

Magistrate Court Clerks' Annual Training

June 23-24, 2022

Savannah Riverfront Marriott, Savannah, GA

*Class is located in Savannah Ballroom C
Meals will be served in Savannah Ballroom DE*

Thursday, June 23, 2022

7:00 – 8:00	Group Breakfast/Registration
8:00 – 8:50	Garnishments – Hon. Jim Altman
9:00 – 9:50	GCIC/Bond Conditions – Hon. Jim Altman
10:10 – 11:00	Transfers & Appeals – Hon. Megan Kinsey
11:10 – Noon	Caseload Reports – Mr. Jeffrey Thorpe
Noon – 1:00	Group Lunch
1:00 – 1:50	Mechanics Lien – Hon. Michael Barker
2:00-2:50	Abandoned Motor Vehicles – Hon. Michael Barker
3:10-4:00	Disposessories – Hon. Rebecca Pitts
4:10-5:00	Statement Claims & Writ of Possession Foreclosure – Hon. Gayle Gazaway

Friday, June 24, 2022

7:00 – 8:00	Group Breakfast
8:00 – 8:50	Clerk Ethics – Hon. Rick Waters
9:00 – 9:30	Pre-Warrant Hearing Skit – Council of Magistrate Court Clerks
9:45 – 11:00	Criminal Overview – Hon. David Crosby
11:10 – Noon	Q&A Session – Council of Magistrate Court Clerks



INSTITUTE OF CONTINUING JUDICIAL EDUCATION

University of Georgia
1150 South Milledge Avenue
Athens, GA 30602-5025

<https://icje.uga.edu>



Institute of Continuing Judicial Education of Georgia
 University of Georgia, 1150 South Milledge Avenue
 Athens, GA 30602-5025
<http://icje.uga.edu>

The following are the members of ICJE’s Board of Trustees.

Judge Katherine "Katie" Lumsden <i>Chair</i> Superior Court – Houston Circuit	Dean Peter “Bo” Rutledge <i>Vice Chair</i> School of Law University of Georgia
Judge William P. Bartles <i>Secretary/Treasurer</i> Juvenile Court – Flint Circuit	Judge Bonnie Chessher Oliver <i>Past Chair</i> Superior Court – Northeastern Circuit
Justice John Ellington <i>Liaison Member</i> Supreme Court of Georgia	Judge Patty Walters Laine Probate Court – Hall County
Judge Gregory Poole Superior Court – Cobb Circuit	Judge Allison Barnes Salter State Court – Cobb County
Dean Mary Anne Bobinski School of Law Emory University	Cynthia H. Clanton Director, AOC
Interim Dean Karen J. Sneddon School of Law Mercer University	Kyemeshia T. Gibson Superior Court Clerk – Meriwether County
Dawn M. Jones State Bar of Georgia The Firm of Dawn M. Jones	Judge Megan Kinsey Magistrate Court – Butts County
Dean Jace Gatewood Atlanta's John Marshall Law School	Chief Judge Rashida Oliver Municipal Court – East Point
Judge Elizabeth Gobeil Court of Appeals	Dean LaVonda Reed Georgia State University School of Law

ICJE Staff to Magistrate Court Clerks:

Lynne Moore Nelson, Executive Director: 706-369-5793, lynnemoore.nelson@uga.edu
 Thomas Erwin, Event Planner: 706-369-5809, terwin21@uga.edu

<p><i>Council of Magistrate Court Clerks Inc.</i></p> <p><i>Executive Committee & District Representative TERM 2021-22</i></p>	<p>President: Carla Brown, Lee County PO Box 522 Leesburg, GA 31763 Work: 229-759-6016 Email: cabrown@lee.ga.us</p>
<p>Vice President: Cynthia Kelley, Burke County PO Box 401 Waynesboro, GA 30830 Work: 706-554-4281 Email: c.kelley@burkecounty-ga.gov</p>	<p>Secretary-Treasurer: Cheryl McMillan, Charlton County 1520 Third St, Suite B Folkston, GA 31537 Work: 912-496-2617 Email: cmcmillan@charltoncountyga.gov</p>
<p>District 1: Renea Daniels, Brantley County PO Box 1150 Nahunta, Ga 31553 Work: 912-462-6730 Email: danielsreneard@gmail.com</p>	<p>District 2: Kelley Maslak, Lowndes County PO Box 1349 Valdosta, GA 31603 Work: 229-671-2623 Email: kmaslak@lowndescounty.com</p>
<p>District 3: Jackie Norman, Lee County PO Box 522 Leesburg, GA 31763 Work: 229-759-6016 Email: jnorman@lee.ga.us</p>	<p>District 4: Patricia Carreker, Rockdale County PO Box 289 Conyers, GA 30012 Work: 770-278-7796 Email: Patricia.Carreker@rockdalecountyga.gov</p>
<p>District 5: Cathelene "Tina" Robinson Clerk: Fulton Co 136 Pryor Street S W, Room 106 Atlanta, GA 30303 Work: 404-613-5313 Email: Tina.robinson@fultoncountyga.gov</p>	<p>District 6: Jan Streetman, Upson County PO Box 890 Thomaston, GA 30286 Work: 706-647-6891 Email: jstreetman@upsoncountyga.org</p>
<p>District 7: Monika Welchel, Bartow County 112 Cherokee Avenue Suite 101 Cartersville, GA 30120 Work: 770-387-5070 Email: wechelm@bartowcountyga.gov</p>	<p>District 8: Alanda Sikes, Candler County 1075 E Hiawatha St Ste C Metter, Georgia 30439 Work: 912-685-2888 Email: asikes@candlerco-ga.gov</p>
<p>District 9: Connie Griffith, Forsyth County 1090 Tribble Gap Rd Cumming, GA 30040 Work: 770-205-4578 Email: clgriffith@forsythco.com</p>	<p>District 10: Savannah Hadden, McDuffie County 210 Railroad St Thomson, GA 30824 Work: 706-595-2137 Email: savannah.hadden@gsccca.org</p>
	<p style="text-align: right;">3</p>

Nominating Committee:	
<p>Shelly Herndon, Pierce Co 3550 Hwy 84 Ste 2 Blackshear, GA 31516 Work: 912-449-2027 shelly.herndon@piercecountyga.gov</p>	<p>Alecia Lawrence 22 North Court Street Camilla, GA 31730 Work: 229-336-2077 Email: alawrence@mitchellcountyga.net</p>
Advisor:	<p>Judge Connie Holt, Morgan County PO Box 589 Madison, GA 30650 Work: (706) 342-3088 Email: Cholt@morgancountyga.gov</p>

TABLE OF CONTENTS

2022 Magistrate Court Clerks' Annual Training

• Agenda.....	1
• Board of Trustees.....	2
• Council of Magistrate Court Clerks.....	3
• Table of Contents.....	5
• Attendance Form.....	7
• Evaluation Form.....	9
• Garnishments.....	11
• GCIC/Bond Conditions.....	19
• Transfers & Appeals.....	33
• Caseload Reports.....	41
• Mechanics Lien.....	49
• Abandoned Motor Vehicles.....	63
• Dispossesories.....	115
• Statement Claims & Writ of Possession Foreclosure.....	133
• Clerks Ethics.....	139
• Pre-Warrant Hearing Skit.....	169
• Criminal Overview.....	177
• Q&A Session.....	191
• ICJE Points of Contact.....	200



MANDATORY CONTINUING JUDICIAL EDUCATION ATTENDANCE FORM
TURN IN THIS SHEET BEFORE LEAVING OR EMAIL TO terwin21@uga.edu

**Magistrate Court Clerks' Annual Training
June 23-24, 2022
Savannah Riverfront Marriott, Savannah, GA**

Court Title: _____ Name: _____

County: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

Are you a current Judge? _____ Have you sat as a Judge in the past 12 months? _____

COURTS SERVED: *(Check ALL that apply to you!)*
State Juvenile Probate Magistrate Municipal

Thursday, June 23, 2022

Garnishments	8-8:50 (1 HR)	Hours Claimed _____
GCIC/Bond Conditions	9-9:50 (1 HR)	Hours Claimed _____
Transfers & Appeals	10:10 - 11 (1 HR)	Hours Claimed _____
Caseload Reports	11:10 - Noon (1 HR)	Hours Claimed _____
Mechanics Lein	1-1:50 (1 HR)	Hours Claimed _____
Abandoned Motor Vehicles	2-2:50 (1 HR)	Hours Claimed _____
Disposessories	3:10 - 4 (1 HR)	Hours Claimed _____
Statement Claims &...	4:10- 5 (1 HR)	Hours Claimed _____

Friday, June 24, 2022

Clerk Ethics	8-8:50 (1 HR)	Hours Claimed _____
Pre-Warrant Hearing Skit	9-9:30 (0.5 HRS)	Hours Claimed _____
Criminal Overview	9:45 -11 (1.5 HRS)	Hours Claimed _____
Questions & Answers	11:10-Noon (1.0 HR)	Hours Claimed _____

TOTAL HOURS CLAIMED FOR THE SEMINAR: _____

(I certify the above attendance information recorded is accurate & represents my true attendance / participation at the seminar.)

Signature

Date



EVALUATION

Magistrate Court Clerks' Annual Training

June 23-24, 2022, Savannah Riverfront Marriott, Savannah, GA



Instructions: Please fill out the evaluation below OR you may complete this evaluation online by scanning the QR code (located in the top right-hand corner of this form) with your smartphone camera. Physical forms may be returned to the ICJE table prior to leaving the conference OR by email to terwin21@uga.edu.

Instructions: Numerically score the topic, with 1 being low and 5 being high, for relevance (timeliness and target of focus) of the instructional topic in relation to work currently being done by your office.

Comment on the instructor, explaining how this person might improve a presentation, such as by:

- (i) Describing illustrative problems and tested solutions;
- (ii) Incorporating reference use of the handout materials;
- (iii) Responding to questions or observations contributed by participants.

Garnishments 1 2 3 4 5
 Hon. Jim Altman
 Comments:

GCIC/Bond Conditions 1 2 3 4 5
 Hon. Jim Altman
 Comments:

Transfers & Appeals 1 2 3 4 5
 Hon. Megan Kinsey
 Comments:

Caseload Reports 1 2 3 4 5
 Mr. Jeffery Thorpe
 Comments:

Mechanics Lein 1 2 3 4 5
 Hon. Michael Barker
 Comments:

Abandoned Motor Vehicles

1 2 3 4 5

Hon. Michael Barker

Comments:

Dispossessories

1 2 3 4 5

Hon. Rebecca Pitts

Comments:

Statement Claims & Writ of Possession Foreclosure

1 2 3 4 5

Hon. Gayle Gazaway

Comments:

Clerk Ethics

1 2 3 4 5

Hon. Rick Waters

Comments:

Pre-Warrant Hearing Skit

1 2 3 4 5

Council of Magistrate Court Clerks

Comments:

Criminal Overview

1 2 3 4 5

Hon. David Crosby

Comments:

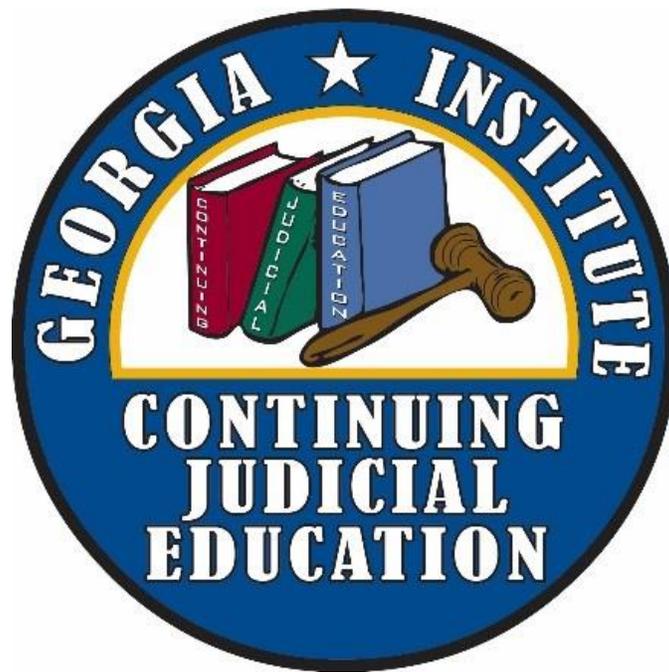
Questions & Answers

1 2 3 4 5

Council of Magistrate Court Clerks

GENERAL COMMENTS:

Garnishments



Hon. Jim Altman

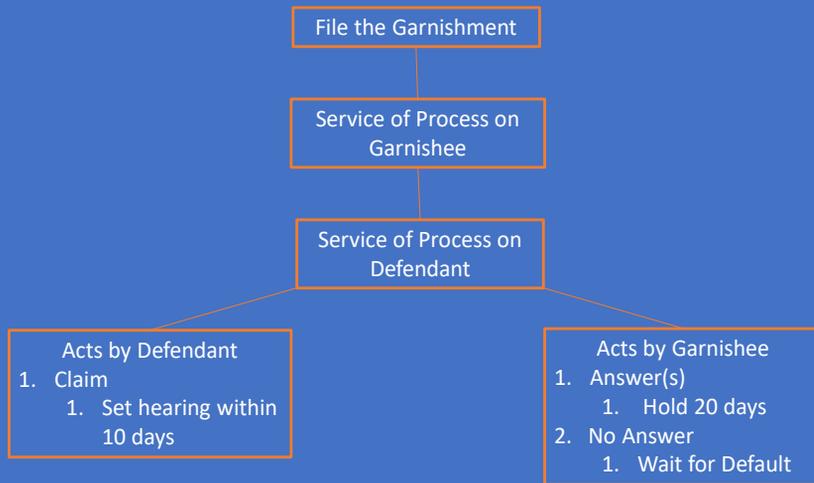
Garnishments

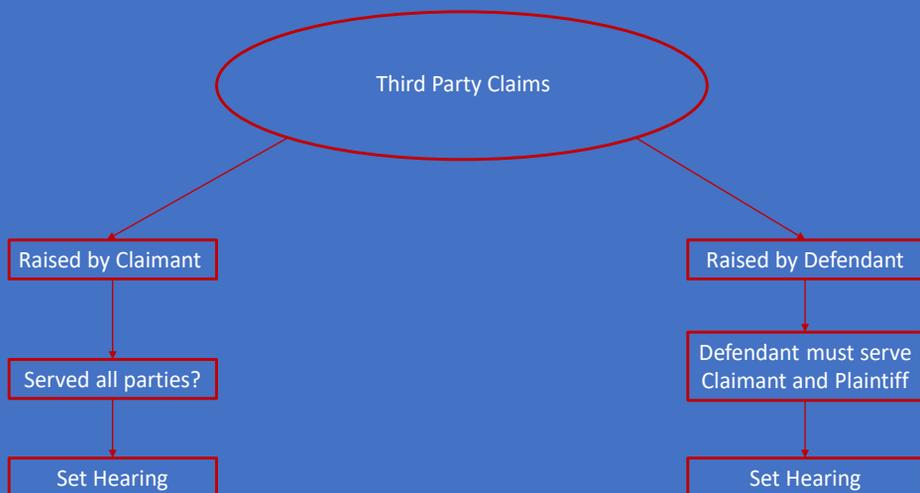
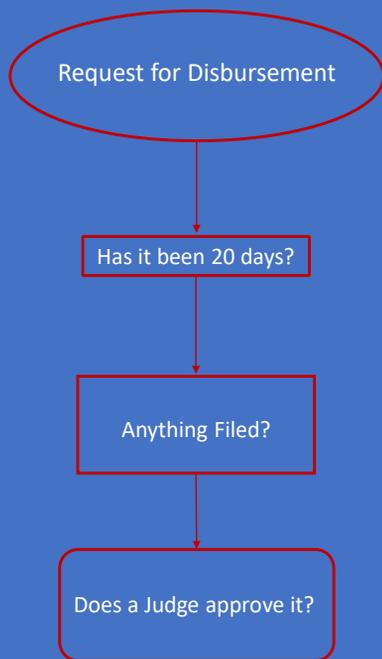
1. Three Kinds of Garnishments
 - a. Regular
 - b. Continuing
 - c. Child Support
2. Jurisdictional Amount applies
3. Civil Practice Act applies
4. Recent changes in Garnishment law
 - a. Approval no longer required (applies to Dispos too).
 - b. 2016 math error corrected – exempt wages
 - c. Part (C) service by regular mail, took the clerk out of the acceptance of the affidavit.
 - d. Took Defendant out of the 3rd party claims, but: N.B. Defendant can raise the 3rd party claim, but claimant must come in to prove it.
 - e. Recent Interesting Cases
 - i. Blach v. Diaz-Verson, Civil (2018-02-05, 2018-03-06) S17Q1508 When is a financial institution not a financial institution.
 - ii. Principal Lien Services, LLC v. NAH Corporation, Civil (2018-05-14, 2018-06-07) A18A0029 Defaulting Garnishee could not raise lack of service of Defendant.
 - iii. Rivers v. Rivers et al., Civil (2019-01-16, 2019-02-01) A18A1725 No statutory time limit to move for default.
 - iv. Smith v. Robinson, 355 Ga. App. 159 (2020), no exemption for child support due.
 - v. Not garnishment but important to your lives.
 1. Prince v. Rawls, Civil (2018-06-13, 2018-07-23) A18A0212 Clerk closed early due to snowstorm. No designated alternate location to file. Time periods extended to next business day.
 2. Anglin v. State Farm Fire & Casualty Insurance Company, Civil (2019-01-10, 2019-01-23) A18A1723, no summons attached to service copy of complaint is not service of process.
5. Key moments in the clerk's life
 - a. Service of Process
 - i. On the Garnishee
 - ii. On the Defendant
 1. 3 day Rule
 2. Savings provision
 - b. Payment of funds
 - i. Regular Garnishments
 - ii. Wage Garnishment
 - c. Defaults
6. Garnishment flow chart

Garnishments

James Altman
Senior Magistrate

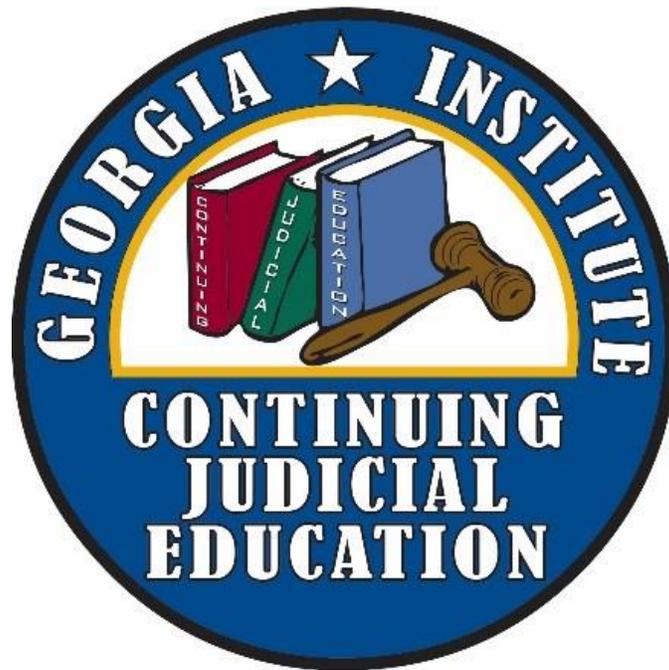
**SUCH
EXCITEMENT!!**







GCIC/Bond Conditions



Hon. Jim Altman

The Protective Order Registry

Georgia Protective Order Registry (GPOR)

- By law, GCIC is responsible for the operation of the Georgia Protective Order Registry.
- The Georgia Protective Order Registry became operational on July 1, 2002.
- The Georgia Protective Order Registry is an online web-based service that stores protective orders.
- The goal of the Georgia Protective Order Registry is to enhance victim safety by providing law enforcement officers, prosecuting attorneys and the courts 24/7 access to protective orders that have been issued by the courts of this state and foreign courts

§ 19-13-51. Definitions

As used in this article, the term:

(7) "Protective order" means:

(A) An ex parte, temporary, six-month, permanent, restraining, pretrial release, or sentencing order issued by a judge in this state that prohibits contact or that is pursuant to Article 7 of Chapter 5 of Title 16 or this chapter;

§ 19-13-53. Standardized forms; timing of transmission of information and data entry; sheriff's responsibility

(b) The clerk of the issuing court shall electronically transmit a copy of the protective order or modification thereof to the registry as expeditiously as possible but no later than by the end of the next business day after the order is filed with the clerk of court.

New Forms

Standardized Bond Forms

Information Sheets

PROTECTIVE ORDERS

Data Entry Form for TEXAS CRIME INFORMATION CENTER (TCIC)

The intent of this form is to aid court clerks with the collecting and providing to local law enforcement agencies pertinent information regarding protective orders for the purpose of entry into TCIC.

To be filled out by Criminal Justice Law Enforcement Official:

ORI: _____ (check one) **PROTECTIVE ORDER:** _____ **EMERGENCY PROTECTIVE ORDER:** _____

OCA: _____ **PROTECTIVE ORDER NO:** _____ **COURT IDENTIFIER:** _____

ISSUE DATE: _____ **DATE OF EXPIRATION:** _____ **DATE OF DISMISSAL:** _____

***** RESPONDENT INFORMATION *****

Items in **ALL UPPERCASE LETTERS** must be answered to allow entry into TCIC.

NAME OF RESPONDENT: _____ **SEX:** (circle one) M F

RACE: (circle one) Indian Asian Black White Unknown **Ethnicity:** (circle one) Hispanic Non-Hispanic Unknown

Place of Birth: _____ **CTZ:** _____ **DATE OF BIRTH:** _____ **HEIGHT:** _____ **WEIGHT:** _____

Skin: (circle one) Albino Black Dark Dk Brown Fair Light Lt Brown Medium Med Brown Olive Ruddy Sallow Yellow Unknown

EYE COLOR: (circle one) Black Blue Brown Gray Green Hazel Maroon Pink Multi-Colored Unknown

HAIR COLOR: (circle one) Black Blond Brown Gray Red White Sandy Bald Unknown

Scars, Marks and/or Tattoos: (please describe in detail): _____

Caution and Medical Conditions: (circle all that apply) 00 - Armed and Dangerous 05 - Violent Tendencies 10 - Martial Arts Expert
15 - Explosive Expertise 20 - Known to abuse drugs 25 - Escape risk 30 - Sexually violent predator 35 - Heart condition
SS-Alcoholic 60 - Allergies 65 - Epilepsy 70 - Suicidal 80-Medication Required 85-Hemophilic 90- Diabetic 01-Other

PROTECTION ORDER CONDITIONS (PCO): (circle all that apply)

- 01 - Respondent is restrained from assaulting, threatening, abusing, harassing, following, interfering with or stalking the protected person and/or child of the protected person.
- 02 - Respondent may not threaten a member of the protected person's family/household.
- 03 - The protected person is granted exclusive possession of the residence/household.
- 04 - Respondent is required to stay away from the residence, property, school or place of employment of the protected person or other family or household member.
- 05 - Respondent is restrained from making any communication with the protect of person including, but not limited to, personal, written, or phone contact, or their employers, employees or fellow workers, or other whom the communication would be likely to cause annoyance or alarm.
- 06 - Respondent is awarded temporary custody of the children named.
- 07 - Respondent is prohibited from possessing and/or purchasing a firearm or other weapon.
- 08 - See miscellaneous field for comments regards terms and conditions of the protection order.
- 09 - The protected person is awarded temporary exclusive custody of the child(ren) named.

BRADY RECORD INDICATOR (BRD): Respondent is NOT disqualified Y- Respondent is disqualified U-Unknown **RELATIONSHIP**

TO PROTECTED PERSON:

(PLEASE INCLUDE THE FOLLOWING NUMERIC IDENTIFIERS, IF AVAILABLE):

Texas ID. No: _____ **Misc ID. No:** _____ **Social Security No:** _____

Driver's License No: _____ **Driver's License State:** _____ **Date of Expiration:** _____

Respondent's Address:

STREET: _____ **CITY:** _____ **STATE:** _____ **ZIP:** _____ **COUNTY:** _____

If a Defendant that appears in front of you gets there without an OTN number, the Defendant MUST go back to the Sheriff to get the OTN number straightened out.

Legislative Changes to
be proposed
Reduce the Scope

Needs:

Direct Line to Clerk for Verification
Updating as Required i.e. Bond
Changes

Not Included:

Stay Away Orders
No Violent Contact Orders

Respondent

Respondent First Name (NAM) *

Respondent Middle Name (NAM)

Respondent Last Name (NAM) *

Respondent Suffix

OTN

SID

OTN will be required on all No Contact Bond orders

Respondent Gender (SEX) *

Respondent Race (RAC) *

Respondent Date of Birth (DOB) * mm/dd/yyyy

Respondent SSN (SOC)

Respondent Height (HGT)

Respondent Weight (WGT)

Respondent Hair Color (HAI)

Respondent Eye Color (EYE)

Respondent Medical Condition (CMC)

Petitioner

Petitioner First Name (PPN) *

Petitioner Middle Name (PPN)

Petitioner Last Name (PPN) *

Petitioner Suffix

Petitioner Gender (PSX) *

Petitioner Race (PPR) *

Petitioner Date of Birth (PPB) * mm/dd/yyyy

Petitioner SSN (PSN)

Protected Party

Protected Party First Name (PPN)

Protected Party Middle Name (PPN)

Protected Party Last Name (PPN)

Protected Party Suffix

Protected Party Gender (PSX)

Protected Party Race (PPR)

Protected Party Date of Birth (PPB) mm/dd/yyyy

Protected Party SSN (PSN)

Although only one protected party can be added on the add screen, additional protected parties can be added once the order has been entered and saved

Protective Order Registry Materials

§ 19-13-51. Definitions

As used in this article, the term:

- (1) "Court" means judges in the classes of courts identified in Title 15 and any other person while acting as such a judge pursuant to designation as otherwise authorized by law.
- (2) "Foreign court" means a court of competent jurisdiction in any state other than this state or any territory or tribal jurisdiction in the United States.
- (3) "Foreign protective order" means any temporary order of protection, order of protection, restraining order, injunction, pretrial release order, or sentencing order that prohibits contact, acts of family violence, or stalking issued by a foreign court.
- (4) "Law enforcement officer" means any agent or officer of this state, or a political subdivision or municipality thereof, who, as a full-time or part-time employee, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws and whose duties include the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime. Such term also includes the following: state or local officer, sheriff, deputy sheriff, dispatcher, 9-1-1 operator, police officer, prosecuting attorney, member of the State Board of Pardons and Paroles, a hearing officer of the State Board of Pardons and Paroles, and a community supervision officer of the Department of Community Supervision.
- (5) "Modification" means any amendment, dismissal, or continuance.
- (6) "Prosecuting attorney" means each attorney elected to represent a judicial circuit in this state and any assistant or deputy district attorney, or solicitor, in each judicial circuit in this state.
- (7) "Protective order" means:
 - (A) An ex parte, temporary, six-month, permanent, restraining, pretrial release, or sentencing order issued by a judge in this state that prohibits contact or that is pursuant to Article 7 of Chapter 5 of Title 16 or this chapter; and
 - (B) A foreign protective order.
- (8) "Registry" means the Georgia Protective Order Registry.

§ 19-13-53. Standardized forms; timing of transmission of information and data entry; sheriff's responsibility

- (a) The courts of this state shall use a standardized form or forms for the issuance of any protective order. The form or forms shall be promulgated by the Uniform Superior Court Rules. The standardized form or forms for protective orders shall be in conformity with the provisions of this Code, shall be subject to the approval of the Georgia Crime Information Center and the Georgia Superior Court Clerks' Cooperative Authority as to form and format, and shall contain, at a minimum, all information required for entry of protective orders into the registry and the National Crime Information Center Protection Order File. The Administrative Office of the Courts shall distribute the forms. A court may modify the standardized form to comply with the court's application of the law and facts to an individual case. The form or forms shall contain, at a minimum, all information that is required for entry of protective orders into the registry and the National Crime Information Center Protection Order file.
- (b) The clerk of the issuing court shall electronically transmit a copy of the protective order or modification thereof to the registry as expeditiously as possible but no later than by the end of the next business day after the order is filed with the clerk of court. In the event of electronic failure, the clerk of court shall immediately notify the Georgia Crime Information Center which shall authorize an alternative method of transmitting the protective order or modification thereof to the registry.
- (c) The Georgia Crime Information Center shall ensure that any protective order or modification thereof is entered in the registry within 24 hours of receipt of the protective order or modification thereof from the clerk of court. The inability to enter information for all data fields in the registry shall not delay the entry of available information.
- (d) The sheriff's department shall be responsible for the validation of all National Crime Information Center protective order entries made on its behalf by the superior court clerk's office in accordance with the validation steps established by the Georgia Crime Information Center and the National Crime Information Center. All registry entries shall be validated in accordance with the file retention schedule established by the National Crime Information Center. The sheriff shall respond to and confirm "HIT" confirmation requests based upon the records maintained in the sheriff's office.
- (e) The entry of a protective order in the registry shall not be a prerequisite for enforcement of a protective order.

PROTECTIVE ORDERS

Data Entry Form for

TEXAS CRIME INFORMATION CENTER (TCIC)

The intent of this form is to aid court clerks with the collecting and providing to local law enforcement agencies pertinent information regard ing protective orders for the purpose of entry into TCIC.

To be filled out by Criminal Justice/Law E11force111e11t Official:

ORI: _____ (check one) PROTECTIVE ORDER: _____ EMERGENCY PROTECTIVE ORDER: _____

OCA: _____ PROTECTIVE ORDER NO: _____ COURT IDENTIFIER: _____

ISSUE DATE: _____ DATE OF EXPIRATION: _____ DATE OF DISMISSAL: _____

***** RESPONDENT INFORMATION *****

items in **ALL UPPERCASE LETTERS** must be answered to allow entry into TCIC.

AME OF RESPONDENT: _____ SEX: (circle one) M F

RACE: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

Place of Birth: _____ CTZ: _____ DATE OF BIRTH: _____ HEIGHT: _____ WEIGHT: _____

Skin: (circle one) Albino Black Dark Dk Brown Fair Light Lt Brown Medium Med Brown Olive Ruddy Sallow Yellow Unknown

EYE COLOR: (circle one) Black Blue Brown Gray Green Hazel Maroon Pink Multi-Color ed Unknown

HAIR COLOR: (circle one) Black Blond Brown Gray Red White Sandy Bald Unknown

Scars, Marks and/or Tattoos: (please describe in detail): _____

Caution and Medical Conditions: (circle all that apply) 00 - Armed and Dangerous OS- Violent Tendencies 10- Martial Arts Expert IS- Explosive Expertise 20- Known to abuse drugs 2S- Escape risk 30- Sexually violent predator SO- Heart condition SS-Alcoholic 60- Allergies 6S- Epilepsy 70- Suicidal 80-Medication Required 8S-Hemophiliac 90- Diabetic 01--Other

PROTECTION ORDER CONDITIONS (PCO): (circle all that apply)

- 01- Respondent is restrained from assaulting, threatening, abusing, harassing, following, interfering with or stalking the protected person and/or child of the protected person.
- 02- Respondent may not threaten a member of the protected person's family/household.
- 03- The protected person is granted exclusive possession of the residence/household.
- 04- Respondent is required to stay away from the residence , property , school or place of employment of the protected person or other fam il y orhousehold member.
- 05- Respondent is restrained from making any communication with the protect ed person including , but not limited to, personal, written, or phone contact, or their employers, employees or fellow workers, or other whom the communication would be likely to cause annoyance or alarm.
- 06- Respondent is awarded temporary custody of the children named.
- 07- Respondent is prohibited from possessing and/or purchasing a fireaml or other weapon.
- 08- See miscellaneous field for comments regards terms and conditions of the protection order.
- 09- The protected person is awarded temporary exclusive custody of the child(ren) named.

BRADY RECORD INDICATOR (BRD): _____ - Respondent is NOT disqualified Y- Respondent is disqualified U--Unknown **RELATIONSHIP TO**

PROTECTED PERSON: _____ (PLEASE

INCLUDE THE FOLLOWING NUMERIC IDENTIFIERS, IF AVAILABLE).

Texas I.D. No: _____ Misc I.D. No: _____ Social Security No: _____

Driver's License No: _____ Driver's License State: _____ Date of Expiration: _____

Respondent's Address:

STREET: _____ CITY: _____ STATE: _____ ZIP: _____ COUNTY: 29

Respondent's Vehicle Information:

License Plate No: _____ L.P. State: _____ L.P. Year Of Expiration: _____ L.P. Type: _____

Vehicle I.D. #: _____ Year: _____ Make: _____ Model: _____ Style: _____ Color: _____

***** PROTECTED PERSON INFORMATION *****

NAME OF PROTECTED PERSON: _____ SEX: (circle one) M F

RACE: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

DATE OF BIRTH: _____ SOCIAL SECURITY NO. (PSN): _____

Street City: _____ State: _____ Zip: _____ COUNTY: _____

Protected Person Employment Information: (use additional pages if necessary)

Place of Employment Name: _____ Address: _____

City: _____ State: _____ Zip: _____

Place of Employment Name: _____ Address: _____

City: _____ State: _____ Zip: _____

***** PROTECTED CHILD INFORMATION *****

(Use additional pages if necessary)

Name of Protected Child: _____ Sex: (circle one) M F

Race: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

Date of Birth: _____ Child Care or School Facility Name: _____

Address: _____ City: _____ State: _____ Zip: _____

Name of Protected Child: _____ Sex: (circle one) M F

Race: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

Date of Birth: _____ Child Care or School Facility Name: _____

Address: _____ City: _____ State: _____ Zip: _____

Name of Protected Child: _____ Sex: (circle one) M F

Race: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

Date of Birth: _____ Child Care or School Facility Name: _____

Address: _____ City: _____ State: _____ Zip: _____

To be filled out by Criminal Justice/Law Enforcement Official:

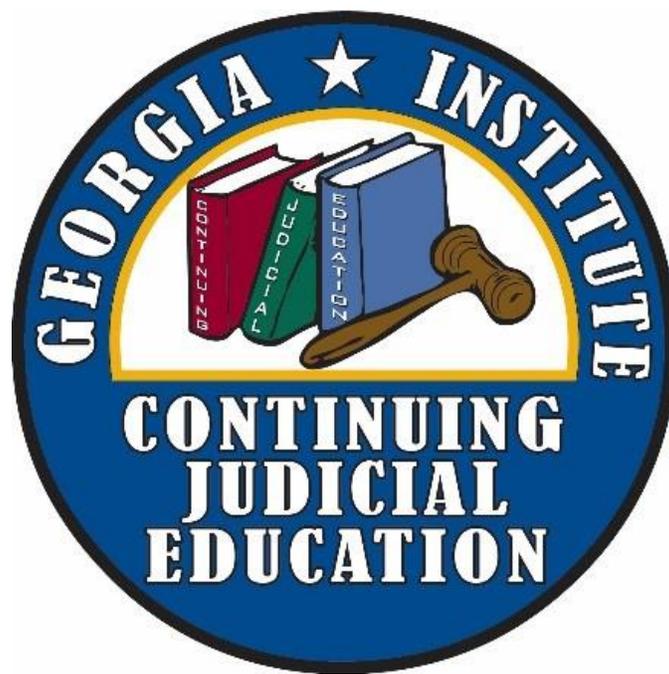
SID#: _____ FBI#: _____ FPC: _____ MN _____

19 - Protection Order Conditions (PCO) Field Codes

In a record response, the translation field will include the code with the literal translation.

Code	Translation
01	01 - THE SUBJECT IS RESTRAINED FROM ASSAULTING, THREATENING, ABUSING, HARASSING, FOLLOWING, INTERFERING, OR STALKING THE PROTECTED PERSON AND/OR THE CHILD OF THE PROTECTED PERSON.
02	02 - THE SUBJECT MAY NOT THREATEN A MEMBER OF THE PROTECTED PERSON S FAMILY OR HOUSEHOLD.
03	03 - PROTECTED PERSON IS GRANTED EXCLUSIVE POSSESSION OF THE RESIDENCE OR HOUSEHOLD.
04	04 - THE SUBJECT IS REQUIRED TO STAY AWAY FROM THE RESIDENCE, PROPERTY, SCHOOL, OR PLACE OF EMPLOYMENT OF THE PROTECTED PERSON OR OTHER FAMILY OR HOUSEHOLD MEMBER.
05	05 - THE SUBJECT IS RESTRAINED FROM MAKING ANY COMMUNICATION WITH THE PROTECTED PERSON INCLUDING BUT NOT LIMITED TO, PERSONAL, WRITTEN, OR TELEPHONE CONTACT, OR THEIR EMPLOYERS, EMPLOYEES OR FELLOW WORKERS, OR OTHERS WITH WHOM THE COMMUNICATION WOULD BE LIKELY TO CAUSE ANNOYANCE OR ALARM THE VICTIM.
06	06 - THE SUBJECT HAS VISITATION OR CUSTODY RIGHTS OF THE CHILD(REN)NAMED.
07	07 - THE SUBJECT IS PROHIBITED FROM POSSESSING AND/OR PURCHASING A FIREARM OR OTHER WEAPONS AS IDENTIFIED IN THE MISCELLANEOUS FIELD.
08	08 - SEE THE MISCELLANEOUS FIELD FOR COMMENTS REGARDING THE TERMS AND CONDITIONS OF THE ORDER.
09	09 - THE PROTECTED PERSON IS AWARDED TEMPORARY EXCLUSIVE CUSTODY OF THE CHILD(REN) NAMED.

Transfers & Appeals



Hon. Megan Kinsey



TRANSFERS AND APPEALS

Judge Megan Kinsey, Butts County Magistrate Court
mkinsey@buttscounty.org

Transfers

- Definition-to move a case from one court to another. Could be another Magistrate Court or to a higher court
- Transfer/Change of Venue UMCR 36-
- In all cases where it is determined by the court that the other court in which a case is pending lacks jurisdiction, or venue, or both that court shall by written order, order the transfer of the original case file in accordance with Article VI, Section I, Paragraph VIII, of the 1983 Constitution of the State of Georgia, or where this rule is not applicable, dismiss the case without prejudice.
- Lack of Jurisdiction Over Counterclaim UMCR 36.1
- Where the defendant asserts a legally sufficient counterclaim in good faith which is beyond the jurisdiction of the magistrate court but the entire case is within the jurisdiction of another Georgia court, the court shall transfer the case to a court with jurisdiction over the counterclaim. Where the parties agree on a transferee court with jurisdiction over the counterclaim, the court shall transfer the case to the court Otherwise, the court shall select a proper court to which to transfer the case.

Transfers cont..

- Transfers Between Magistrate Courts UMCR 36.2
- Upon a judicial determination that the court lacks venue, the court shall transfer the case by written order to a magistrate court of proper venue. No court shall refuse to accept a transfer accompanied by the fees provided by paragraph 36.3. If it is later determined that the transferee court has no jurisdiction or venue to hear the case, it may in turn transfer the action pursuant to this rule.
- Costs for Transfers Between Magistrate Courts UMCR 36.3
- A. The case shall be transferred with the initial filing fee, and the transferred filing fee shall be the filing fee in the transferee court. All surcharges, such as for the local law library funds, retirement funds, and the like shall be retained and reported in the court of the initial filing. No additional filing costs shall be required by the transferee court, no surcharges will be collected from the parties or be required to be paid by the transferee court, nor shall any refund be made to the parties if the filing fee is less than the transferee court.

Transfers cont...

- Costs for Transfers Between Magistrate Courts UMCR 36.3
- B. If service upon the defendant has not been perfected, a service fee in the amount provided for in OCGA 15-16-21(b)(1) for the transferee court shall be paid by the plaintiff prior to the transfer. If a service attempt (beyond a check of map, data base or index of addresses) has been made in the court where the action was originally filed, the original service fee shall be considered as expended and the entire service fee be billed to the plaintiff. If no service has been attempted, the plaintiff shall only be billed the difference between the service fee originally paid and that required by this rule. A bill for the required service shall be sent to the plaintiff by regular mail and the case may be dismissed without prejudice for want of prosecution if the bill is not paid within 30 days.
- The service fee provided in OCGA 15-16-21 (b) (1) shall be the service fee in all transferred cases irrespective of whether the transfer court uses the sheriff, marshal, or constable as the office for service of process in that county. The parties shall not be entitled to any refund of a portion of the fee.

Clerk's Duties for Transfers

- When sending a transfer out-
 - Send the original case file and fee within 10 days of the Judge signing the Order for transfer. Consider keeping a copy of the case file, the Judge's Orders and copy of check sent.
- When receiving a transfer-
 - File the case in and assign a new case number. Consider sending a new summons with the new court's address so there is no confusion as to where the defendant should file their answer. Mail a copy with the newly assigned case number to the plaintiff.

Appeals (until June 30, 2023)

- What is an appeal?
 - -apply to a higher court for a reversal of the decision of a lower court
- Appeals for Judgments in civil cases must be filed within 30 days of the date of Judgment was signed and filed, 7 days for Dispossessory Actions
- The appeal is initiated by the filing of the notice of appeal, notice must specify the court to which the appeal is to be taken
- Once the notice is filed, an order is presented to the Judge authorizing the appeal.
- Depending on how your jurisdiction handles these either:
 1. Make certified copies of all documents in the case, and forward those documents to the Court within 10 days
 2. Make copies of the case and forward originals to the Court within 10 days

Appeals as of July 1, 2023

- Superior and State Court Appellate Act- HB916
- A petition for review from a Magistrate Court final judgement (not default) is a *de novo* proceeding
- Makes for a “single, modern and uniform procedure called a “petition for review”
- Replaces- Notice of Appeals, Direct Appeal and Writs of Certiorari
- A petitioner must file a **Petition for Review** with the Clerk of the **reviewing court** within 30 days of judgment (7 days for Dispossessory cases)

In the Petition for Review, they must have a statement including our case number, concise statement of the final judgment being appealed, whether there's a record, whether the Petitioner is in custody and contact information for the parties

-failure to comply is an amendable defect, as directed by the reviewing court

-within 5 days of after filing the petition for review, the Petitioner must serve all parties and the lower judiciary a copy including the new case number

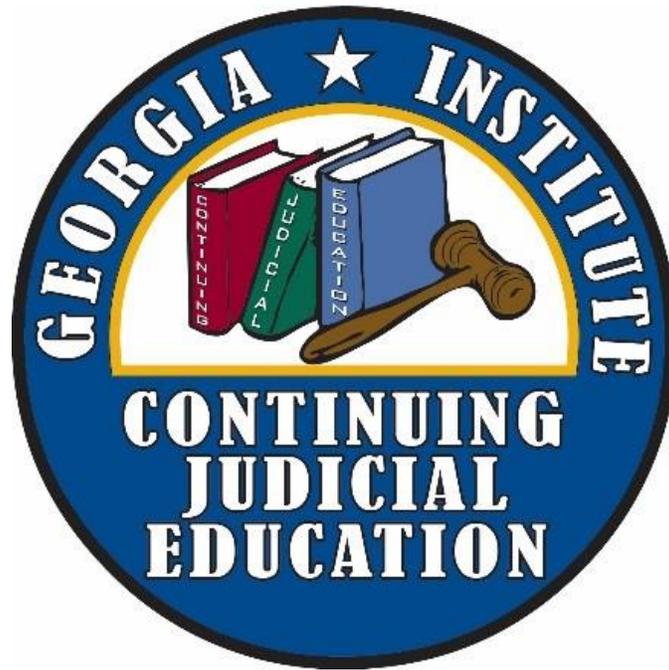
Appeals after July 1, 2023

- Once Mag court is served with the petition for review, the Clerk must promptly notify the Judge
- Magistrate Court has **30 days** to send a **true copy** of the record to the reviewing court
- -Magistrate court must send a bill for unpaid costs to the petitioner who will have 30 days to pay
- -Unless the affidavit of indigence has been filed, the petitioner will have to get a certificate from Magistrate Court that all costs have been paid and file that with the reviewing court within 5 days of issuance
- -Petitioner may also file an affidavit of indigence with the reviewing court
- -for dispossessory appeals, rent will be paid into the registry of the reviewing court
- When the appeal is filed, the Magistrate Court judgment is suspended
- -if the party dismisses or withdraws their petition, it is as if no appeal had been filed

Questions Submitted

- What is the cost of transfer from Magistrate Court to a higher court?
- How does Magistrate Court handle electronic filing mandates on appeals/transfers to a higher court?
- Is HB 916 going to have any effect on the clerks and if so, what do we need to know?
- On transfers do the original papers go to the transfer court?
- On an appeal does the original papers stay in the lower court or do you transfer the original?

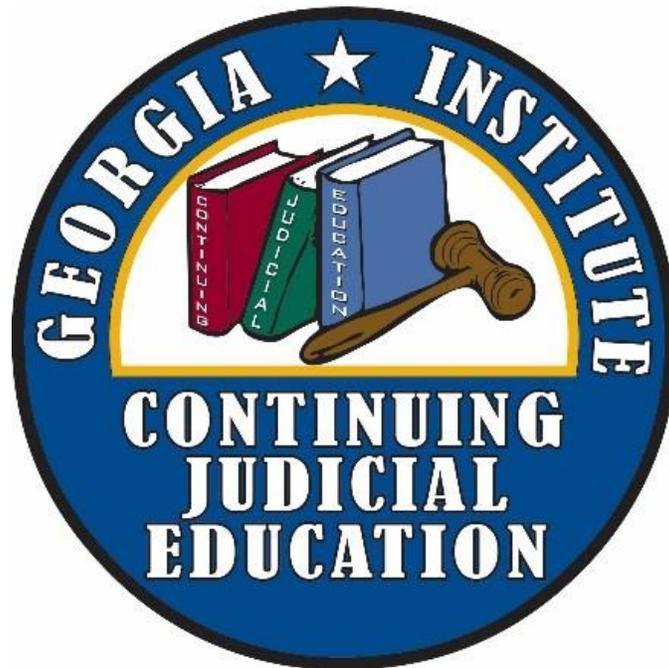
Caseload Reports



Mr. Jeffrey Thorpe

[NO HANDOUTS PROVIDED AT THE TIME OF PRINTING]

Mechanics Lein



Hon. Michael Barker



Mechanics' Liens

JUDGE MICHAEL BARKER, MAGISTRATE COURT OF CHATHAM COUNTY
MBARKER@CHATHAMCOUNTY.ORG

What is a lien?

A lien is a legal claim to secure a debt and may encumber real or personal property.

“[L]ien statutes, being in derogation of the common law, are to be **strictly construed against the lien claimant**, and that **strict compliance** is required in order to enforce them.”

Purser Truck Sales, Inc. v. Horton, 276 Ga. App. 17, 18 (2005) (emphasis added).

OCGA § 40-3-54

NOT OCGA § 44-14-360 et seq.

What allows the assertion of a lien?

Work performed on vehicle

Materials furnished in repairing or servicing vehicle

Both work done and materials furnished

NOT STORAGE OR ESTIMATES

How is a lien perfected?

What notice of this right must be given to the vehicle owner?

None.

Priority of lien?

Such special lien shall be superior to all liens except for taxes and such other liens and security interests of which the mechanic had actual or constructive notice before the work was done or material furnished.

What can a car owner do to speed up the process?

Owner of vehicle can contest the validity of the charges by sending a written demand upon the lienholder.

Lienholder Response

Must institute foreclosure proceedings or an Abandoned Motor Vehicle claim within 30 days of receipt, or the lien is forfeited.

Meaning...

...if they don't file in the allotted time, they gotta give the car back. Mechanic can still sue for breach of contract.

How does a mechanic foreclose on the lien?

Make an affidavit showing all the facts necessary to constitute a lien under this Code section and the amount claimed to be due.

What information does a mechanic need for this affidavit?

Date vehicle was retained

Amount due for work and/or materials

Names and addresses of all owners and lienholders

Clerk's Duties

Upon such affidavit being filed, the clerk or a judge of the court shall serve notice upon the owner, the recorded lienholders and security interest holders, and the lessee.

Content of Notice

The right to a hearing to determine if reasonable cause exists to believe that a valid debt exists

Such hearing must be petitioned for within five days after receipt of the notice

If no petition for such hearing is filed within the time allowed, the lien will conclusively be deemed a valid one and foreclosure thereof allowed.

Service of Notice

Certified mail, return receipt requested

Time to request a hearing starts from **RECEIPT** of notice, so return receipt is necessary

You'll probably get the request for the hearing before you get the green card

No answer/request for a hearing?

Lien is conclusively deemed a valid one, and foreclosure is allowed

What if a hearing is requested?

Brace yourself for the insanity.

Schedule and conduct a “probable cause” hearing within 10 days

If mechanic wins – they can keep car...for now

Owner can post bond in the amount of the repair bill + costs and get the car back



Within five days of the probable cause hearing, a defendant must petition the court for a full hearing on the validity of the debt if a further determination of the validity of the debt is desired.

If such a petition is filed, the court shall set a full hearing thereon within 30 days of the filing of the petition.

If no such petition is filed, the lien on the amount determined reasonably due shall be conclusively deemed a valid one and foreclosure thereof allowed.



If the court finds the actions of the mechanic in retaining or seeking possession of the vehicle were not taken in good faith, the court, in its discretion, may award damages to the owner, the lessee, or any person deprived of the rightful use of the vehicle due to the deprivation of the use of the vehicle.



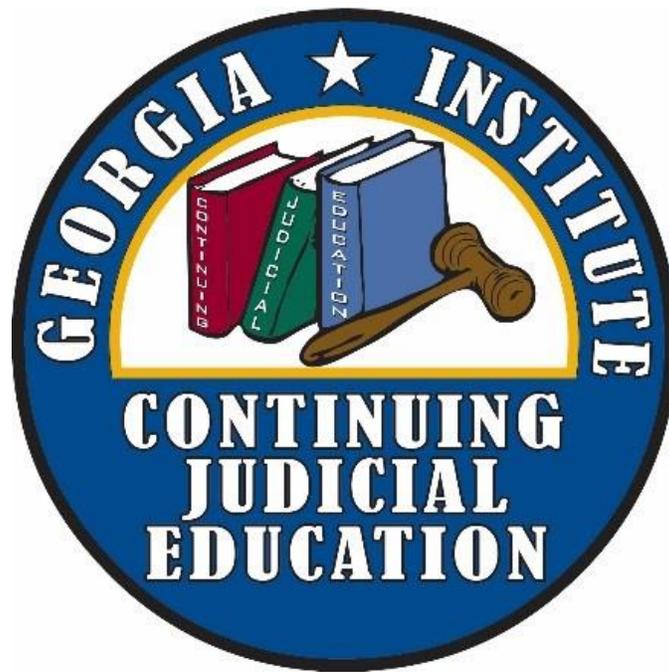
Statute of Limitations

Foreclosure process must be commenced 1 year from recording or retention.



Questions?

Abandoned Motor Vehicles



Hon. Michael Barker



Return of the Abandoned Motor Vehicles

JUDGE MICHAEL BARKER, MAGISTRATE COURT OF CHATHAM COUNTY
MBARKER@CHATHAMCOUNTY.ORG

HB 307

Effective September 1, 2019

Four Types of Liens (really only 2)

- (A) A towing company/storage facility that removes a vehicle from public property at the request of a peace officer;
- (B) A towing company/storage facility that removes a vehicle from private property at the request of a property owner;
- (C) A repair facility which has been in possession of a motor vehicle for at least 15 days without communication from an owner or insurance company, or payments of amounts owed; and
- (D) A salvage dealer which has been in possession of a motor vehicle for at least 15 days without communication from an owner or insurance company.

First Duty (Public Towing)

Within 3 days of removal, the company must request owner/lienholder information from department, due back no later than 5 days from when the request was received. OCGA § 40-11-15 (d).

First Duty (Private Towing)

- (1) Within 3 days of removal, the company must request owner/lienholder information from department, due back no later than 5 days from when the request was received. OCGA § 40-11-16 (a) (1).
- (2) Within 1 day of requesting owner/lienholder info, the company must submit information to law enforcement for stolen vehicle search. OCGA § 40-11-16 (a)(2). Failure of the peace officer to perform the stolen vehicle search will not limit any remedies available to the towing company. OCGA § 40-11-16 (a)(3).

First Duty (Repair Facility)

After 15 days, but no later than 180 days, the company must request owner/lienholder information from department, due back no later than 5 days from when the request was received. OCGA § 40-11-16 (b)(1).

First Duty (Salvage Dealer)

After 15 days, but no later than 60 days, the company must request owner/lienholder information from department, due back no later than 5 days from when the request was received. OCGA § 40-11-16 (b).



Towing – Public and Private Owners are Known

Notification letter must be sent to all owners via (a) certified mail or (b) hand delivery with acknowledgement by signature and copy of recipient's driver's license within 15 days of removal. OCGA § 40-11-19 (a)(1).

Repair Facilities and Salvage Dealers Owners are Known

REPAIR FACILITIES: After 15 days, but no later than 180 days, notification letter sent to all owners via certified mail. OCGA § 40-11-19 (b)(1).

SALVAGE DEALERS: After 15 days, but no later than 60 days, notification letter sent to all owners via certified mail. OCGA §§ 40-11-19 (c)(1).

Owners are Unknown

If owners are unknown, or department does not send information in a timely manner, company shall advertise once a week for two weeks in newspaper of general circulation or legal organ where vehicle was obtained. The advertisement must be placed within 60 days of removal/failure to pay (for repair facilities)/last communication (for salvage dealers). OCGA § 40-11-19 (a)(2), (b)(2), (c)(2).

If owners become known while advertisement is running, notice must be sent as provided in OCGA § 40-11-19 (a)(1), (b)(1) or (c)(1) within 10 days of obtaining the information. OCGA § 40-11-19 (a)(3), (b)(3), (c)(3).

Special Rule -- Repair Facilities

IF A REPAIR FACILITY RECEIVES A DEMAND PURSUANT TO OCGA § 40-3-54 (b), THE REPAIR FACILITY HAS 30 DAYS TO INSTITUTE FORECLOSURE PROCEEDINGS (AS EITHER AN ABANDONED MOTOR VEHICLE OR A MECHANIC'S LIEN). FAILURE TO DO SO FORFEITS THE LIEN. THIS DEMAND WAIVES ALL FIRST NOTICE REQUIREMENTS. OCGA § 40-10-19 (f).

Disclaimers

If an owner executes a Disclaimer of Motor Vehicle Ownership Interest, the owner waives all future notices as required by the Act, including service of the Petition. OCGA § 40-11-19.5.

The Disclaimer does not waive the owner's right to claim any surplus that might exist after the auction. Disposition of the surplus is governed by OCGA § 44-12-211.1.



Filing Fee



Petition Contents/Attachments

- A. Sworn/verified foreclosure petition
- B. Authority to tow vehicle and schedule of rates with local governing authority (public property towing only)
- C. Stolen vehicle search request (private property towing only)
- D. Owner information obtained from department or agency
- E. Evidence of compliance with first notice requirements/Disclaimer
- F. Itemized amounts sought

Service of Petition

The company must serve known owners via certified mail or statutory overnight delivery, return receipt requested, with a copy of the claim and the answer form. OCGA § 40-11-19.1 (b)(1). Electronic proof of delivery shall be accepted. Refusal of certified mail is tantamount to delivery. OCGA § 40-11-19.1 (b)(2).

Service – Unknown/Unserved Owners

If the notice under OCGA § 40-11-19 was satisfied by advertisement, or signed proof that the notification letter required by OCGA § 40-11-19.1 (b)(1) has not been returned after ten days of such mailing or is returned as unclaimed, the company has 60 days to place advertisement once a week for two weeks in the newspaper of general circulation or legal organ where action has been filed. OCGA § 40-11-19.1 (b)(2).

If owners become known while advertisement is running, notice must be sent as provided in OCGA § 40-11-19.1 (b)(1). OCGA § 40-11-19.1 (b)(3).

Answer to Petition

Owner has 10 days to file an answer. If service is accomplished by advertisement, answer must be filed within 10 days of the expiration of the two-week advertisement. OCGA § 40-11-19.1 (c).

The answer must be sworn. OCGA § 40-11-19.1 (b)(1).

Court Action – Answer Filed

The hearing must be held within 10 days of receipt of the answer. OCGA § 40-11-19.1 (c).

Continuances are allowed for good cause. OCGA § 40-11-19.1 (e)(1).

Court Action -- Trial

At the trial, the court shall hear evidence of and determine

- (1) whether the removal of the vehicle was lawful,
- (2) whether the lien amount is based upon recoverable fees pursuant to OCGA § 40-11-19 (d),
- (3) whether notice to all owners was proper, and
- (4) shall hear any other facts pertinent to the case to reach a decision on foreclosure of the lien.

The court may hear evidence of and make a determination on whether storage fees should accrue after the filing date of the petition. OCGA § 40-11-19.1 (e)(2).

Court Action – No Answer Filed

If no answer is filed pursuant to OCGA § 40-11-19.1 (c), petitioner shall provide proof of service and request judgment in writing.

Unless providently hindered, judgment shall be decided within 15 (calendar) days of submission.

If motion is denied, petitioner may refile petition once within 6 months. OCGA § 40-11-19.1 (d).

Judgment (Part 1)

If the petition is granted, enter a judgment awarding the following amounts (if proven):

(a) Removal (Towing) Fee

- (i) If towed from private property, the maximum allowable charge for the removal of the motor vehicle as set forth by rule and regulation of the Department of Public Safety for maximum state-wide rate tariffs, unless preempted by applicable federal law, rule, or regulation
- (ii) If towed from public property at the request of a peace officer, the rate specified pursuant to an agreement with a local governing authority, unless preempted by applicable federal law, rule, or regulation;

Judgment (Part 2)

(b) Per Diem Storage Fee (calculate per day from date of filing through 25 days after judgment is rendered – OCGA § 40-11-19 (d)(2))

- (i) If towed from private property, the maximum allowable charge for the storage of the motor vehicle as set forth by rule and regulation of the Department of Public Safety for maximum state-wide rate tariffs, unless preempted by applicable federal law, rule, or regulation
- (ii) If towed from public property at the request of a peace officer, the rate specified pursuant to an agreement with a local governing authority, unless preempted by applicable federal law;

Judgment (Part 3)

- (c) Repair Fees (if applicable);
- (d) Cost of Obtaining Owner Information;
- (e) Notification/Advertising Costs;
- (f) Prejudgment interest at the rate of 4% per annum from which the OCGA § 40-11-19 notification was received; and
- (g) 15% attorney's fees (if filed and pursued by attorney of record).
- (h) All costs of court (filing fee + certified copy fee = \$25)

Judgment (Part 4)

Within 5 days of judgment, the court shall enter an order authorizing sale of the vehicle pursuant to OCGA § 40-11-19.2. OCGA §§ 40-11-19.1 (d), (e)(1).

The court can charge up to \$14 for a certified copy of this order. OCGA § 40-11-19.1 (d), (e)(2).

Forms

Any forms required to be made available by the Council of Magistrate Court Judges under this article shall be developed and published no later than September 1, 2019. Such forms shall be no longer than one page per form, front and back, and every effort shall be made to consolidate any required notice or mailing to a single page.

OCGA § 40-11-19.4



Questions?

6. ABANDONED MOTOR VEHICLES

6.1 The Abandoned Motor Vehicle Act creates liens for four types of groups:

- (A) A towing company/storage facility that removes a vehicle from public property at the request of a peace officer;
- (B) A towing company/storage facility that removes a vehicle from private property at the request of a property owner;
- (C) A repair facility which has been in possession of a motor vehicle for at least 15 days without communication from an owner or insurance company, or payments of amounts owed; and
- (D) A salvage dealer which has been in possession of a motor vehicle for at least 15 days without communication from an owner or insurance company.

6.2 DEFINITIONS (OCGA § 44-11-13)

(A) "Department" means the Department of Revenue or any entity that has an agreement with such department to serve as an authorized entity to access information relating to motor vehicle ownership and disseminate such information upon request and which is identified as such an authorized entity on the website of the Department of Revenue.

(B) "Motor vehicle" means every trailer and vehicle which is self-propelled.

(C) "Owner" means any secured interest holder with a current interest in a motor vehicle and person listed on the registration of a motor vehicle found in the records of the department or in the records of the state where the vehicle is registered.

(D) "Repair facility" means any person maintaining physical custody of a motor vehicle for repairs that have been requested or authorized by an owner or by an insurance company acting on behalf of an owner.

(E) "Salvage dealer" means any person taking possession of a motor vehicle from or upon request from an insurance company which is damaged to the extent that its restoration to an operable condition would require the replacement of two or more major component parts or for which the insurance company has paid a total loss claim and has been unable to obtain a certificate of title.

(F) "Secured interest holder" means a secured party within the meaning of OCGA § 11-9-102 or a person with a perfected encumbrance pertaining to an interest in a motor vehicle.

(G) "Towing and storage firm" means any person regulated by the Department of Public Safety and in compliance with requirements set forth in OCGA § 44-1-13 who removes a motor vehicle from private or public property with or without the consent of the motor vehicle owner or authorized user and provides storage for such motor vehicle after removal.

(H) "Trailer" means a vehicle with or without motive power designed to be drawn by a motor vehicle; provided, however, that such term shall not include a mobile home as such term is set forth in OCGA § 8-2-160 unless such vehicle was left unattended on public property and its removal was requested by a peace officer.

6.3 PREREQUISITES TO FILING FORECLOSURE PETITION

6.31 VEHICLE TOWED FROM PUBLIC PROPERTY AT REQUEST OF PEACE OFFICER

A. Within 3 days of removal, the company must request owner/lienholder information from department, due back no later than 5 days from when the request was received. OCGA § 40-11-15 (d).

B. NOTICE OF CLAIM

(1) IF OWNERS ARE KNOWN

(a) Notification letter must be sent to all owners via (a) certified mail or (b) hand delivery with acknowledgement by signature and copy of recipient's driver's license within 15 days of removal. OCGA § 40-11-19 (a)(1).

(2) IF OWNERS ARE UNKNOWN

(a) If owners are unknown, or department does not send information in a timely manner, company shall advertise once a week for two weeks in newspaper of general circulation or legal organ where vehicle was obtained. The advertisement must be placed within 60 days of removal. OCGA § 40-11-19 (a)(2).

(b) If owners become known while advertisement is running, notice must be sent as provided in OCGA § 40-11-19 (a)(1) within 10 days of obtaining the information. OCGA § 40-11-19 (a)(3).

6.32 VEHICLE TOWED FROM PRIVATE PROPERTY AT THE REQUEST OF THE PROPERTY OWNER

A. (1) Within 3 days of removal, the company must request owner/lienholder information from department, due back no later than 5 days from when the request was received. OCGA § 40-11-16 (a)(1).

(2) Within 1 day of requesting owner/lienholder info, the company must submit information to law enforcement for stolen vehicle search. OCGA § 40-11-16 (a)(2). Failure of the peace officer to perform the stolen vehicle search will not limit any remedies available to the towing company. OCGA § 40-11-16 (a)(3).

B. NOTICE OF CLAIM

(1) IF OWNERS ARE KNOWN

(a) Notification letter must be sent to all owners via (a) certified mail or (b) hand delivery with acknowledgement by signature and copy of recipient's driver's license within 15 days of removal. OCGA § 40-11-19 (a)(1).

(2) IF OWNERS ARE UNKNOWN

(a) If owners are unknown, or department does not send information in a timely manner, company shall advertise once a week for two weeks in newspaper of general circulation or legal organ where vehicle was obtained. The advertisement must be placed within 60 days of removal. OCGA § 40-11-19 (a)(2).

(b) If owners become known while advertisement is running, notice must be sent as provided in OCGA § 40-11-19 (a)(1) within 10 days of obtaining the information. OCGA § 40-11-19 (a)(3).

6.33 VEHICLE LEFT AT REPAIR FACILITY

A. After 15 days, but no later than 180 days, the company must request owner/lienholder information from department, due back no later than 5 days from when the request was received. OCGA § 40-11-16 (b)(1).

B. NOTICE OF CLAIM

(1) IF OWNERS ARE KNOWN

(a) Notification letter sent to all owners via certified mail. OCGA § 40-11-19 (b)(1).

(2) IF OWNERS ARE UNKNOWN

(a) If owners are unknown, or department does not send information on additional owners in a timely manner, the company shall advertise once a week for two weeks in newspaper of general circulation or legal organ of county where repair facility is located within 60 days of the department's failure to send the information. OCGA § 40-11-19 (b)(2).

(b) If owners become known while advertisement is running, notice must be sent as provided in OCGA § 40-11-19 (b)(1) within 10 days of obtaining the information. OCGA § 40-11-19 (b)(3).

C. IF A REPAIR FACILITY RECEIVES A DEMAND PURSUANT TO OCGA § 40-3-54 (b), THE REPAIR FACILITY HAS 30 DAYS TO INSTITUTE FORECLOSURE PROCEEDINGS (AS EITHER AN ABANDONED MOTOR VEHICLE OR A MECHANIC'S LIEN). FAILURE TO DO SO FORFEITS THE LIEN. OCGA § 40-10-19 (f).

6.34 VEHICLE LEFT AT SALVAGE FACILITY

A. After 15 days, but no later than 60 days, the company must request owner/lienholder information from department, due back no later than 5 days from when the request was received. OCGA § 40-11-16 (b).

B. NOTICE OF CLAIM

(1) IF OWNERS ARE KNOWN

(a) After 15 days, but no later than 60 days, notification letter sent to all owners via certified mail. OCGA §§ 40-11-19 (c)(1).

(2) IF OWNERS ARE UNKNOWN

(a) If owners are unknown, or department does not send information in a timely manner, the company shall advertise once a week for two weeks in newspaper of general circulation or legal organ of county where salvage dealer is located within 60 days of the last communication. OCGA § 40-11-19 (c)(2).

(b) If owners become known while advertisement is running, notice must be sent as provided in OCGA § 40-11-19 (c)(1) within 10 days of obtaining the information. OCGA § 40-11-19 (c)(3).

6.4 DISCLAIMER

A. If an owner executes a Disclaimer of Motor Vehicle Ownership Interest, the owner waives all future notices as required by the Act, including service of the Petition. OCGA § 40-11-19.5.

B. The Disclaimer does not waive the owner's right to claim any surplus that might exist after the auction. Disposition of the surplus is governed by OCGA § 44-12-211.1.

6.5 LIEN FORECLOSURE PROCEDURE

A. Not sooner than 10 days but no later than six months after complying with the notice requirements, the company may file to foreclose on lien. The clerk accepts the filing along with an \$11 filing fee. The company is responsible for swerving the petition in accordance with OCGA § 40-11-19.1 (b).

6.51 SERVICE OF PETITION

A. The company must serve known owners via certified mail or statutory overnight delivery, return receipt requested, with a copy of the claim and the answer form. OCGA § 40-11-19.1 (b)(1). Electronic proof of delivery shall be accepted. Refusal of certified mail is tantamount to delivery. OCGA § 40-11-19.1 (b)(2).

B. If the notice under OCGA § 40-11-19 was satisfied by advertisement, or signed proof that the notification letter required by OCGA § 40-11-19.1 (b)(1) has not been returned after ten days of such mailing or is returned as unclaimed, the company has 60 days to place advertisement once a week for two weeks in the newspaper of general circulation or legal organ where action has been filed. OCGA § 40-11-19.1 (b)(2).

C. If owners become known while advertisement is running, notice must be sent as provided in OCGA § 40-11-19.1 (b)(1). OCGA § 40-11-19.1 (b)(3).

6.52 CONTENTS OF/ATTACHMENTS TO PETITION

A. Sworn/verified foreclosure petition

B. Authority to tow vehicle and schedule of rates with local governing authority (public property towing only)

C. Stolen vehicle search request (private property towing only)

D. Owner information obtained from department or agency

E. Evidence of compliance with first notice requirements, or properly executed Disclaimer (Section 6.4)

6.53 ANSWER TO PETITION

A. Owner has 10 days to file an answer. If service is accomplished by advertisement, answer must be filed within 10 days of the expiration of the two-week advertisement. OCGA § 40-11-19.1 (c). The answer must be sworn. OCGA § 40-11-19.1 (b)(1).

6.54 COURT ACTION

A. ANSWER FILED

(1) The hearing must be held within 10 days of receipt of the answer. OCGA § 40-11-19.1 (c). Continuances are allowed for good cause. OCGA § 40-11-19.1 (e)(1).

(2) At the trial, the court shall hear evidence of and determine whether the removal of the vehicle was lawful, whether the lien amount is based upon recoverable fees pursuant to OCGA § 40-11-19 (d), and whether notice to all owners was proper, and shall hear any other facts pertinent to the case to reach a decision on foreclosure of the lien. The court may hear evidence of and make a determination on whether storage fees should accrue after the filing date of the petition. OCGA § 40-11-19.1 (e)(2).

B. NO ANSWER FILED

(1) If no answer is filed pursuant to OCGA § 40-11-19.1 (c), petitioner shall provide proof of service and request judgment in writing. Unless providently hindered, judgment shall be decided within 15 (calendar) days of submission. OCGA § 40-11-19.1 (d).

(2) If motion is denied, petitioner may refile petition once within 6 months. OCGA § 40-11-19.1 (d). It is the opinion of this author that this provision is not meant to cure any missed deadlines, but only allows the petitioner to supply evidence of compliance if that evidence was not attached to the original petition. Another alternative is to schedule the petition for a hearing to give the petitioner the opportunity to supply the missing documents.

C. JUDGMENT

(1) If the petition is granted, enter a judgment awarding the following amounts (if proven):

(a) Removal (Towing) Fee

(i) If towed from private property, the maximum allowable charge for the removal of the motor vehicle as set forth by rule and regulation of the Department of Public Safety for maximum state-wide rate tariffs (See Appendix A), unless preempted by applicable federal law, rule, or regulation

(ii) If towed from public property at the request of a peace officer, the rate specified pursuant to an agreement with a local governing authority, unless preempted by applicable federal law, rule, or regulation;

(b) Per Diem Storage Fee (calculate per day from date of filing through 25 days after judgment is rendered)

(i) If towed from private property, the maximum allowable charge for the storage of the motor vehicle as set forth by rule and regulation of the Department of Public Safety for maximum state-wide rate tariffs (See Appendix A), unless preempted by applicable federal law, rule, or regulation

(ii) If towed from public property at the request of a peace officer, the rate specified pursuant to an agreement with a local governing authority, unless preempted by applicable federal law;

(c) Repair Fees (if applicable) – copies of any invoices should be provided to substantiate the repair fee;

(d) Cost of Obtaining Owner Information (If DOR or an authorized entity provided the information, the cost is capped at \$2. If neither provided the information for an out-of-state vehicle, and the company had to pay more for obtaining the info, there is no cap – they recover the actual cost of obtaining the info, and evidence of that cost should be submitted.);

(e) Notification/Advertising Costs;

(f) Prejudgment interest at the rate of 4% per annum from which the OCGA § 40-11-19 notification was received; and

(g) 15% attorney's fees (if filed and pursued by attorney of record).

(2) Within 5 days of judgment, the court shall enter an order authorizing sale of the vehicle pursuant to OCGA § 40-11-19.2. OCGA §§ 40-11-19.1 (d), (e)(1). The court can charge up to \$14 for a certified copy of this order. OCGA § 40-11-19.1 (d), (e)(2).

MAGISTRATE COURT OF _____ COUNTY, GEORGIA

Date Filed _____

Case No: _____

Plaintiff(s) Name, Address

vs

Vehicle Owner Name, Address

Motor Vehicle Description and VIN

Lien Holders Notified

PETITION FOR ABANDONED MOTOR VEHICLE LIEN FORECLOSURE

NOW COMES PETITIONER, a [] towing or storage facility [] repair facility [] salvage dealer, and files this petition to foreclose on the above-referenced abandoned motor vehicle.

- _____ Date vehicle was [] towed [] left at repair facility [] left with salvage dealer (authority to tow attached)
_____ Date information was requested from Department of Revenue or authorized entity (copy of owner information attached)
_____ Date and method of first notice [] mailed [] hand delivery [] advertised [] disclaimer (proof of compliance attached for all owners)

The accrued fees allowed under OCGA § 40-11-19, as set forth below, have not been paid.

PETITIONER PRAYS that the lien be foreclosed and an order be issued to allow for public sale of the vehicle to satisfy a lien for the following amounts:

Table with 2 columns: Description of fee and Amount. Rows include Removal (Towing) Fee, Storage (At \$ per day for days), Future Storage Fee, Repair Fees (if applicable, with invoice attached), Cost of Obtaining Owner Information, Notification/Advertising Fees, and TOTAL.

PETITIONER ALSO PRAYS for prejudgment interest at the rate of 4% per annum from which the OCGA § 40-11-19 notification was received, 15% attorney's fees (if applicable), and all costs of court.

Sworn to and Subscribed before me
This day of 20

Notary Public or Clerk
My Commission Expires:

Plaintiff/Attorney for Plaintiff

SUMMONS

YOU MUST FILE AN ANSWER TO THIS CLAIM NO LATER THAN TEN (10) DAYS FROM RECEIPT OF THIS NOTICE USING THE STANDARDIZED ANSWER FORM PROVIDED. FAILURE TO FILE A TIMELY ANSWER WILL RESULT IN FORECLOSURE OF THE LIEN AND A COURT ORDER AUTHORIZING DISPOSITION OF THE VEHICLE PURSUANT TO OCGA 40-11-19.2.

MAGISTRATE COURT OF _____ COUNTY, GEORGIA

Date Filed _____

Case No: _____

Plaintiff(s) Name, Address

vs

Vehicle Owner Name, Address

Motor Vehicle Description and VIN

Lien Holders Notified

ANSWER TO PETITION FOR ABANDONED MOTOR VEHICLE LIEN FORECLOSURE

NOW COMES RESPONDENT, Owner of the above-referenced vehicle, and files this answer to the petition to foreclose lien on the above-referenced abandoned motor vehicle.

Owner Name: _____

Owner Address: _____

Date owner obtained an interest in the motor vehicle: _____

Check all that apply, and explain in the space provided (attach additional sheets if necessary).

The towing or storage firm was not authorized to remove the vehicle for the following reason(s):

The lien claimed is not valid because:

Additional facts that support why the lien should not be foreclosed upon:

I dispute the following charges:

THEREFORE, Respondent prays for a hearing on all relevant issues within ten (10) days.

Sworn to and Subscribed before me

This ____ day of _____ 20____

Notary Public or Clerk

My Commission Expires: _____

Defendant/Attorney for Defendant

ABANDONED MOTOR VEHICLE NOTICE
(TOWING OR STORAGE COMPANY)

Owner Name: _____

Owner Address: _____

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID (VIN)#: _____ Vehicle License #: _____ State _____

Dear Owner:

You have been identified as an owner of the above-referenced vehicle, which is currently being held at the business listed below, and are being notified in accordance with OCGA 40-11-19(a)(1). The following fees are currently due:

\$_____ Fees associated with removal of the vehicle

\$_____ Daily fee for storage of the vehicle

Daily fees will accrue until full payment has been made at the rate of \$_____ per day. Additional fees that are recoverable by a towing or storage firm include fees for obtaining the owner's information, notifying the owner (including advertising, if necessary), court filing costs, attorney's fees, and interest.

The towing and storage firm has the right to petition a court to foreclose a lien for all amounts owed after 10 calendar days from the date this notice was sent. If the lien is foreclosed, a court shall order the sale of the vehicle to satisfy the debt.

If you wish to disclaim ownership in this vehicle, complete and return the form found on the next page/back of this letter. Disclaiming ownership and judgment of foreclosure being entered shall result in the holding of an auction. The excess proceeds (if any), that may exist shall be deposited with the Department of Revenue and be treated as unclaimed property. Disposition of such property shall be governed pursuant to O.C.G.A. § 44-12-211.1.

Please contact us immediately, or we will avail ourselves of all remedies allowed by law.

The vehicle is currently located at _____.

Anyone with an ownership interest in this vehicle should contact the following business immediately.

Business Name: _____

Address: _____

Telephone #: _____

DISCLAIMER OF MOTOR VEHICLE OWNERSHIP INTEREST

Georgia, _____ County

I, _____ (name of motor vehicle owner) do hereby swear that I disclaim any and all ownership interest in:

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

I understand that by signing this form I will no longer hold any rights to the above listed vehicle and such vehicle may be sold at auction to satisfy a debt related to a lien filed against the vehicle.

I further understand that disclaiming an ownership interest in this vehicle does not relieve me of any other debts related to such vehicle, such as a debt entered into for the purchase of such vehicle.

By signing this form, I understand that I waive all future notices to which I am entitled under Article 1A of Chapter 11 of Title 40, "The Abandoned Motor Vehicle Act."

Sworn to and Subscribed before me

This ____ day of _____ 20__

Notary Public or Clerk

Owner of Vehicle

My Commission Expires: _____

If you wish to disclaim ownership, return this completed and notarized form to _____

_____ (name and address of party owed fees)

ABANDONED MOTOR VEHICLE ADVERTISEMENT NOTICE
(TOWING OR STORAGE COMPANY)

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

You are hereby notified, in accordance with OCGA 40-11-19 (a) (2), that the above-referenced vehicle is subject to a lien and a petition may be filed in court to foreclose a lien for all amounts owed. If the lien is foreclosed, a court shall order the sale of the vehicle to satisfy the debt.

The vehicle is currently located at _____.

Anyone with an ownership interest in this vehicle should contact the following business immediately:

Business Name: _____

Address: _____

Telephone #: _____

ABANDONED MOTOR VEHICLE ADVERTISEMENT NOTICE
(TOWING OR STORAGE COMPANY)

You are hereby notified, in accordance with OCGA 40-11-19 (a) (2), that each of the below-referenced vehicles are subject to a lien and a petition may be filed in court to foreclose a lien for all amounts owed. If the lien is foreclosed, a court shall order the sale of the vehicle to satisfy the debt.

The vehicles are currently located at _____.

The vehicles subject to liens as stated above are identified as:

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

List additional vehicles as necessary.

Anyone with an ownership interest in any of these vehicles should contact the following business immediately:

Business Name: _____

Address: _____

Telephone #: _____

ABANDONED MOTOR VEHICLE NOTICE
(REPAIR FACILITY)

Owner Name: _____

Owner Address: _____

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID (VIN)#: _____ Vehicle License #: _____ State _____

Dear Owner:

You have been identified as an owner of the above-referenced vehicle, which is currently being held at the business listed below, and are being notified in accordance with OCGA 40-11-19(b)(1). The following fees are currently due:

\$_____ Fees owed for repair of vehicle

\$_____ Daily fee for storage of vehicle after completion of repairs

Daily fees will accrue until full payment has been made at the rate of \$_____ per day. Additional fees that are recoverable by a repair facility include fees for obtaining the owner's information, notifying the owner (including advertising, if necessary), court filing costs, attorney's fees, and interest.

The repair facility has the right to petition a court to foreclose a lien for all amounts owed after 10 calendar days from the date this notice was sent. If the lien is foreclosed, a court shall order the sale of the vehicle to satisfy the debt.

If you wish to disclaim ownership in this vehicle, complete and return the form found on the next page/back of this letter. Disclaiming ownership and judgment of foreclosure being entered shall result in the holding of an auction. The excess proceeds (if any), that may exist shall be deposited with the Department of Revenue and be treated as unclaimed property. Disposition of such property shall be governed pursuant to O.C.G.A. § 44-12-211.1.

Please contact us immediately, or we will avail ourselves of all remedies allowed by law.

The vehicle is currently located at _____.

Anyone with an ownership interest in this vehicle should contact the following business immediately.

Business Name: _____

Address: _____

Telephone #: _____

DISCLAIMER OF MOTOR VEHICLE OWNERSHIP INTEREST

Georgia, _____ County

I, _____ (name of motor vehicle owner) do hereby swear that I disclaim any and all ownership interest in:

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

I understand that by signing this form I will no longer hold any rights to the above listed vehicle and such vehicle may be sold at auction to satisfy a debt related to a lien filed against the vehicle.

I further understand that disclaiming an ownership interest in this vehicle does not relieve me of any other debts related to such vehicle, such as a debt entered into for the purchase of such vehicle.

By signing this form, I understand that I waive all future notices to which I am entitled under Article 1A of Chapter 11 of Title 40, "The Abandoned Motor Vehicle Act."

Sworn to and Subscribed before me

This ____ day of _____ 20__

Notary Public or Clerk

Owner of Vehicle

My Commission Expires: _____

If you wish to disclaim ownership, return this completed and notarized form to _____

_____ (name and address of party owed fees)

ABANDONED MOTOR VEHICLE ADVERTISEMENT NOTICE
(REPAIR FACILITY)

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

Person who left vehicle at facility: _____

Any information relating to owner: _____

You are hereby notified, in accordance with OCGA 40-11-19 (b) (2), that the above-referenced vehicle is subject to a lien and a petition may be filed in court to foreclose a lien for all amounts owed. If the lien is foreclosed, a court shall order the sale of the vehicle to satisfy the debt.

The vehicle is currently located at _____.

Anyone with an ownership interest in this vehicle should contact the following business immediately:

Business Name: _____

Address: _____

Telephone #: _____

ABANDONED MOTOR VEHICLE NOTICE
(SALVAGE DEALER)

Owner Name: _____

Owner Address: _____

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID (VIN) #: _____ Vehicle License #: _____ State _____

Dear Owner:

You have been identified as an owner of the above-referenced vehicle, which is currently being held at the business listed below, and are being notified in accordance with OCGA 40-11-19(c)(1). The following fees are currently due:

\$_____ Fee for storage of the vehicle. (\$_____ per day for _____ days.)

Daily fees will accrue until full payment has been made at the rate of \$_____ per day from the date of this notice. Additional fees that are recoverable by a salvage dealer include fees for obtaining the owner's information, notifying the owner (including advertising, if necessary), court filing costs, attorney's fees, and interest.

The salvage dealer has the right to petition a court to foreclose a lien for all amounts owed after 10 calendar days from the date this notice was sent. If the lien is foreclosed, a court shall order the sale of the vehicle to satisfy the debt.

If you wish to disclaim ownership in this vehicle, complete and return the form found on the next page/back of this letter. Disclaiming ownership and judgment of foreclosure being entered shall result in the holding of an auction. The excess proceeds (if any), that may exist shall be deposited with the Department of Revenue and be treated as unclaimed property. Disposition of such property shall be governed pursuant to O.C.G.A. § 44-12-211.1.

Please contact us immediately, or we will avail ourselves of all remedies allowed by law.

The vehicle is currently located at _____.

Anyone with an ownership interest in this vehicle should contact the following business immediately.

Business Name: _____

Address: _____

Telephone #: _____

DISCLAIMER OF MOTOR VEHICLE OWNERSHIP INTEREST

Georgia, _____ County

I, _____ (name of motor vehicle owner) do hereby swear that I disclaim any and all ownership interest in:

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

I understand that by signing this form I will no longer hold any rights to the above listed vehicle and such vehicle may be sold at auction to satisfy a debt related to a lien filed against the vehicle.

I further understand that disclaiming an ownership interest in this vehicle does not relieve me of any other debts related to such vehicle, such as a debt entered into for the purchase of such vehicle.

By signing this form, I understand that I waive all future notices to which I am entitled under Article 1A of Chapter 11 of Title 40, "The Abandoned Motor Vehicle Act."

Sworn to and Subscribed before me

This ____ day of _____ 20__

Notary Public or Clerk

Owner of Vehicle

My Commission Expires: _____

If you wish to disclaim ownership, return this completed and notarized form to _____

_____ (name and address of party owed fees)

ABANDONED MOTOR VEHICLE ADVERTISEMENT NOTICE
(SALVAGE DEALER)

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

Person who left vehicle at facility: _____

Any information relating to owner: _____

You are hereby notified, in accordance with OCGA 40-11-19 (b) (2), that the above-referenced vehicle is subject to a lien and a petition may be filed in court to foreclose a lien for all amounts owed. If the lien is foreclosed, a court shall order the sale of the vehicle to satisfy the debt.

The vehicle is currently located at _____.

Anyone with an ownership interest in this vehicle should contact the following business immediately:

Business Name: _____

Address: _____

Telephone #: _____

DISCLAIMER OF MOTOR VEHICLE OWNERSHIP INTEREST

Georgia, _____ County

I, _____ (name of motor vehicle owner) do hereby swear that I disclaim any and all ownership interest in:

Vehicle Make: _____ Year: _____ Model: _____
Vehicle ID # (VIN): _____ Vehicle License #: _____ State _____

I understand that by signing this form I will no longer hold any rights to the above listed vehicle and such vehicle may be sold at auction to satisfy a debt related to a lien filed against the vehicle.

I further understand that disclaiming an ownership interest in this vehicle does not relieve me of any other debts related to such vehicle, such as a debt entered into for the purchase of such vehicle.

By signing this form, I understand that I waive all future notices to which I am entitled under Article 1A of Chapter 11 of Title 40, "The Abandoned Motor Vehicle Act."

Sworn to and Subscribed before me
This ____ day of _____ 20__

Notary Public or Clerk
My Commission Expires: _____

Owner of Vehicle

If you wish to disclaim ownership, return this completed and notarized form to _____

(name and address of party owed fees)

ABANDONED MOTOR VEHICLE PETITION ADVERTISEMENT

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

Present location of vehicle: _____.

You are hereby notified that a petition was filed in the Magistrate Court of _____ County to foreclose a lien for all amounts owed. If the lien is foreclosed, a court shall order the sale of the vehicle to satisfy the debt.

Anyone with an ownership interest in this vehicle may file an answer to this petition on or before:

Answer forms may be found in the Magistrate Court Clerk's office located at:

Forms may also be obtained online at www.georgiamagistratecouncil.com.

ABANDONED MOTOR VEHICLE PETITION ADVERTISEMENT

You are hereby notified, in accordance with O.C.G.A. Section 40-11-19.1, that petitions were filed in the Magistrate Court of _____ County to foreclose liens against the vehicles listed below for all amounts owed. If a lien is foreclosed, the Court shall order the sale of the vehicle to satisfy the debt. The present location of the vehicles is:

Anyone with an ownership interest in a vehicle listed herein may file an answer to the petition on or before:

Answer forms may be found in the Magistrate Court Clerk's office located at:

Forms may also be obtained online at www.georgiamagistratecouncil.com.

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

Magistrate Court Case No.: _____

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

Magistrate Court Case No.: _____

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

Magistrate Court Case No.: _____

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

Magistrate Court Case No.: _____

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

Magistrate Court Case No.: _____

Vehicle Make: _____ Year: _____ Model: _____

Vehicle ID #: _____ Vehicle License #: _____ State _____

Magistrate Court Case No.: _____

Attach additional sheets as necessary.

MAGISTRATE COURT OF _____ COUNTY, GEORGIA

Date Filed _____

Case No: _____

Plaintiff(s) Name, Address
vs

Vehicle Owner Name, Address

Motor Vehicle Description and VIN

Lien Holders Notified

AFFIDAVIT OF MILITARY SERVICE

Personally appeared before me, the undersigned notary public or clerk, _____
(name of Affiant), who after being duly sworn, deposes and states as follows:

I am the Plaintiff, Attorney of Record for the Plaintiff, or the duly authorized agent for the Plaintiff, and I am executing this affidavit as required by Uniform Magistrate Court Rule 43.1 and the Servicemembers Civil Relief Act, 50 U.S.C. § 3931. To the best of my knowledge and belief:

- I have searched the website for the Department of Defense Manpower Data Center and have been able to ascertain that the vehicle Owner/Lien Holder in the above-styled action is in military service as defined by 50 U.S.C. § 3911. The status report from the Department of Defense is attached.
- I have searched the website for the Department of Defense Manpower Data Center and have found no indication that the vehicle Owner/Lien holder in the above-styled action is in military service. Therefore, to the best of my knowledge and belief, the vehicle Owner is not in military service as defined by 50 U.S.C. § 3911. The status report from the Department of Defense is attached.
- I have not been able to ascertain whether or not the vehicle Owner/Lien Holder in the above-styled action is in military service as defined by 50 U.S.C. § 3911 after making a good faith effort.

Sworn to and Subscribed before me
This ____ day of _____ 20____

Notary Public or Clerk
My Commission Expires: _____

Authorized Signature of Affiant

MAGISTRATE COURT OF _____ COUNTY, GEORGIA

Date Filed _____

Case No: _____

Plaintiff(s) Name, Address

vs

Vehicle Owner Name, Address

Motor Vehicle Description and VIN

Lien Holders Notified

ORDER ON PETITION FOR ABANDONED MOTOR VEHICLE LIEN FORECLOSURE

The above-referenced petition coming before this Court for [] a motion for judgment pursuant to OCGA § 40-11-19.1 (d) [] a hearing on the merits pursuant to OCGA § 40-11-19.1 (e), and the Court further finding that the petition should be granted,

THIS COURT HEREBY ORDERS that the lien be foreclosed on the above-referenced vehicle for the following amounts:

Removal (Towing) Fee:	\$ _____
Storage	\$ _____
Repair Fees (if applicable)	\$ _____
Cost of Obtaining Owner Information:	\$ _____
Notification/Advertising Costs:	\$ _____
Attorney's Fees (if applicable):	\$ _____
Prejudgment Interest	\$ _____
Court Costs/Certified Copies	\$ _____
<u>TOTAL:</u>	\$ _____

IT IS FURTHER ORDERED that the vehicle shall be sold at public auction to satisfy this lien in accordance with OCGA § 40-11-19.2.

SO ORDERED, this ____ day of _____, 20__.

Magistrate

MAGISTRATE COURT OF _____ COUNTY, GEORGIA

Date Filed _____

Case No: _____

Plaintiff(s) Name, Address
vs

Vehicle Owner Name, Address

Motor Vehicle Description and VIN

Lien Holders Notified

ORDER DENYING PETITION FOR ABANDONED MOTOR VEHICLE LIEN FORECLOSURE

The above-referenced petition coming before this Court for a motion for judgment pursuant to OCGA § 40-11-19.1 (d). After reviewing the record, the Petition is DENIED for the following reason(s):

- No Designation of Business Entity submitted with Petition
- No SCRA Affidavit submitted with Petition
- Information not requested from Department in a timely manner
- Information from Department not provided in file
- No authority to tow provided in file
- No evidence that law enforcement was notified of removal
- Issue with first notice/advertisement
- VIN/Vehicle does not match notice/Petition
- Issue with second notice/advertisement
- Statute of Limitations issue
- Other: _____

SO ORDERED, this ____ day of _____, 20__.

Magistrate

PUBLIC TOW – KNOWN OWNER

Tow Date	
Request Owner Info from Department	Within 3 days of removal
Send First Notices	Within 15 days of removal
Petition Filing	No sooner than 10 days but not later than 6 months of compliance with notice requirements

Important Documents

- Authority to tow
- Request for owner/lienholder info
- Response from department
- First notices
- Petition notices and evidence of delivery/refusal
- Request for order/SCRA affidavit

PUBLIC TOW – UNKNOWN OWNER

Tow Date	
Request Owner Info	Within 3 days of removal
Advertise Two Consecutive Weeks	Within 60 days of removal
Petition Filing	No sooner than 10 days but not later than 6 months of compliance with notice requirements

Important Documents

- Authority to tow
- Request for owner/lienholder info
- Response from department (if applicable)
- First notice advertisement
- Petition advertisement
- Request for order

”Day’ means a business day unless otherwise stated and shall not include Saturdays, Sundays, and legal holidays recognized by the state.” OCGA § 40-11-13 (1).

If owner becomes known while first advertisement is running, first notices must be sent within 10 days of receiving that information. If owner becomes known while petition advertisement is running, petition notices must be sent.

REPAIR FACILITY – KNOWN OWNER

Date of Last Communication with Owner	
Request Driver Info from Department	No sooner than 15 days or later than 180 days after last communication with owner
Send First Notices	No sooner than 15 days or later than 180 days after last communication with owner
Petition Filing	No sooner than 10 days but not later than 6 months of compliance with notice requirements

Important Documents

- Repair invoice
- Request for owner/lienholder info
- Response from department
- First notices
- Petition notices and evidence of delivery/refusal
- Request for order/SCRA affidavit

REPAIR FACILITY – UNKNOWN OWNER

Date of Last Communication with Owner	
Request Driver Info from Department	No sooner than 15 days or later than 180 days after last communication with owner
Advertise Two Consecutive Weeks	Within 60 days of Department’s failure to send owner information
Petition Filing	No sooner than 10 days but not later than 6 months of compliance with notice requirements

Important Documents

- Repair invoice
- Request for owner/lienholder info
- Response from department (if applicable)
- Advertisement
- Petition advertisement
- Request for order

“Day’ means a business day unless otherwise stated and shall not include Saturdays, Sundays, and legal holidays recognized by the state.” OCGA § 40-11-13 (1).

The term "communication" includes any form of communication which can be verifiably documented. OCGA § 40-11-16 (b)(1).

If owner becomes known while first advertisement is running, first notices must be sent within 10 days of receiving that information. If owner becomes known while petition advertisement is running, petition notices must be sent.

IF A REPAIR FACILITY RECEIVES A DEMAND PURSUANT TO OCGA § 40-3-54 (b), THE REPAIR FACILITY HAS 30 DAYS TO INSTITUTE FORECLOSURE PROCEEDINGS (AS EITHER AN ABANDONED MOTOR VEHICLE OR A MECHANIC’S LIEN). FAILURE TO DO SO FORFEITS THE LIEN. THIS DEMAND WAIVES ALL FIRST NOTICE REQUIREMENTS. OCGA § 40-10-19 (f).

SALVAGE FACILITY – KNOWN OWNER

Date of Last Communication with Owner	
Request Driver Info from Department	No sooner than 15 days or later than 60 days after last communication with owner
Send First Notices	No sooner than 15 days or later than 60 days after last communication with owner
Petition Filing	No sooner than 10 days but not later than 6 months of compliance with notice requirements

Important Documents

- Request for owner/lienholder info
- Response from department
- First notices
- Petition notices and evidence of delivery/refusal
- Request for order/SCRA affidavit

SALVAGE FACILITY – UNKNOWN OWNER

Date of Last Communication with Owner	
Request Driver Info from Department	No sooner than 15 days or later than 60 days after last communication with owner
Advertise Two Consecutive Weeks	Within 60 days of Department’s failure to send owner information
Petition Filing	No sooner than 10 days but not later than 6 months of compliance with notice requirements

Important Documents

- Request for owner/lienholder info
- Response from department (if applicable)
- Advertisement
- Petition advertisement
- Request for order

”Day’ means a business day unless otherwise stated and shall not include Saturdays, Sundays, and legal holidays recognized by the state.” OCGA § 40-11-13 (1).

The term "communication" includes any form of communication which can be verifiably documented. OCGA § 40-11-16 (b)(1).

If owner becomes known while first advertisement is running, first notices must be sent within 10 days of receiving that information. If owner becomes known while petition advertisement is running, petition notices must be sent.

PRIVATE TOW – KNOWN OWNER

Tow Date	
Request Owner Info from Department	Within 3 days of removal
Notify Law Enforcement of Removal	Within 1 day of requesting owner info
Send First Notices	Within 15 days of removal
Petition Filing	No sooner than 10 days but not later than 6 months of compliance with notice requirements

Important Documents

- Authority to tow
- Notification of removal to Law Enforcement
- Request for owner/lienholder info
- Response from department
- First notices
- Petition notices and evidence of delivery/refusal
- Request for order/SCRA affidavit

PRIVATE TOW – UNKNOWN OWNER

Tow Date	
Request Owner Info from Department	Within 3 days of removal
Notify Law Enforcement of Removal	Within 1 day of requesting owner info
Advertise Two Consecutive Weeks	Within 60 days of removal
Petition Filing	No sooner than 10 days but not later than 6 months of compliance with notice requirements

Important Documents

- Authority to tow
- Notification of removal to Law Enforcement
- Request for owner/lienholder info
- Response from department (if applicable)
- Advertisement
- Petition advertisement
- Request for order

”Day’ means a business day unless otherwise stated and shall not include Saturdays, Sundays, and legal holidays recognized by the state.” OCGA § 40-11-13 (1).

If owner becomes known while first advertisement is running, first notices must be sent within 10 days of receiving that information. If owner becomes known while petition advertisement is running, petition notices must be sent.



GEORGIA DEPARTMENT OF PUBLIC SAFETY

STATEWIDE MAXIMUM RATE TARIFF

INTRASTATE RATES AND CHARGES

Applying on

NON-CONSENSUAL TOWING

As described in DPS Transportation Rule 570-36-.03

And

O.C.G.A. § 44-1-13

MAXIMUM RATE TARIFF

NOTE: The rates contained herein apply to the towing and storage of vehicles improperly parked or trespassing on private property and removed at the request of the property owner or authorized agent, without the prior consent of the vehicle's owner or operator.

ISSUED BY:

GEORGIA DEPARTMENT OF PUBLIC SAFETY

P.O. Box 1456

Atlanta, Georgia 30371-1456

ISSUED: 09/25/2017

EFFECTIVE: 11/10/2017

GEORGIA DEPARTMENT OF PUBLIC SAFETY
STATEWIDE MAXIMUM RATE TARIFF
INTRASTATE RATES AND CHARGES
NON-CONSENSUAL TOWING

SECTION 1 – BACKGROUND/INTRODUCTION

The rates prescribed in this tariff apply to all nonconsensual towing and storage movements within the State of Georgia for the removal and storage of vehicles improperly parked or trespassing on private property. (Exception: The governing authority of a municipality may require towing and storage operators to charge lower maximum rates on traffic moving between points within such municipality than those provided herein.)

APPLICATION OF TARIFF

This tariff governs rates, fares and charges for services related to the removal and storage for towing of trespassing vehicles on private property when towing is performed without the prior consent or authorization of the owner or operator of the vehicle.

GOVERNING REGULATIONS

This tariff is authorized by O.C.G.A. § 44-1-13 and governed by Georgia Department of Public Safety Rules and Regulations Chapter 570-36.

DISCOUNTS FROM MAXIMUM RATES OR CHARGES

The rates and charges prescribed herein are maximum rates. Carriers may not exceed the maximum rate or charge applicable for any individual component set forth herein. Carriers may negotiate lower rates at their discretion.

METHOD OF PAYMENT

Payment may be made payable by cash, commonly recognized traveler's checks, money orders, certified checks or cashier's checks. Carriers equipped to accept debit cards and major credit cards may do so at no additional charge.

ISSUED: 09/25/2017

EFFECTIVE: 11/10/2017

GEORGIA DEPARTMENT OF PUBLIC SAFETY
STATEWIDE MAXIMUM RATE TARIFF
INTRASTATE RATES AND CHARGES
NON-CONSENSUAL TOWING

SECTION 1 – BACKGROUND/INTRODUCTION

POSTED NOTICE

The rates and charges prescribed in this tariff may only be assessed if the private property on which the trespassing vehicle is located has a posted notice stating that the unauthorized vehicles will be towed. Such notices must conform to the sign specifications outlined in DPS Rule 570-36-.05.

Private property containing not more than four residential units is not required to post such notices.

IMPOUNDMENT RECORDS AND CONTRACTS

In lieu of the contract with the private property owner or agent required in DPS Rule 570-36-.10, carriers removing trespassing vehicles from residential properties containing not more than four residential units may obtain signed authorization from the property owner or agent. Such authorization must be maintained by the wrecker service and provided to DPS staff upon request.

ISSUED: 09/25/2017

EFFECTIVE: 11/10/2017

GEORGIA DEPARTMENT OF PUBLIC SAFETY
MAXIMUM RATE TARIFF
INTRASTATE RATES AND CHARGES
NON-CONSENSUAL TOWING

SECTION 2 – RATES AND CHARGES

A. TOWING RATES AND CHARGES

- | | |
|--|------------------------|
| 1. Removal fee for vehicles with a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less | Not to exceed \$175.00 |
| 2. Removal fee for vehicles with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds to 20,000 | Not to exceed \$300.00 |
| 3. Removal fee for vehicles with a Gross Vehicle Weight Rating (GVWR) of 20,001 pounds or greater – per unit charge | Not to exceed \$450.00 |
| 4. Removal fee for vehicles with a Gross Vehicle Weight Rating (GVWR) of 20,001 pounds or greater – combination unit | Not to exceed \$850.00 |
-

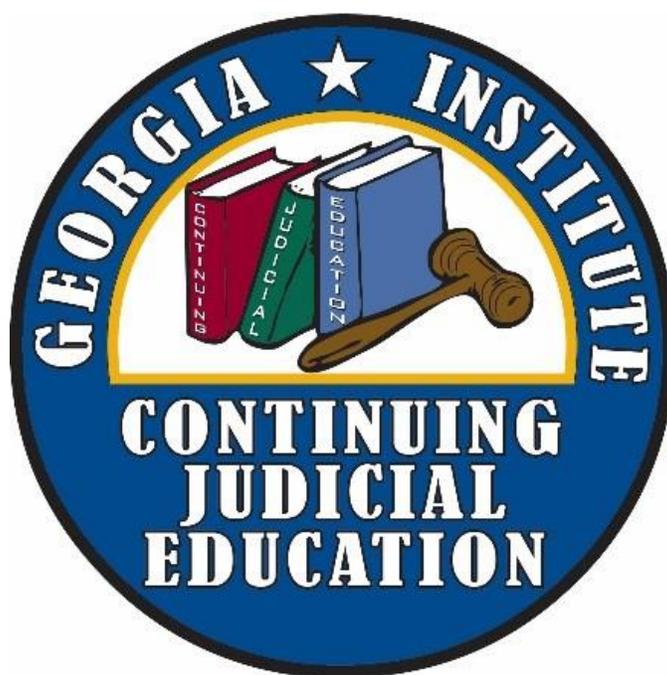
B. STORAGE RATES AND CHARGES

- | | |
|--|-----------------------|
| 1. Storage for the first 24 hours, beginning at the time the vehicle is removed from the property | No charge |
| 2. Storage for any day or days the impoundment facility is closed and the vehicle's owner is unable to claim the vehicle | No charge |
| 3. Daily storage fee for vehicles with a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less | Not to exceed \$25.00 |
| 4. Daily Storage fee for vehicles with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds to 20,000 pounds | Not to exceed \$30.00 |
| 5. Daily Storage fee for vehicles with a Gross Vehicle Weight Rating (GVWR) of 20,001 pounds or greater – per unit charge | Not to exceed \$40.00 |
| 6. Daily Storage fee for vehicles with a Gross Vehicle Weight Rating (GVWR) of 20,001 pounds or greater – combination unit | Not to exceed \$75.00 |

ISSUED: 09/25/2017

EFFECTIVE: 11/10/2017

Disposessories



Hon. Rebecca Pitts



DISPOSSESSORIES

Judge Rebecca Pitts, Magistrate Court of Butts County
rpitts@buttscounty.org



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Dispossessory - a civil proceeding involving landlords and tenants. The purpose of the proceeding is to remove a tenant from the property and may result in a judgment against a tenant for past due rent.

- OCGA 44-7-49 through 44-7-59 outlines the procedure for dispossessory actions.
- The Clerk's Handbook in section 4.2.1 – 4.2.7 outlines the Clerk's procedures on handling Dispossessory filings.
- The property subject to the dispossessory action must be located within your county.
- Dispossessory actions are not subject to the normal \$15,000.00 jurisdictional limit.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

- Per 44-7-50 (a) – when a tenant fails to pay the rent or fails to deliver possession when demanded, the owner or the agent, attorney at law, or attorney in fact of such owner can file an affidavit under oath to a Clerk or Judge of the State, Superior or Magistrate Court in the county of which the property is located. The affidavit may likewise be made before a notary public.
- Rule 31 Affidavit –(Uniform Mag. Rule 31) – any officer or full-time employee of a corporation, sole proprietorship, partnership may be designated to represent it in civil actions in Magistrate Court.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Affidavit

- Grounds for filing an affidavit:
 - (1) Non-payment of rent
 - (2) Tenant holding over beyond term of the lease
 - (3) Tenant at sufferance or tenant at will



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Filing of Dispossessory Affidavit

- Upon the individual filing the affidavit and tendering the filing fee, assign a case number and establish the new case file.
- Make copies of the stamp-filed affidavit, receipt the filing fee and provide copies of the affidavit and receipt to the filing party.
- If your court has informational forms on “what to expect next” provide that to the filing party and explain the process after filing.
- Offering procedural information is helpful to self-represented litigants and often assures them that their case will be handled properly.
- Just be careful on what you say and don’t offer legal advice or opinions on what you think the Judge will decide on their case.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Summons

- Issue the Summons and prepare the affidavit for service. This can be done by a Judge or Clerk after the affidavit is filed. OCGA 44-7-51 (a)
- The Summons SHALL command and require the tenant to answer within seven days from the date of actual service UNLESS the seventh day falls on a Saturday, Sunday or legal holiday, in which case the last day to answer shall be the next day the office is open.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Service

1. Personal Service on the tenant listed on the affidavit **MUST BE ATTEMPTED**. OCGA 44-7-51 (a)
2. Sui Juris - If the sheriff, marshal or constable is unable to personally serve the tenant, the sheriff may serve the summons and affidavit to any person residing sui juris (of suitable age and discretion) on the premises.
3. Tack & Mail – If personal service cannot be perfected on a tenant or someone residing sui juris on the premises, the summons and affidavit may be posted on the door of the premises AND mailed **ON THE SAME DAY** to the tenant at his/her last known address if any and make entry of the mailing on the affidavit.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Return of Service

OCGA 9-11-4 states: “The person serving the process ***shall*** make proof of such service with the court in the county in which the action is pending ***within five business days of the service date***. If the proof of service is not filed within five business days, the time for the party served to answer the process ***shall not begin to run until such proof of service is filed***.”

Proof of service shall be as follows:

- (1) If served by a sheriff or marshal, or such official’s deputy, the affidavit or certificate of the sheriff, marshal, or deputy;
- (2) If by any other proper person, such person’s affidavit;....”



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Answer

- Answer MUST be filed within seven days of the date of service.
- Answer may be either oral or in writing. OCGA 44-7-51(b)
- If Answer is oral, the substance of the answer must be reduced to writing and noted by the Clerk.
- If Answer is not oral, provide the form to the tenant upon request.
- “All others” or “Persons in Possession” of the property allows any person in possession of the property to become a party and file an answer. They also must answer within 7 days.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Answer Cont'd

- Tenants are NOT required to pay rent into the Court as a pre-requisite to filing an answer or counterclaim.
- A landlord who wants a tenant to pay rent into the registry of the Court should file a motion based on OCGA 44-7-54 seeking an order to compel the payments.
- Tenant is required to pay rent into the Court when the right of possession cannot be determined within two weeks of the service of the landlord's affidavit is served upon the tenant/defendant. OCGA 44-7-54.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Payment to Landlord of Rent Paid Into Court:

- The Court should order the Clerk to pay the landlord the amount of rent paid into the registry of the court as the tenant makes those payments. OCGA 44-7-75(f).
- The tenant may be excused from payment into the Court if a receipt is submitted showing payment has been made.
- If the tenant claims to be entitled to all or part of the funds as a result of a counterclaim, the portion of funds claimed should be held in the registry until a final determination by a Judge.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Failure to Answer

- Failure to answer within 7 days results in immediate judgment per OCGA 44-7-53(a). Normal rule for opening default DOES NOT APPLY TO DISPOSSESSORIES. It is the plaintiff's responsibility to file a motion for a default judgment and writ if tenant fails to file an answer.
- No money judgment may be entered if the tenant failed to answer and was served by tack and mail service. If they answered and failed to appear in Court, then a money judgment would be ok.
- If the dispossessory affidavit fails to demand or state an amount of past due rent, the Judge will only order for a Writ of Possession to issue.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Military Affidavit is Required before Judgment

- Service Member Civil Relief Act (SCRA)

- 50 USC 3931: Plaintiff/Landlord MUST FILE an affidavit with the court stating one of three things: 1) that the defendant is in military service; 2) that the defendant is not in military service; or 3) that the Plaintiff/Landlord is unable to determine whether the defendant is in military service after making a good faith effort to determine the defendant's military service status.
- To verify an individual's military service status, one may search the Department of Defense's Defense Manpower Data Center ("DMDC") database. This database may be located online at: <https://scra.dmdc.osd.mil/>.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Clerk's Duties Upon Answer Being Filed

- Provide the necessary forms for filing an answer upon request of the filing party.
- Review the form to make sure it has been completed, file-stamp the Answer.
- Assign a hearing date at the time the answer is filed.
- The hearing should be scheduled within 7-10 days of the Answer being filed.
- Provide a copy of the hearing notice, answer and certificate of service to all parties and attorneys of record in the case. Make sure the certificate of service lists the names and addresses of the parties receiving the documents and hearing notice. (We often list the method of service, i.e. mail or hand delivery, etc.)



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

E-Filed Answers

- Answers to a dispossessory affidavit can also be e-filed if your court uses e-filing.
- The date and time the Answer filed is established when the e-filing service provider receives the electronic filing. Keep this in mind if the answer to the claim is filed on the last day at the final hour.
- Follow your court's protocol for filing/printing and importing the electronic filing. Use a stamp to show when the Court also received the e-filed document.
- Follow the Court's procedure for scheduling the hearing and providing copies to all parties and attorneys of record.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Answer (Jurisdictional Issue) & Counterclaim

- If an answer requires affirmative equitable relief, magistrate court does NOT have jurisdiction. Bring answers like this to the attention of the Judge. The case may still need to be set down for a hearing, but the Judge needs to be aware there may be jurisdictional issues to consider.
- Counterclaims are allowed in dispossessory actions. Magistrate Court does not have jurisdiction over monetary counterclaims in excess of \$15,000.00. If the Judge determines the court is without jurisdiction to hear the case, transfer to State or Superior Court is the proper remedy.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Pending the Hearing

- The Clerk should not allow any party to speak to the Judge about their pending case. The JQC forbids communication between Judges and the parties. All JQC canons and rules must be strictly followed. Your average citizen and self-represented litigant may not understand this.
- When parties continuously call or ask to speak to the Judge, be courteous. Kindly explain why the Judge cannot speak to litigants regarding their pending case.
- Encourage parties to seek the advice of an attorney if they have legal questions, and to wait until the hearing to plead their case in open Court.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Trial & Judgment

- The landlord will be required to establish their case before the Judge.
- The tenant may present their own testimony and evidence as a defense to the action and may or may not present a counterclaim.
- If the Judge finds in favor of the Plaintiff, a Judgment Granting Writ of Possession will be issued in the case.
- The Judgment and Writ of Possession will be effective at the expiration of seven days from the date of the hearing. OCGA 44-7-55 (a)
- If the tenant/defendant fails to appear after having answered the case, the Plaintiff may motion for a Default Judgment and immediate Writ of Possession. There is no 7 day stay in the event of default.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Judgment Cont'd

Consent Agreements or Consent Judgments can also be entered in a dispossessory action.

Stamp file and provide copies of the Court's Judgment to all parties and attorneys of record.

In the event there is a notice of default on the consent agreement, there may be a motion for a hearing or motion for an immediate writ due to non-payment. This may vary between courts. Follow the procedure your Judges have established.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Appeal

- Appeals may be made to State or Superior court within 7 days of Judgment. The time limit applies even where possession is no longer an issue.
- Tenant SHALL be required to pay future rents into the registry of the Court.
- Tenants are allowed to remain in possession of the property pending the final outcome of the appeal unless there is a failure to comply with the order to pay rent into the Court.
- The original Judgment Granting Writ should contain a provision in the order regarding the amount that is due and payable into the registry pending appeal. Amount may include past due rent, plus future rents due and payable on a certain date and frequency during the appeal process.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Appeal Cont'd

- Upon the notice of appeal being filed, prepare the file, a case index and certification of the records being transmitted.
- Follow normal procedures for any other case that is appealed.
- Once the case is appealed from Magistrate Court, the case belongs to the higher Court.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Application for Writ of Possession

- OCGA 44-7-55 (d) - applications for execution of a writ of possession *shall be made within 30 days of issuance of the writ of possession* unless such application for said writ is accompanied by an affidavit showing good cause for the delay in applying for execution of the writ. The failure to execute a writ in conformity with this Code section shall require the applicant to apply for a new writ.
- (e) Nothing in this Code section shall require a sheriff, constable, or marshal to execute a writ of possession within 30 days from the issuance of any order granting a writ of possession, or the issuance, application, or request for the execution of the writ of possession.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Writ of Possession – Mobile Homes

- 44-7-59. Removal of transportable housing from lands subject to writ of possession.
- If tenant does not move the mobile home within 10 days, landlord shall be entitled to have the mobile home moved from the property at the expense of the tenant by a motor common carrier licensed by the Department of Public Safety for the transportation of manufactured housing.
- There shall be a lien upon such transportable housing to the extent of moving fees and storage expenses in favor of the person performing such services.
- Such lien may be claimed and foreclosed in the same manner as special liens on personalty by mechanics under Code Sections 44-14-363 and 44-14-550, except that storage fees not to exceed \$4.00 per day shall be expressly allowed.



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Helpful Resources

<https://georgiamagistratecouncil.com/>



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

<https://georgiacourts.gov/cmcss/>

georgiacourts.gov/cmcss/

Georgia Courts Registrar Georgia Magistrate Directory

Enter your search

Council of Magistrate Court Clerks

Home Council of Magistrate Court Clerks



Welcome to the Council of Magistrate Court Clerks website

Our Clerks Council is made up of members from all 159 counties of the state which have a Magistrate Court. Our council has 10 district representatives who are elected to represent each judicial district in the state which makes up our executive council.

Magistrate Courts are sometimes referred to as the "Emergency Room" of the Courts of Georgia. Magistrate clerks are like nurses, that can assist in filings without giving legal advice. Our courts see a little of everything. Most criminal cases begin and are heard in our courts. Civil filings with a monetary amount of up to \$15,000 come before our court which may result with a simpler and sometimes quicker resolution of cases. It is not mandatory to have an attorney when cases are filed in magistrate courts. Pro Se litigants (self-representation) may present or defend their case whether it be civil or criminal.

This site is designed for use not only for judiciary but also for citizens not familiar with our proceedings. Please take a moment to browse our website and hopefully you will find a wealth of resources to help educate and assist you with any Magistrate Court issues.

[Translate This Website »](#)



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Magistrate Forms Generator

Interview

georgia.tylerhost.net/SRL/SRL/ExecuteInterview

English (United States)

Guide & File Interviews

Interview Home Start a Filing My Interviews

Select Interview Complete Interview Review Summary Submit Documents

Magistrate Triage

Council of Magistrate Court Judges' Guide & File Program

These are the types of cases that the Interviews currently support:

- Statement of Claim (General Civil Suit)
- Dispossession (Landlord/Tenant)
- Abandoned Mobile Home Removal and Lien Foreclosures
- Abandoned Motor Vehicle Liens and Lien Foreclosures
- Personal Property Foreclosures
- Garnishments

The following questions will direct you to the interview that applies to your situation.

Please click **Next** to proceed.

Exit Go to Start Page Next

You can also...

SAVE YOUR WORK. SIGN UP

ALREADY SIGNED UP? LOG IN

Where to Get Help

- Georgia Legal Services
- Georgia State Bar Legal Aid
- Georgia Legal Aid

Legal Assistance



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

https://www.dca.ga.gov/sites/default/files/2-15-21_handbook_final_draft.pdf

The screenshot shows the Georgia Department of Community Affairs website. The header includes the logo and the tagline "Helping to build strong, vibrant communities." Below the header is a navigation menu with links for Home, About, Newsroom, Programs, and Contact Us, along with a search bar and social media icons. The main content area features a sidebar with two boxes: "LOCAL GOVERNMENT ASSISTANCE" and "COMMUNITY & ECONOMIC DEVELOPMENT". The main content area is titled "Georgia Landlord-Tenant Handbook" and "Georgia Landlord-Tenant Handbook - Publications". It includes a breadcrumb trail: "Safe & Affordable Housing > Rental Housing Assistance > Housing Choice Voucher Program (formerly known as Section 8) > Georgia Landlord-Tenant Handbook > Georgia Landlord-Tenant Handbook". There are two links for the handbook: "Georgia Landlord-Tenant Handbook (PDF)" and "Georgia Landlord-Tenant Handbook". A "Description:" section follows, stating: "We are pleased to inform that starting in 2021, the Landlord-Tenant Handbook will be managed in partnership with Georgia State University (GSU) and the University of Georgia (UGA). Staff and students from GSU and UGA will take the lead in editing and updating the Handbook, while the Department of Community Affairs will continue to host it on this website for the benefit of all Georgia residents."



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

<https://georgiarentalassistance.ga.gov/>

The screenshot shows the Georgia Rental Assistance website. The header includes the logo and the tagline "Helping to build strong, vibrant communities." Below the header is a navigation menu with links for FAQ, Required Documents, Sample Forms, Report Fraud, Languages, and a Log In button. A prominent orange banner reads "Now offering state-wide assistance." Below the banner is a large image of a family (a man, a woman, and a child) looking at a tablet. Overlaid on the image is a text box that says "We're here to help." and provides information about the Georgia Rental Assistance Program: "If you're a Georgia renter who has fallen behind on rent payments as of March 13, 2020, you may qualify for assistance. The Georgia Rental Assistance Program can provide up to 18 months of rental and utility assistance, paid directly to participating landlords and service providers on behalf of tenants. See if you qualify." There is a "Learn More" button below the text box.

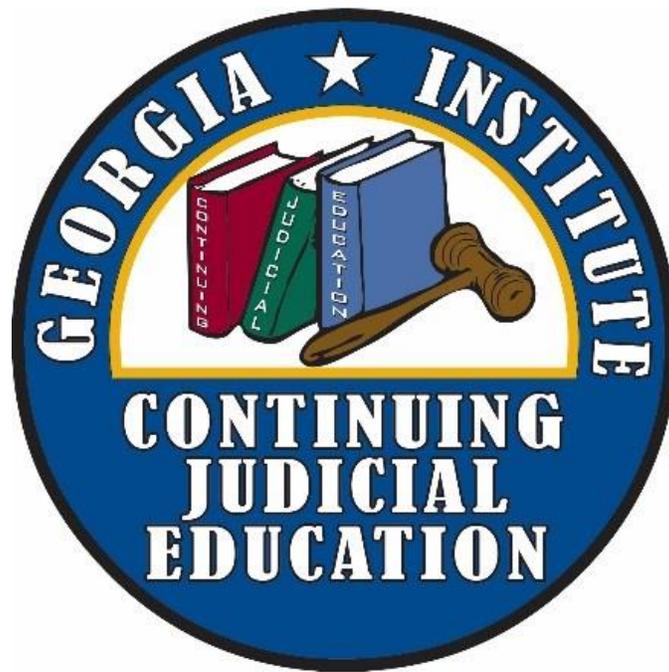


Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law



Institute of Continuing Judicial Education of Georgia • University of Georgia • School of Law

Statement Claims & Writ of Possession Foreclosure



Hon. Gayle Gazaway

**IN THE MAGISTRATE COURT FOR THE COUNTY OF WHITFIELD
STATE OF GEORGIA**

205 N. Selvidge Street, Suite E
Post Office Box 386
Dalton, GA 30722-0386
Desk: 706-876-1676
Fax: 706-278-8810

Case No. _____

Date Filed: _____

PLAINTIFF: _____

DEFENDANT: _____

Vs.

STATEMENT OF CLAIM

Plaintiff says the defendant is indebted to the plaintiff as follows:

That said claim is in the amount of \$ _____ plus \$ _____ costs to date; and all future costs of this suit.

State of Georgia, _____ County:

_____ being duly sworn on oath, says the foregoing is a just and true statement of the plaintiff and claim made by plaintiff against defendant, exclusive of set-offs and just grounds of defense.

Sworn and subscribed before me

This _____ day of _____, 20____

(Agent for) Plaintiff

Notary Public or Attesting Officer

(If agent, title/capacity)

NOTICE AND SUMMONS

To _____

You are hereby notified that _____ has made and filed a claim and is asking for judgement against you in the sum of _____ dollars (\$ _____), as shown by the foregoing statement. YOU ARE REQUIRED TO FILE OR PRESENT AND ANSWER TO THIS CLAIM WITHIN 30 DAYS AFTER SERVICE OF THIS CLAIM UPON YOU. IF YOU DO NOT ANSWER, JUDGEMENT BY DEFAULT WILL BE ENTERED AGAINST YOU. YOUR ANSWER MAY BE FILED IN WRITING OR MAY BE GIVEN IN PERSON, ORALLY, TO THE CHIEF OR PRESIDING JUDGE, CLERK OF COURT OR DEPUTY CLERK DURING NORMAL COURT HOURS.

The court will hold a hearing upon this claim at a time to be set after your answer is filed. If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing. If you wish to have witnesses summoned, see the court at once for assistance.

If you have any claim against the plaintiff, you should notify the court at once. If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

Magistrate, Whitfield County

Georgia, Whitfield County

Above NOTICE and STATEMENT OF CLAIM served on defendant(s) _____

_____ named above at _____ M., _____ day of _____, 20____

at (or in) _____, in Whitfield County, Georgia.

Constable

Statement of Claim

- What is statement of claim?
 - Suit against an individual and/or company that is less than \$15k.
- Where to file a claim?
 - Normally where the defendant resides unless it's a car accident or multiple defendants.
- What is the filing cost?
 - \$47.00 to file and \$50.00 to serve (each defendant)
- Service of process
 - May be served at defendant's residence personally and/or notoriously.
 - May be **personally** served at defendant's place of employment.
- Answer of claim/ schedule hearing
 - Defendant may file an answer within 30 days from date of service.
- Open default time frame
 - Defendant may file an answer after 30 days of service but no more than 45 days of service.
After 30 days is required to pay "open default" fee (court cost)
- Plaintiff files Motion for Default and Military Affidavit if no answer filed after 45 days of service
- Case is reviewed and judgment may be issued.

MAGISTRATE COURT of WHITFIELD COUNTY
P.O. BOX 386
DALTON, GA 30722-0386

AFFIDAVIT FOR FORECLOSURE OF PERSONAL PROPERTY

Civil Action File

No. _____

Plaintiff(s) Name, Address

Telephone: _____

vs.

VIEW STATUS OF CASE

www.whitfieldcountyga.com

Defendant(s) Name, Address

Telephone: _____

Personally appeared _____ who, on oath, says that he/she is Plaintiff(s)

Agent ; Attorney-at-Law; for Plaintiff(s); and is authorized to make this Affidavit, and that Defendant(s) herein, whose address is set forth above herein is indebted to said Plaintiff(s) in the amount(s) of Principal (\$ _____), upon a Security Agreement ; Defendant has defaulted in the payments required by the Security Agreement; Defendant is either now a resident of this County or the secured property is located in this County; Plaintiff is entitled under O.C.G.A. Section 44-14-230 et. Seq. to a Writ of Possession to the following secured property:

Sworn and subscribed before me this

_____ day of _____, 20__

Plaintiff(s) or - Agent - Attorney

(If Agent /Attorney – Title or Capacity)

Notary Public /Clerk/Deputy Clerk

Email

My Commission Expires: _____

NOTICE AND SUMMONS

TO: Defendant(s)

You are hereby commanded and required personally or by attorney to file with the Clerk of the Magistrate Court of Whitfield County, within (7) days from the date of service of the within affidavit and summons, or on the first business day thereafter if the seventh day falls on a Saturday, a Sunday, or a legal holiday, then and there to answer said affidavit in writing or orally. (See mailing address above, or file in person at 205 N Selvidge Street Ste E, Dalton, GA.) If the Defendant(s) fails to answer on or before the seventh day from the date of service, the Defendant(s) may reopen the default as a matter of right by making an answer within seven (7) days after the date of the default notwithstanding the provisions of O.C.G.A. 9-11-55. If the seventh (7) day is a Saturday, a Sunday, or a legal holiday, the answer may be made on the next day which is not a Saturday, a Sunday, or a legal holiday. If the answer is not so made, a writ of possession shall issue against Defendant(s) as by law provided, pursuant to Plaintiff(s)' affidavit.

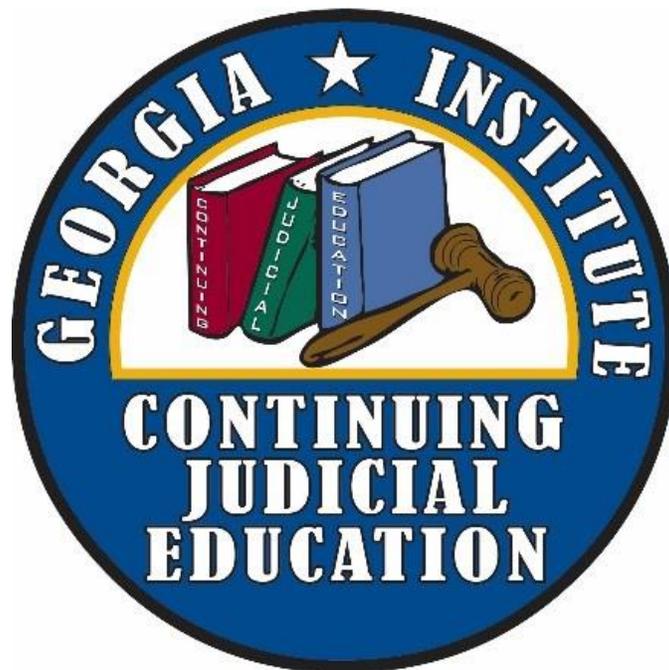
Filed this _____ day of _____, 20__ WITNESS the Honorable Chris N Griffin, Chief Magistrate

Clerk/Deputy Clerk

Personal Property Foreclosure

- What is Personal Property Foreclosure?
 - An action to recover secured property
- Where to file Personal Property Foreclosure?
 - Venue is in the county where either the debtor or property is located.
- What is the filing cost?
- Service
- Answer to claim/ schedule hearing
- Open default time frame
- Plaintiff files Motion for Default, Military Affidavit, and Writ if no answer filed after 14days of service. Writ fee of \$50.00 is due
- Case is reviewed and judgment may be issued.
- Writ is given to Constables to execute

Clerks Ethics



Hon. Rick Waters

ETHICS FOR COURT CLERKS



JUDGE RICK WATERS

rwatersjr@hotmail.com

WHAT IS ETHICS?

MEANING OF ETHICS :

The word "ethics" is derived from the Greek word "ethos", which refers to character.

Some years ago, sociologist Raymond Baumhart asked business people, "What does ethics mean to you?" Among their replies were the following:

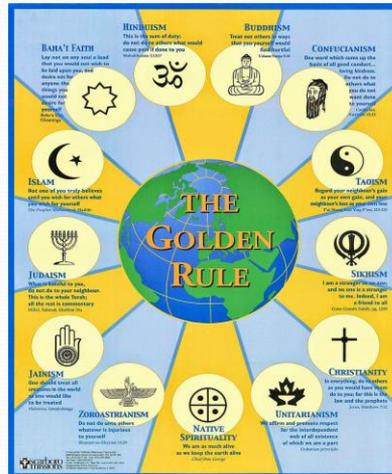
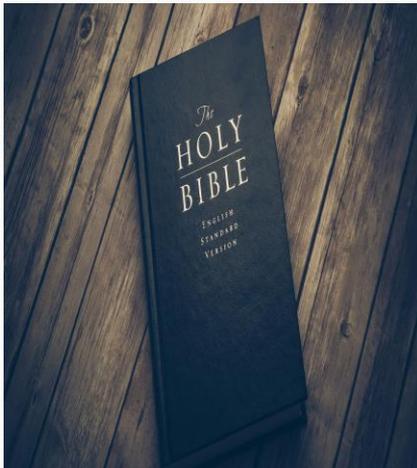
1. "Ethics has to do with what my feelings tell me is right or wrong."
2. "Ethics has to do with my religious beliefs."
3. "Being ethical is doing what the law requires."
4. "Ethics consists of the standards of behavior our society accepts."
5. "I don't know what the word means."

These replies might be typical of our own. The meaning of "ethics" is hard to pin down, and the views many people have about ethics are shaky.

I know right from wrong
so I'm ethical.



My religion will guide me.



If it's legal, it's ethical.



Ethics is based on our society.

“WHAT IS MORALITY IN ANY GIVEN TIME OR PLACE? IT IS WHAT THE MAJORITY THEN AND THERE HAPPEN TO LIKE AND IMMORALITY IS WHAT THEY DISLIKE.”

ALFRED NORTH WHITEHEAD

© Lifehack Quotes

What is ethics then????

- What, then, is ethics? Ethics is two things. First, ethics refers to well-founded standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, laws, religion, obligations, benefits to society, fairness, or specific virtues.

What is ethics then???? (part 2)

- Secondly, ethics refers to the study and development of one's ethical standards. As mentioned above, feelings, laws, and social norms can deviate from what is ethical. So it is necessary to constantly examine one's standards to ensure that they are reasonable and well-founded.

With Ethics, does one size fit all??



Does one size fit all??

- Ethical codes are not collections of minute rules that infallibly prescribe in great detail how exactly practitioners of a profession should act in all conceivable particular situations. Because of their general nature, values and standards set forth in ethical codes cannot exactly fit each concrete situation in all its complexity, richness, and uniqueness. Code applications must take into account the concrete contexts, distinguishing features and facts of specific situations, in addition to potential conflicts among relevant general values and standards of ethical conduct.

YOUR MISSION AS COURT CLERKS SHOULD BE:

- *(1) to assure the administrative efficiency of the court,*
- *(2) to protect the court's ethical integrity, and*
- *(3) to help maintain public confidence in the court's fairness in dispensing justice impartially.*

COURT CLERKS – ETHICS TEST

- Responsible and defensible ethical decision-making in any given situation requires informed judgment in applying relevant ethical principles in their situation-specific order of priority. **A litmus test for the soundness of ethical judgments would be the decision makers' comfort level if their ethical judgments were both publicized in the local media and also scrutinized by an expert board of their peers.**

Are Ethics Important to the justice system?

- A fair and independent court system is essential to the administration of justice in a democratic society.
- Court professional should strive to: Inspire public confidence and trust in our courts; and Convey impartiality, equality, fairness and integrity.

Why Should I Care About Ethics?



Copyright © 2011 R.J. Romero www.hipaa-cartoons.com

"I've been getting annoying pangs of conscience when faced with ethical dilemmas. Got anything for that?"

- To protect myself from harm
- To be a good Court Clerk
- To achieve the best results for the most people
- To do the right thing
- To respect people's fundamental rights

Confidentiality

What can you discuss with:

- (1) the public,
- (2) attorneys
- (3) your friends
- (4) your family???



Your Nosey Friend. (example)

- (Example) A very prominent citizen has been sued in Magistrate Court for not paying a contractor. The Judge has head the case but has not yet issued a ruling. Beth, a court clerk, has been contacted by one of her (nosey) friends who wants a copy of the complaint, wants to know who testified at the hearing and wants to know how the Judge seems to be leaning in the case. What can Beth discuss?

POSSIBLE ANSWERS

1. Tell her EVERYTHING.
2. Tell her nothing and say “that’s confidential”.
3. Let her come look through the case file.
4. Tell her to meet you at Longhorns after work so you can give her the scoop.

Confidentiality-

To protect confidential information, never use it for personal advantage or disclose it, except for lawful reasons.

Info that's Confidential

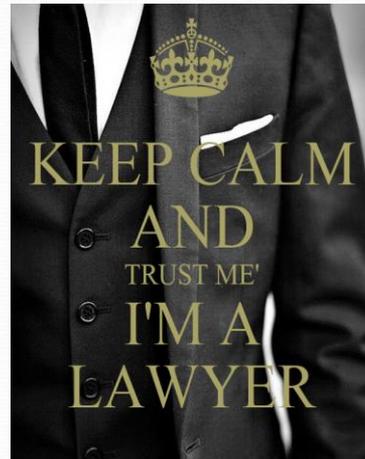
- Hints of how a Judge might decide the case or timing of the decision
- Observations about the Judge's decision making process
- Content of case related discussions with the Judge
- Information not available to the general public

Info that's Not Confidential

- Court Rule and Court Procedures
- Court Records including orders and judgments
- Info about how, in general, the court operates
- Info disclosed in open court

What about lawyers?

Attorneys may want to know how their cases are going, and they may want an insider's view of how they can improve their clients' chances. They may call and give their arguments to you to try to lead you into a discussion of the merits of the case. You should not engage in substantive discussion with attorneys.



Conflicts of Interest

Would a reasonable person question if you were performing your duties Impartially?



Bring back those crab legs!!(example)

- An grocery store owner has sued his former employee alleging he took crab legs from his store on several occasions. Your best friend's husband owns the store and will be a witness if the case goes to trial. How do you deal with the conflict if there is one?

POSSIBLE ANSWERS

1. Don't be involved in the case at all.
2. Discuss the potential conflict with the Judge.
3. Don't tell anyone that the victim is your friend.
4. Ask the judge to enter a judgment against the employee for a million dollars.

Rule for Potential Conflicts of Interest

- Maintain a high standard of personal conduct and avoid even the **appearance** of impropriety that can harm the reputation of and diminish public trust in the court
- Don't be unduly influenced
- Don't compromise your independence
- Don't allow your judgment to be impaired
- Don't let outside forces interfere

Impartiality-

- To treat all stakeholders in the court equitably, fairly, and neutrally.

Potential Conflicts

- A friend has a financial interest in a case
- You have a personal bias towards (or are related to) a party
- You solicit funds for a charitable organization or for your child's school
- You were a witness to a case pending in your court or have personal knowledge of a disputed fact

REASONABLE PERSON STANDARD APPLIES

Conflicts can arise when you know that you, or your spouse/close relative, might be so personally or financially affected by a matter that a reasonable person would question your ability to perform official duties impartially.

“Reasonable Person”= It’s not how you, or someone else looks at something but how an outsider looking at it would see it.

How do you handle conflicts??

- Disclose the conflict to the Judge as soon as possible.
- Think about how an outsider would look at the situation and your relation to it
- Ask someone else in your office to handle the case or fill in for you in court.
- If it doesn't feel right -DON'T DO IT!

Can I solicit funds or sell tickets, or merch?



Clerks are not prohibited but...

- Do not use you the prestige of your office to solicit the funds.
- Do not solicit funds from attorneys who appear in court
- Do not solicit funds from subordinates or other court personnel.
- Do not raise funds for organizations who take controversial stands on matters that arise, or might arise in court.



Beware of Season's Greetings!

- Under what circumstances can a court clerk accept a Christmas gift? From whom?

POSSIBLE ANSWERS

- 1. Can you accept breakfast tacos from an attorney because the staff was helpful to him/her during the year?
- 2. Can you accept a baby shower gift from an attorney who practices in the court?
- 3. Can you accept a gift from your co-worker because it's your birthday?
- 4. Can you accept a Starbucks gift card as a Christmas gift from an attorney who appears in Magistrate Court?

Ethical Rule on Gifts

- refrain from soliciting or receiving gratuities or favors or promises of the same by using one's position at the court

GIFTS, GIFTS, GIFTS



- **The safest rule is to not accept any gifts from anyone who does business with the court or who could potentially do business with the court. This should include current and past litigants.**

Exceptions to the rule on receiving gifts:

- ordinary social hospitality (someone brings cookies by for the whole office)
- gifts from relatives and friends on special occasions
- de minimis gifts – attorney gives you a pen with his firm name on it
- gifts that are given as a result of your spouse’s separate business and professional activities

Does anybody really care what I do on
social media?????????????



Possible Social Media Ethical Problems – Part 1



Possible Social Media Ethical Problems- Part 2



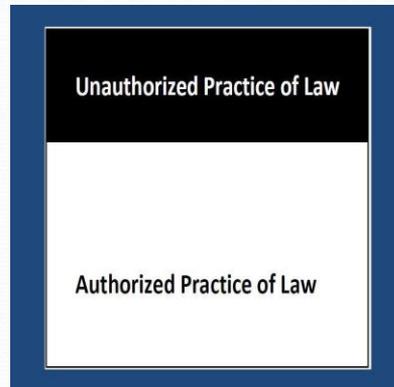
Social Media Do's and Don't

- 1. Think of the consequences of social media posts on the Court
- 2. Do not do unto others what you don't want others to do unto you
- 3. Be truthful and shun the falsehoods
- 4. Be cautious in posting rants
- 5. Social media should not be a place for embarrassing or humiliating people
- 6. Be culturally sensitive and politically neutral

How do I enjoy social media ethically?

- 1. Don't list work on social media sites
- 2. Make your site private
- 3. Take a breath before you post.
- 4. Speak for yourself, not your institution.
- 5. Keep secrets secret.
- 6 Remember the SCREEN SHOT

Giving legal advice



How Much or How Little?

- A citizen, Linda Sue Badneighbor, asks you how to file for a warrant against her neighbor for violating the city leash law ordinance. She asks what forms to use, and whether she needs an attorney. She also asks you what you would do, under the circumstances. How should you handle this?

POSSIBLE ANSWERS

- 1. Tell Linda Sue, “Lady, do I look like an attorney to you?”
- 2. Advise her and assist her in filing the proper forms.
- 3. Advise her to talk to the County Attorney.
- 4. Advise her to contact law enforcement.

Ethical Rule on Providing Information

- **Information**
To provide accurate, understandable, timely, and, within legal constraints, complete information to all stakeholders but without giving legal advice.

How do I know if what I'm doing is giving legal advice????

- The Supreme Court of Florida in the case of State v. Sperry had a very good explanation of what giving legal advice means. The Court said:
- “If the giving of such advice affects important rights of a person under the law, and if the reasonable protection of the rights requires the person giving the advice to possess *legal skill and knowledge of the law greater than that possessed by the average citizen*, then the giving of such advice constitutes the practice of law.”

What's the harm with helping people who really seem to need help?

- The people most likely to suffer if you give legal advice, either good or bad, are the litigants in court and attorneys. If the advice is bad, the recipients will suffer for it. If the advice is good, the opposing side of the case (or potentially the victims) will suffer for it.

OCGA § 15-19-51



- (a) It shall be unlawful for any person other than a duly licensed attorney at law:
 - (4) To render or furnish legal services or advice;
- ****Punished as a misdemeanor**** (O.C.G.A. 15-19-56)

Test regarding giving legal advice



Ethical Decision Making in 5 Steps

- **Step 1:** Identify the ethical problem.
- **Step 2:** Get ALL the facts
- **Step 3:** Evaluate alternative actions and eliminate obviously bad choices.
- **Step 4:** Test your decision. Would you be comfortable sharing your decision with another clerk, your parents or it being posted on social media.
- **Step 5:** Make the decision and accept and learn from the consequences

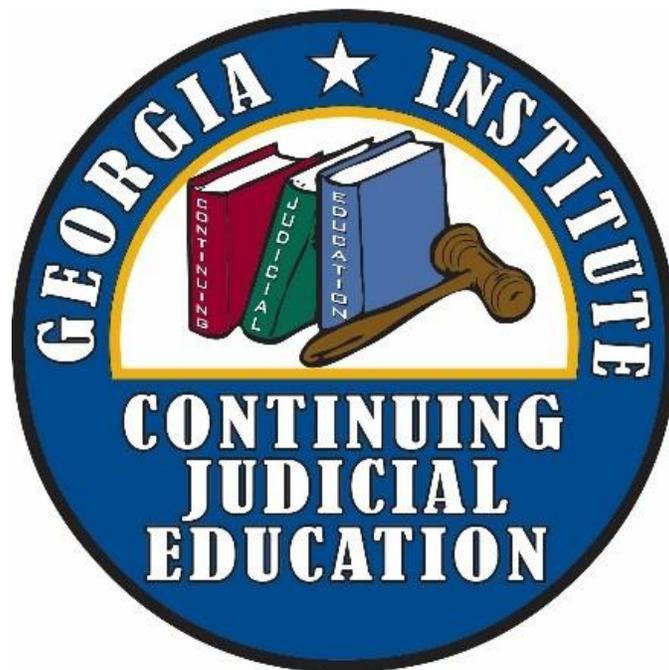
Best Practical Test



-Question-



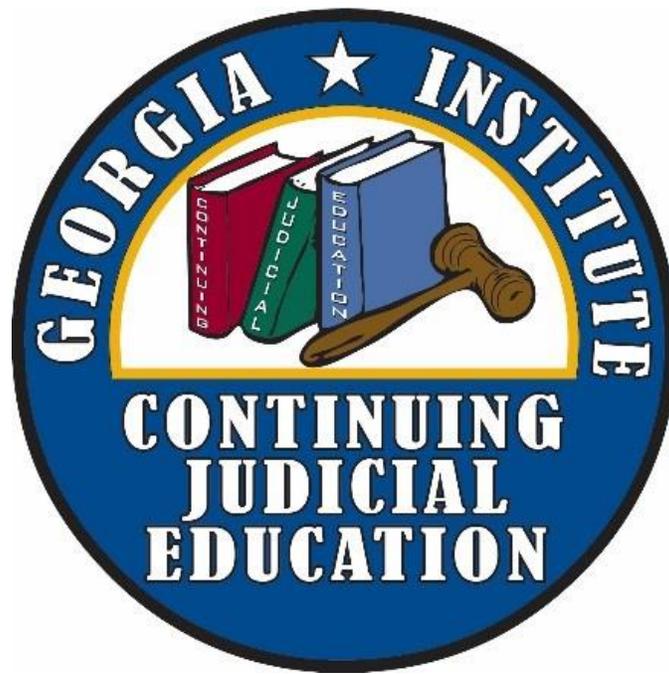
Pre-Warrant Hearing Skit



Council of Magistrate Court Clerks

[NO HANDOUTS]

Criminal Overview



Hon. David Crosby

Criminal Overview

Hon. David W. Crosby
Chief Magistrate
Brooks County

dcrosby@brookscountyga.gov

229-305-2686

Introduction



- The criminal justice system must respond in the name of society when crimes are committed.
- The criminal justice system protects individual rights as part of the law enforcement function. This happens for both the accused and the victim.

Pre-Warrant Applications - Introduction



- Pre-Warrant Applications can be filed in the court by a citizen who thinks a crime has been committed under Georgia Law.
- These DO NOT require an incident report from law enforcement, however some courts require one.

Pre-Warrant Applications – First Five

File

- The Applicant will file an application requesting a warrant for the arrest of another person.

Provide

- Provide the Applicant with the proper intake form.

Obtain

- If it is office policy, have the applicant provide an incident report.

Determine

- Determine if the charge will be a felony or a misdemeanor.

Present

- Present application to judge for review under the following circumstances.

Pre-Warrant Applications - Circumstances

Signed

- There is an immediate safety threat
- There is an evasion or further obstruction attempt
- The person is currently incarcerated
- The person is a fugitive from justice
- The offense is for deposit account fraud and the person has previously been served a ten-day notice
- The offense is for an act of family violence

Denied

- There is an issue as to whether the application sets forth probable cause



Pre-Warrant Applications – Finalizing

Mail

- If a pre-warrant application hearing is required, prepare a Notice of Hearing with scheduled court date to be mailed to all parties and witnesses.

Prepare

- Prepare draft of warrant for judge to have at the pre-warrant hearing, if applicable, include a proposed bond on the schedule.

Concept Check

1. Which of the following is grounds for a warrant application to be denied?
 - A. The person whose arrest is sought will attempt to evade arrest
 - B. The offense for which application for the warrant is made consists of an act of family violence
 - C. The application holds an issue regarding whether there is probable cause
 - D. The person who is sought is currently incarcerated

Deposit Account Fraud- Introduction



- **§ 16-9-20 - Deposit account fraud**
- A person commits the offense of deposit account fraud when such person makes, draws, utters, executes, or delivers an instrument for the payment of money on any bank or other depository in exchange for a present consideration or wages, knowing that it will not be honored by the drawee.
- One of the following conditions should be met

Deposit Account Fraud- Introduction

- The accused had no account with the drawee at the time the instrument was made, drawn, uttered, or delivered;
- Payment was refused by the drawee for lack of funds upon presentation within 30 days after delivery and the accused or someone for them shall not have tendered the holder thereof the amount due thereon, together with a service charge, within ten days after receiving written notice that payment was refused upon such instrument.
- Notice mailed by certified or registered mail or statutory overnight delivery is returned undelivered to the sender when such notice was mailed within 90 days of dishonor to the person at the address printed on the instrument or given by the accused at the time of issuance of the instrument.

Deposit Account Fraud – First Four

File

- The Applicant will file an application requesting a warrant for the deposit account fraud warrant.

Provide

- Provide the Applicant with the proper intake form.

Obtain

- Have the applicant provide the ten-day letter the victim mailed, and the certified mail receipt.

Determine

- Add the fees, fines, and returned to check amount to determine the total the defendant owes.

Deposit Account Fraud – Finalizing

Prepare

- If the person whose arrest is sought has previously been served with the ten-day notice, present the warrant to the judge for signage than send to the Sheriff's Department.

Mail

- If a pre-warrant application hearing is required, prepare a Notice of Hearing with scheduled court date to be mailed to all parties and witnesses.

Concept Check

1. Which of the following is required for a deposit account fraud citation?
 - A. The certified mail receipt
 - B. A copy of the returned check
 - C. The ten-day letter the victim mailed
 - D. All the above

First Appearance Hearing

- A hearing that is held to advise of the charges against them, advise of their rights, and set bond if eligible.
- If there was not a warrant, first appearance hearings must be scheduled for no later than 48 hours after the arrest.
- If there was a warrant, first appearance hearings must be scheduled no later than 72 hours after the arrest.



Concept Check

1. How long is the window for scheduling a first appearance hearing without a warrant?
 - A. 48
 - B. 36
 - C. 72
 - D. 24

Preliminary Hearings

- A preliminary hearing is a hearing scheduled so that the court may determine if there is probable cause for the case to proceed
- A preliminary hearing is not required if:
 - An indictment has been returned
 - An accusation has been filed on a misdemeanor
 - The defendant has tendered bail (unless there are special conditions on the bond)
 - However, the Judge can schedule a hearing in his/her discretion

Arrest Warrants - Introduction

- An arrest warrant is a judges order to LEO to arrest and bring to jail a person charges with a crime.
- Before an arrest warrant is issued the LEO or victim must make a sworn statement that the accused committed a crime.



Arrest Warrants – Filings and Returns

Assign

- Assign docket number to arrest warrant application

Present

- Allow warrant to be presented to judge

Copy

- If signed, make a copy of the warrant and return the original to the officer

Transfer

- Defendant is arrested, the original warrant should be returned to the court for transfer of the appropriate prosecuting attorney

Search Warrants - Introduction

- Is a legal document signed by a judge (after a finding of probable cause) authorizing a LEO to enter and search premises.
- Search warrants can be issued for the collection of DNA and blood samples in certain crimes.
- Most offenders on probation have a 4th amend wavier.



Search Warrants – Filings and Returns

Assign

- Assign docket number to search warrant application

Present

- Allow warrant to be presented to judge

Copy

- If signed, make a copy of the warrant and return the original to the officer

File

- When the return comes in, copy the return and file it under the same docket number

Subpoenas

Subpoena is defined as a summon issued to a person and/or documents to be presented on a particular Court date as testimony or evidence on behalf of the plaintiff or defendant, prosecution or defense.

A request for subpoenas can be filed by any party in the case. It is helpful to make sure the request for subpoena contains the person's name and address along with details and location of the specific documents being requested

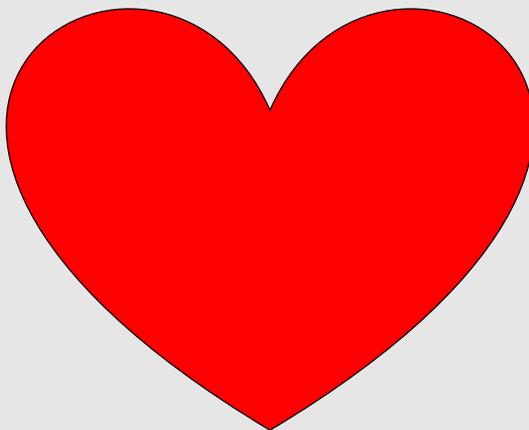
The clerk has the authority to issue subpoenas as long as the case is in your court

Subpoenas – Requirements

The issued subpoena must include all the following:

- The name and address of the person subpoenaed
- The location and street address of the courtroom and case style information or title of the proceeding
- A written command signed by a Clerk or Judge for the subpoenaed individual to appear, attend, and give testimony or notice to produce evidence at a certain date, time and location for the specific case.
- You may issue blank subpoenas to an Attorney of record at their request for them to complete and sign
- A subpoena can be served by any Sherriff or Deputy Sherriff, or any person over the age of 18. A signed certificate of service must be provided to the court to verify the service. Subpoenas also may be served by registered or certified mail.
- The calculation and tender of witness fees is up to the party requesting the subpoena

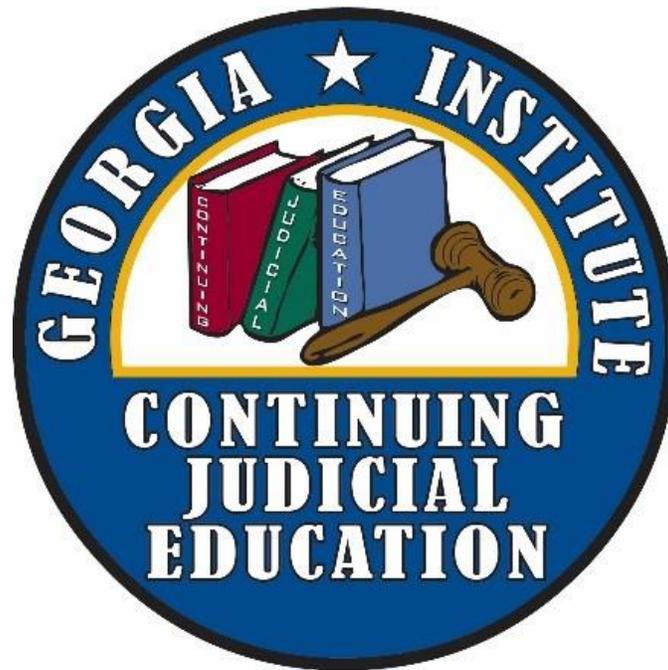
Clerks are the HEART of Magistrate Court!





Questions/Comments

Q&A Session



Council of Magistrate Court Clerks

[NO HANDOUTS]

ICJE POINTS OF CONTACT

CONSTITUENT GROUPS	ICJE STAFF	OFFICE NUMBER	EMAIL ADDRESS
<p>Superior Court Judges State Court Judges Magistrate Court Judges Magistrate Court Clerks Judicial Staff Attorneys</p>	<p>Lindsey Colley Event Coordinator & Thomas Erwin Event Planner</p>	<p>706-369-5813 706-369-5809</p>	<p>lcolley@uga.edu terwin21@uga.edu</p>
<p>Probate Ct Judge/Non-Traffic Probate Ct Judge/Traffic Municipal Court Judges Municipal Court Clerks Accountability Court Judges</p>	<p>Laura Kathryn Hogan Event Coordinator & Casey Semple Event Planner</p>	<p>706-369-5836 706-369-5807</p>	<p>lkhogan@uga.edu csemple@uga.edu</p>
<p>Office Manager Financials</p>	<p>Emily Rashidi Business Operations Manager</p>	<p>706-369-5842</p>	<p>emily.rashidi@uga.edu</p>
<p>Multi-Class Live & Online Superior Court Clerks Juvenile Court Judges Juvenile Court Clerks Probate Court Clerks International Groups USCR 43.6</p>	<p>Susan Mason Electronic Media /Event Coordinator</p>	<p>706-369-5818</p>	<p>susan.mason@uga.edu</p>
<p>ICJE Executive Director</p>	<p>Lynne Moore Nelson</p>	<p>706-369-5793</p>	<p>LynneMoore.Nelson@uga.edu</p>