** the day of the

actual act, event, or default in your calculations. You should **include** the last day of the time period unless it is not a working day (Saturday, Sunday, or a holiday). If the last date of the time period is not a working day, then the time period runs until the end of the next working day. [Magistrates Rule 3](#).

When the time period is **less than 7 days**, do not include Saturdays, Sundays, and holidays in your calculations.

**NOTE:** A half holiday is considered a working day in Magistrates Court.

### **What happens if I am sued and I decide not to respond within 30 days?**

If you receive a Complaint and decide not to defend your position within 30 days, the Magistrates Court will enter a *Default Judgment* against you. In other words, the Plaintiff will win the lawsuit. This means that the Plaintiff will be entitled to the money or relief that he or she claims that you owe him or her. [Magistrates Rule 11](#).

### **What happens if the Magistrates Court enters a default judgment against me?**

If the Magistrates Court enters a default judgment against you, then:

- The Magistrates Court will notify you that you have lost the lawsuit.
- The Magistrates Court may order you to pay the person who won the lawsuit.
- The Magistrates Court may order you to pay the total amount due at one time or in installments. If the Magistrates Court orders you to pay *installment payments*, you will not need to pay the total amount at one time. Instead, the Magistrates Court



will allow you to make smaller payments over a specific period of time.

- If the Magistrates Court orders you to make installment payments and you fail to make an installment payment, the total amount of the judgment will become due immediately. In other words, the Magistrates Court will not allow you to continue making smaller payments. Instead, you will have to make one large payment.
- If you do not pay the total amount due, there may be legal consequences, such as a negative effect on your credit.

### **After I have sued the Defendant, how will I know if the Defendant files a claim against me?**

You will know that the person has filed a claim against you when you receive a document called a *Counterclaim*. The Defendant first files the Counterclaim with the Magistrates Court. The Magistrates Court delivers the counterclaim to you.

### **What should I do if the Defendant files a Counterclaim against me?**

- You are not required to file a reply to a Counterclaim in Magistrates Court. If you do not file a reply, the Court will assume that you have denied all of the claims made by the Defendant.
- If you choose to answer the Counterclaim, you have **30 days** to file a reply. To determine when the 30-day period ends, count thirty days beginning the day after you receive the Counterclaim. In other words, if you receive the Counterclaim on a Monday, day one of the 30-day period will be Tuesday.
- You need to appear at trial to defend your position.

## **How do I know where to go for the trial and when to go?**

The Magistrates Court will contact the parties to tell them the date and location of the trial.

## **What can I do if I know that I will not be able to go to Magistrates Court on the day that trial is scheduled?**

You must contact the Magistrates Court to get permission to reschedule the trial. The Magistrates Court may require that you submit your request in writing.

You must have an important and valid reason to reschedule. Usually, you can only get permission to reschedule once.

## **What happens if the Defendant files a counterclaim against me and I fail to come to the trial?**

If the Defendant files a Counterclaim against you, you should come to the trial to argue your claims against the Defendant and to defend your position.

If you do not appear at trial, the Magistrates Court will dismiss your claims against the Defendant and you will lose. The Magistrate Judge will rule in favor of the Defendant and the Defendant will win his or her claims against you. This means that the Defendant will be entitled to the money or relief that he or she claims that you owe him or her. [Magistrates Rule 11\(c\)](#).

## **What happens if both the Plaintiff and the Defendant do not appear for the trial?**

If both the Plaintiff and the Defendant do not come to trial, the Magistrate Judge will dismiss all the claims that were filed. Neither the Plaintiff nor the Defendant will win. Additionally, if the Magistrate Judge dismisses the claims, the lawsuit will no longer exist. [Magistrates Rule 11\(b\)](#).

## **Am I entitled to a jury trial in Magistrates Court?**

If you want a jury trial, you must send a written request for a jury trial to the Magistrate's Court **at least 5 working days** before the date of the trial. [Magistrates Rule 13\(c\)](#). Working days are Monday, Tuesday, Wednesday, Thursday, and Friday.

## **What happens at the trial?**

You and your opponent will appear before the Magistrate Judge at the same time in the courtroom.

If you are the Plaintiff:

- You will explain your claims and your position first.
- You may question any witnesses you believe will support your position.
- You may give the Magistrate Judge any documents or things that you believe will support or prove your position. It is very important that you bring these items to court with you if you want them to be considered.
- You may ask the Defendant questions that relate to your claims or position.

- If you do not have an attorney or if the Defendant does not have an attorney, the Magistrate Judge will question you, the Defendant, and any witnesses.

If you are the Defendant:

- You will explain your position and any claims that you may have after the Plaintiff explains his or her case.
- You may also question any witnesses you believe will support your position.
- You may give the Magistrate Judge any documents or things that you believe will support or prove your position.
- You may ask the Plaintiff questions that relate to your position and your claims.
- If you do not have an attorney or if the Plaintiff does not have an attorney, the Magistrate Judge will question you, the Plaintiff, and any witnesses.

Anything that the Plaintiff, the Defendant, and the witnesses say during the trial will be *under oath*. In other words, if any individual does not tell the truth, that individual may have committed *perjury*.

After you and your opponent have explained your positions, either the Magistrate Judge or the jury will review the information.

As soon as the Magistrate Judge or the jury finishes reviewing the information, the Magistrate Judge or the jury will decide the outcome of the lawsuit. The Magistrate Judge will tell both parties at the same time in the courtroom who won the case. This is called the *verdict*.

### **What happens if I want a witness to come to trial to support my case, but I do not think the witness will come to the trial?**

You may believe that certain people have information that will support your position at trial. You may ask anyone to come to trial to be a

*witness*. A witness will answer questions by you, the opposing party or his attorney, and the Magistrate Judge.

If someone refuses to come to trial to be a witness, you may contact the Magistrates Court. The Magistrates Court may have the power to issue a *subpoena* to force the person to come to trial. [Magistrates Rule 13\(e\)](#).

**NOTE:** Generally, an affidavit or a sworn statement from a witness who cannot attend the trial is **not** admissible in Magistrates Court.

## **What happens if I disagree with the final decision or outcome of the trial?**

The final decision is called a *judgment*. If you disagree with the judgment, you have two options:

1. File a written motion for a new trial within **five days** from the date you receive the notice of the judgment; or
2. Appeal the judgment to the Circuit Court in the county where the Magistrates Court is located. [Magistrates Rule 18](#).

## **How do I appeal a judgment from Magistrates Court?**

If you are appealing the judgment, you are known as the *Appellant* (party appealing).

To appeal a judgment from Magistrates Court, you must:

1. Prepare a *Notice of Appeal*. A Notice of Appeal is a document that lets everyone involved in the case know that you intend to appeal the judgment. [Magistrates Rule 18\(a\)](#). A copy of the approved Notice of Appeal form can be found at the following link: [Magistrates Rule 24, Form 21](#). File the

Notice of Appeal with the Clerk of Court in the Circuit Court where the Magistrates Court is located.

- The Notice of Appeal should contain a general statement describing the reasons why you are appealing.
  - You should state as specifically as possible why the judgment should have been in your favor.
  - If the appeal is based on a disagreement with the amount of the judgment, you must state what you think the amount should have been.
2. File your appeal with the Clerk of the Circuit Court within **30 days**.
- The 30 days begins to run on the day the judge announces his or her decision in court.
  - If you attended the trial and the Magistrate Judge announced the final judgment in your presence, then the Magistrate Court does not have to give you written notice of the judgment to start this 30 day period.
  - If you are the Appellant, and you did not appear at trial or the judge did not announce the final judgment in your presence, then the 30 day period starts only after you receive written notice of the judgment, order, or decision. In other words, you have 30 days to appeal from the date that you receive the judgment in the mail.
3. Serve the “clocked” copy of your Notice of Appeal on all opposing parties and the Magistrates Court where the case was tried. (See FAQs above for information regarding service of process).
- If the other side is represented by an attorney, the Notice of Appeal must be served on the attorney unless the Magistrate Judge orders that you serve the party directly.

4. You will have to pay a \$150 filing fee to the Clerk of the Circuit Court.
  - If you cannot afford to pay the filing fee, you can file a Motion and Affidavit to Proceed *In Forma Pauperis* asking the judge to waive the filing fees. You must file this motion, the Notice of Appeal, and a notarized affidavit that indicates that you cannot pay the fee. When you sign this motion in front of the notary, you are swearing under oath that you cannot afford to pay the court fees.
  - If the judge grants your *In Forma Pauperis* motion, then you will not have to pay filing fees, but you are still responsible for other court costs.

### **If I appeal my case to the Circuit Court, will I be able to have a jury trial?**

No, only a Circuit Court judge will hear your appeal.

### **If I win my case, how do I file a judgment from Magistrates Court?**

If you win your case in the Magistrates Court, you are awarded a judgment. **You must file a judgment with the Circuit Court Clerk of Court's office.**

When you file your judgment, you will need the original transcript or the original paperwork from the Magistrate Judge who heard your case.

To file, take your paperwork to the Clerk of Court's office in the Circuit Court in the county where your case was heard. You will have to pay a \$10 filing fee to the Clerk of Court

## **How do I collect an unpaid judgment?**

If the losing party in your lawsuit has not paid as ordered by the Magistrate Judge, you may prepare an *Execution of Judgment*.

An Execution of Judgment allows the Sheriff's Department to try to collect your judgment. Some counties have forms that may assist you in preparing your Execution of Judgment, but other counties may not. Call the Clerk of Court's office in the county where you are seeking to execute a judgment.

Once you have prepared your Execution of Judgment, you must have the Clerk of Court sign it. Next, take the signed Execution of Judgment to the Division of the Sheriff's office or the Civil Service Department for service. Be prepared to pay processing fees, which vary from county to county.

If there is an appeal in your case and a court has granted a *stay*, you may not be able to collect your judgment at that time. A *stay* is a legal term that means that your lawsuit or the enforcement of your judgment is suspended or temporarily stopped by court order.

## **Can I discuss my case with the judge?**

Neither you nor the judge is allowed to discuss your case outside of the courtroom. Such discussions are considered *ex parte communications*, which are not permitted. This is to ensure fairness to all parties.

## **How are Clerks of Court able to assist me?**

Clerks of Court can provide legal information and answer questions about how the court works. Clerks of Court **CAN**: (1) provide telephone numbers to organizations that may be able to help you get legal information; (2) give you general information about where to find court procedures, deadlines, rules, and practices; (3) provide



scheduling information; (4) provide basic information about your case file; and (5) provide court forms.

Clerks of Court cannot provide legal advice. Clerks of Court **CANNOT**: (1) tell you whether you should bring your case in court; (2) tell you what to say in your court papers (although they can check your papers for completeness); (3) tell you what to say in court; (4) offer an opinion as to what will happen in court if you bring your case; (5) talk to the judge for you; (6) let you talk to the judge outside of the courtroom; or (7) change an order signed by the judge.

## **Resources**

- If you do not understand the information in these FAQs, you may want to contact an attorney.
- To find an attorney who practices law in this area, please contact the South Carolina Bar's Lawyer Referral Service (LRS) at 1-800-868-2284 (toll free). LRS offers a referral by location and type of law. The lawyers who sign up with LRS are in good standing with the South Carolina Bar and must maintain malpractice insurance coverage. The lawyers also agree to a 30-minute consultation for no more than \$50. After the 30-minute consultation, the fees will be the lawyers' normal fees. Once you receive a referral, you will be expected to contact the lawyer by telephone to make an appointment.
- If you cannot afford an attorney, you may contact the South Carolina Legal Aid Telephone Intake Service (LATIS) at **1-888-346-5592** (toll free) or **803-744-9430** (Columbia area). Eligibility for assistance will depend on your income and assets and the type of problem you have. The income limit to be eligible for Legal Services is 125% of the Federal poverty level, which changes every year in April. There is also an asset limit (example of assets include money in bank accounts, property, etc.). Additionally, the problem you have must be within the list of problems with which LATIS can help.