

## 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

