

Going To Magistrate Court

How to Handle Your Own Case

Legal Aid of West Virginia
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Filing the Complaint

1. Go to the Magistrate Clerk's Office and ask for a "Civil Complaint" form.
2. Fill in your own name and address. Then fill in the defendant's name and address. A copy of your papers will be delivered to the other side. *You will need the exact name and a physical address (not a P.O. Box) where the papers can be delivered!*
3. Write a "*brief statement*" of why you think the defendant owes you money. Use short sentences, no fancy legal words.
4. Write what you want to court to do. Normally this will be the amount of money you want the other side to pay.
5. If you can't afford the court filing fee, ask the Magistrate Clerk for an "Affidavit of Indigency." You will need to fill this out with information about your household income, bills, debts, and property. The Clerk will review this and tell you whether you qualify to have the filing fee waived.

After You File The Complaint

The Sheriff's Office will deliver your papers to the defendant. It may take days or weeks to do this.

Once the defendant receives the papers the law allows time to file an "Answer." Depending on the type of case, this can be as long as 30 days from the time the defendant receives the papers.

After the defendant files an Answer, the Magistrate Court will schedule a date and time for trial and send written notification to each side.

If you do not get a notice of hearing date within six weeks after you file your case, check back with the Magistrate Clerk's office to see if the papers were delivered to the defendant.

If the papers were delivered, but the other side has not filed an Answer within 30 days, you can ask the Magistrate Clerk for a form to request a "default judgment" in your favor. This is an order that you win because the other side didn't respond or disagree with you.

What You Must Prove

Every case has two halves:

- (1) the other side did something wrong;
AND
- (2) the damage you suffered because of
what the other side did.

First, you have to prove that the other side did something wrong, like breach of contract or damage to your property. It is up to you to prove what they did, and why it was wrong. You must present evidence to support what you say. It isn't enough for you just to claim something - you must show the court EVIDENCE to prove your case.

Second, you must prove the money value of the damage done. It isn't enough to say that "it's broken," or you "lost money." You have to present evidence to prove exactly what the thing was worth, or exactly how much money was lost on the deal. This means you will need to bring in receipts to show what you spent; or estimates to show how much a repair will cost; or some other evidence or testimony to convince the magistrate.

Proving the 'Value' of Something

If someone damages an item of property, you have to prove what it was worth on the day before it was damaged, and then what it was worth on the day after it was damaged.

WHAT IT WAS 'WORTH' IS WHAT YOU WOULD HAVE GOTTEN FOR IF YOU HAD SOLD IT THROUGH THE WANT ADS, A YARD SALE, OR THE AD BULLETIN.

NOTE: What you paid to buy it new is usually **not** what it is worth at some later point when it was broken or lost. A brand new \$50 jacket can't be sold for \$50 six months later - it's worth less than that.

NOTE: What you will have to pay to replace it with a new one is usually **not** what the old item was worth when it was damaged or lost. Just because it will cost you \$100 to replace the coffee table doesn't mean someone would have bought the old one for \$100.

Instead, you have to value something at the amount it would have brought if you had tried to sell it on the day it was damaged, broken, lost, or whatever. For most of us, our used clothes and furniture and kitchen pans won't raise very much money at that kind of sale.

Evidence - Pictures

The fundamental requirement of the law is EVIDENCE! To win, you need EVIDENCE to prove that what you say is in fact true.

PICTURES ARE POWERFUL! "A picture is worth a thousand words." Use pictures that show the details. Sometimes you might already have pictures that 'incidentally' show something that helps. (For example, a photo from a birthday party that shows the crack in the wall in the background; or the good condition of the car before the accident.)

Pictures eliminate a lot of uncertainty. You may call something 'ruined,' while the other side says it's 'only scratched.' A good picture lets the magistrate see the real condition.

If you have good pictures, take them to a copy shop with an ordinary color Xerox machine and have the best ones enlarged. It will cost about \$1 for each 8x11 full page print, but it's worth it. The things you want to show will leap off the photo for the magistrate.

Videos can also be wonderful, but you have to call the court ahead to make sure they will arrange to have a VCR & TV ready to use.

Evidence - Other Types

In most cases there are other types of evidence that can be used. Find documents that demonstrate what you are talking about in your case:

- ▶ Leases, contracts, and written agreements;
- ▶ receipts for what you spent;
- ▶ checking account records or canceled checks to show whether the check was cashed;
- ▶ estimates for repairs;
- ▶ letters in which agreements were made or at least mentioned.

The tricky part is keeping your records organized, and using only the ones that are really important. No magistrate wants to watch you shuffle through a big pile of papers hunting for something. Figure out which ones are clear and helpful, and use only those.

Finally, you **CAN'T** use letters or written statements from witnesses to prove what happened (because the other side can't ask questions of a piece of paper). The magistrate isn't going to consider letters and notes. If witnesses have useful testimony, **THEY MUST BE PRESENT TO TESTIFY.**

At The Hearing

- ★ You should wait your turn to discuss your side of the story.
- ★ You should not interrupt the judge or the other side.
- ★ When it is your turn to talk to the magistrate, you should explain your situation. *This is your one chance to tell your story. Be complete.*
- ★ You can write out what to say before you go to court. If you run out of time, you can give your written statement to the magistrate.
- ★ You should use pictures, video, letters, and witnesses to prove you are right.
- ★ If you have a video tape, write a letter before the hearing, asking the magistrate to arrange to have a VCR and TV available. *Make sure your video is on a standard cassette that can be put into a VCR.*
- ★★ Sometimes the magistrate will make a decision right there on the spot. Sometimes the magistrate may take several days before mailing out a decision in writing.★★