

## A PROCEDURAL GUIDE FOR HANDLING BAD CHECKS

Almost all "bad checks" are grounds for a civil lawsuit, but only some form the basis for criminal action. The law, as written by the General Assembly and interpreted by the Georgia Court of Appeals and Supreme Court, determines whether this Magistrate Court can issue a criminal warrant or citation. The final decision rests with this Court.

This guide outlines the steps you need to take and the questions you need to answer to present a check for criminal prosecution. Following the steps, however, does not necessarily mean that we can issue a bad check warrant or citation. It means only that we will not deny a warrant or citation because of a procedural error on your part.

### PROCEDURAL STEPS TOWARDS ISSUANCE OF A BAD CHECK WARRANT OR CITATION

1. When accepting the check, the merchant (see note 1) should ensure that printed or written directly upon the check are the customer's full name, current home address and home telephone number. (If the merchant maintains a check-cashing I.D. card system, only the I.D. card number has to be written on the check if the merchant has on file the customer's full name, home address and home telephone number.)
2. The person accepting the check (usually the merchant or an employee) should initial it as evidence that he or she witnessed the customer signing the check.
3. It is strongly suggested, although not legally required, that the merchant obtain from the customer: driver's license number, employer's name and address, work telephone number, social security number, date of birth, etc.

Note 1: The terms "merchant" and "customer" are used for convenience and can refer, respectively, to anyone accepting a check and anyone presenting a check.

4. Deposit or present the check promptly. If the check is not received by the customer's bank within 30 days of you receiving it, you may not be able to prosecute the bad check as a criminal matter.
5. You should be able to answer NO to the following questions in order to pursue a criminal prosecution. If you answer YES to any of the following questions, you may want to consider civil action and/or you may want to consult an attorney.
  - a. Have you accepted payment for the full or partial amount of the check?
  - b. Was the check for payment on an account/loan/installment, NOT "present consideration" (Goods, services, money, rent, taxes, court - ordered child support, wages, etc. .)?
  - c. Was the check "post-dated", a "two-party" check, or did the customer indicate the check was/would be "no good", or did the customer ask you to "hold the check" for him/her?

6. A "10-Day Letter" is required on all bad checks eligible for criminal prosecution. The 10-day letter should be sent by certified mail as soon as possible and, in any event, must be sent within 90 days from the date you discovered the check was bad. The law (OCGA 16-9-20) provides a sample letter for

you to use. An example of a letter format is attached as the last page of this handout. Make a copy of the actual letter you send out to each customer. Send it to the address that is on the check AND any other address given to you at the time the check was presented. If you are aware of another address for the customer, send it certified to ALL.

7. If the check is returned stamped "PAYMENT STOPPED", "REFER TO MAKER", "ENDORSEMENT CANCELED", etc., you probably will have to sue in civil court in the county in which the customer resides (not necessarily in the county in which the check was passed). With a "REFER TO MAKER" notation, you may want to check with the bank: if the account had insufficient funds or was closed on the day it was passed, you may be able to proceed with a criminal action. You should bring with you a letter from the bank confirming the status of the check on the day you first received it. Under Georgia law, the bank must furnish this information to you (OCGA 11-3-508(3).)

8. If the customer ignores the letter or its contents, you may apply for a warrant or citation at the Magistrate Court. You may want to "work" with the customer for a period of time, but do not wait too long before applying for a warrant or citation. Checks presented for criminal prosecution to the Magistrate Court which are more than six months old are not favored.

Bring with you:

- a. the bad check;
- b. a copy of the actual letter you sent;
- c. "green card" (certified mail receipt) OR returned letter;
- d. the name and home address of the person who actually ACCEPTED the check on behalf of the merchant;
- e. any other documents you consider relevant to the case;
- f. \$10.00 for each check you are submitting.

9. When determining which county Magistrate Court to go to, the general rule is: For criminal actions, go to the county in which the act (the giving and receiving of the check) took place; for civil actions, go to the county of the customer's residence.

**REMEMBER:** The above is just the correct procedural process. The Court will determine if, applying additional non-procedural rules and law, a criminal bad check warrant or citation can issue.

STATUTE OF LIMITATIONS is normally two years for misdemeanors and four years for felonies.

**DISCLAIMER:** This handout is provided for information only. It covers the general process of the Magistrate Court; is not intended to be exhaustive; and is not to be interpreted as legal advice nor to be relied on as a substitute for competent legal advice.