



# 2024 Magistrate Court Clerks' Annual Training June 6-7, 2024 Lake Lanier, Buford, GA

Thursday, June 6 <sup>th</sup> , 2024		
Time	Topic	Speaker
7:00 – 8:00 am	<b>REGISTRATION &amp; BREAKFAST</b>	
8:00 – 8:50 am	Criminal History, Records Restrictions – What Magistrate Clerks do.	Mr. Jordan North, GCI
9:00 – 9:50 am	Abandoned Mobile Homes and Abandoned Vessels (30 min each)	Hon. Michael Barker
10 – 10:50 am	Recovering Retention Schedules	Ms. Bobbie Yandell
11– 11:50	Garnishments – what the clerks are supposed to do	Hon. Jim Altman
11:50 -Noon	<b>BUSINESS MEETING</b>	
Noon – 1pm	<b>LUNCH</b>	
1:00 – 2:50 pm	Transfers to other Counties – Magistrate to Magistrate or Magistrate to another Class of court and (30 Min) Petitions to Review (30 min each) touch on New Case law update (1hour)	Hon. Megan Kinsey
3:00 -3:50 pm	Post Judgment – Interrogatories, Scire Facias, Alias Fifas (paint a picture starting at the Judgment and go from there)	Hon. Jennifer Lewis
4:00 – 5:00 pm	Dormant Judgments – Reviving, Foreign & Scire Facias	Hon. Jennifer Lewis
Friday, June 7 <sup>th</sup> , 2024		
Time	Topic	Speaker
7:00 – 8:00 am	<b>BREAKFAST</b>	
8:00 – 9:00 am	Criminal 101 Basics – Vocabulary, Terminology, Processes – County Ordinances, Code Enforcements, Fines (how do you set them) from the clerk’s side	Hon. Carla Brown and Ms. Jackie Norman
9:10 – 10:00 am	The Do’s and Don’ts of a Magistrate Clerk	Mr. Timothy Ezell
10:10 – 11 am	Warrant Applications – Deposit Account Fraud, how to do a warrant without the 10-day letter	Hon. Caroline Evans
11:10 – Noon	Questions & Answers	Moderator: Hon. Carla Brown

# ICJE BOARD OF TRUSTEES



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OF GEORGIA

The following are the members of ICJE's Board of Trustees.  
Please note that your Probate Court Representative is:

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Magistrate Court Judge – Butts County

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<p><b>Dean LaVonda Reed</b> Georgia State University College of Law</p>	<p><b>Dean Karen J. Sneddon</b> Mercer University School of Law</p>

## 2024 ICJE STAFF TO MAGISTRATE COURT JUDGES:

Lynne Moore Nelson, Executive Director: 706-542-1124; [lynnemoore.nelson@uga.edu](mailto:lynnemoore.nelson@uga.edu)

Susan Mason, Event Coordinator: 706-542-1129; [susan.mason@uga.edu](mailto:susan.mason@uga.edu)

Thomas Erwin, Event Planner: 706-542-1150; [terwin21@uga.edu](mailto:terwin21@uga.edu)



## 2024 Magistrate Court Clerks

### Annual Training

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## ICJE STAFF POINTS OF CONTACT



# INSTITUTE OF CONTINUING JUDICIAL EDUCATION OF GEORGIA

CONSTITUENT GROUPS	ICJE TEAM MEMBERS	NEW OFFICE PHONE NO.	EMAIL ADDRESS
<p>Superior Court Judges Superior Court Clerks Magistrate Court Judges Magistrate Court Clerks Multi-Class (<i>Synchronous &amp; Asynchronous</i>) USCR 43.6</p>	<p><b>Susan Mason</b> Event Coordinator &amp; <b>Thomas Erwin</b> Event Planner</p>	<p>706-542-1129  706-542-1150</p>	<p><a href="mailto:susan.mason@uga.edu">susan.mason@uga.edu</a>  <a href="mailto:terwin21@uga.edu">terwin21@uga.edu</a></p>
<p>State Court Judges Probate Court Judges (<i>Non-Traffic</i>) Probate Court Judges (<i>Traffic</i>) Probate Court Clerks Accountability Court Judges International Groups</p>	<p><b>Laura Kathryn Hogan</b> Event Coordinator &amp; <b>Casey Semple</b> Event Planner</p>	<p>706-542-1126  706-542-1128</p>	<p><a href="mailto:lkhogan@uga.edu">lkhogan@uga.edu</a>  <a href="mailto:csemple@uga.edu">csemple@uga.edu</a></p>
<p>Juvenile Court Judges Juvenile Court Clerks Municipal Court Judges Municipal Court Clerks Judicial Staff Attorneys</p>	<p><b>Annelle Berry</b> Event Coordinator &amp; <b>TBA</b> Event Planner</p>	<p>706-542-1164  706-542-1158</p>	<p><a href="mailto:awberry@uga.edu">awberry@uga.edu</a></p>
<p>Office Manager / Financials</p>	<p><b>Emily Rashidi</b> Business Operations Manager</p>	<p>706-542-1160</p>	<p><a href="mailto:emily.rashidi@uga.edu">emily.rashidi@uga.edu</a></p>
<p>ICJE Executive Director</p>	<p><b>Lynne Moore Nelson</b></p>	<p>706-542-1124</p>	<p><a href="mailto:lynnemoore.nelson@uga.edu">lynnemoore.nelson@uga.edu</a></p>



***Legacy Lodge @ Lake Lanier, Buford, GA***

**Attendance Form**

Please return this form to ICJE no later than ***Friday, July 5<sup>th</sup>, 2024***

**Ways to turn in your form:** 1) Onsite to ICJE staff OR 2) Via Mail: 1150 S. Milledge Ave, Athens GA 30602 OR  
3) Via Fax 706-369-5840 OR 4) Via Email to Mr. Thomas Erwin at [terwin21@uga.edu](mailto:terwin21@uga.edu)

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_ County: \_\_\_\_\_

<b>Thursday, June 6th, 2024</b>		
<b>Topic/Session</b>	<b>CJE Hours Available</b>	<b>Hours Claimed</b>
Criminal History, Records Restrictions – What Magistrate Clerks Do.	1 Hr.	
Abandoned Mobile Homes and Abandoned Vessels	1 Hr.	
Recovering Retention Schedules	1 Hr.	
Garnishments – What the Clerks are Supposed to do	1 Hr.	
Transfers to Other Counties, Petitions to Review, New Case Law Update	2 Hrs.	
Post Judgment – Interrogatories, Scire Facias, Alias Fifas	1 Hr.	
Dormant Judgments – Reviving, Foreign & Scire Facias	1 Hr.	
<b>Friday, June 7th, 2024</b>		
Criminal 101 Basics	1 Hr.	
The Do’s and Don’ts of a Magistrate Clerk	1 Hr.	
Warrant Applications – Deposit Account Fraud, How to do a Warrant Without the 10-day Letter	1 Hr.	
Questions & Answers	1 Hr.	

**TOTAL CJE HOURS CLAIMED FOR THE TRAINING** (Maximum allowed 12 hours offered): \_\_\_\_\_

I certify that the above statements are accurate and represent my true attendance at the seminar.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**ICJE STAFF USE ONLY: Spreadsheet \_\_\_\_\_ EA \_\_\_\_\_**

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**2024 Magistrate Court Clerks  
Annual Training  
*Legacy Lodge, Lanier Islands, Buford, GA*  
June 6<sup>th</sup> - 7<sup>th</sup>, 2024  
**ONLINE SURVEY LINK****

You may use this QR Code to access and submit  
the Online Conference Evaluation.

- OR -



You may use this link below to access and submit  
the Online Conference Evaluation:

[https://ugeorgia.ca1.qualtrics.com/jfe/form/SV\\_85JsO0hpJnD  
glWS](https://ugeorgia.ca1.qualtrics.com/jfe/form/SV_85JsO0hpJnDglWS)

*Your Feedback is greatly appreciated!*

**EVALUATION INSTRUCTIONS:**

Each attendee may only submit this evaluation once. All responses will be  
recorded anonymously.

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# **Criminal History, Records Restrictions – What Magistrate Clerks Do**

Mr. Jordon North, GCIC

## **Jordan North - CCH/Identification Services Manager**

Jordan began his GBI career in 2016 with the Division of Forensic Sciences. Not long after, Jordan transferred to the Georgia Crime Information Center (GCIC) working with both the Automated Fingerprint Identification System (AFIS) and the Computerized Criminal History System (CCH).

In 2018, Jordan was promoted to Project Manager and oversaw a variety of projects including the development of Georgia's Rap Back System and various internal system upgrades.

Jordan transferred to the Department of Human Services (DHS), Office of Inspector General to manage the Background Investigations Unit in 2019.

Beginning in 2021 and continuing to present, Jordan oversees the unit operations of AFIS and CCH systems as the CCH/Identification Program Manager.

Additionally, Jordan currently sits on the Uniform Standards Subcommittee of the Criminal Case Data Exchange Board (CDX).

# CCH Overview – Disposition Reporting/Challenge Process – Record Restrictions

Jordan North  
CCH/Identification Services Manager  
Georgia Crime Information Center



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

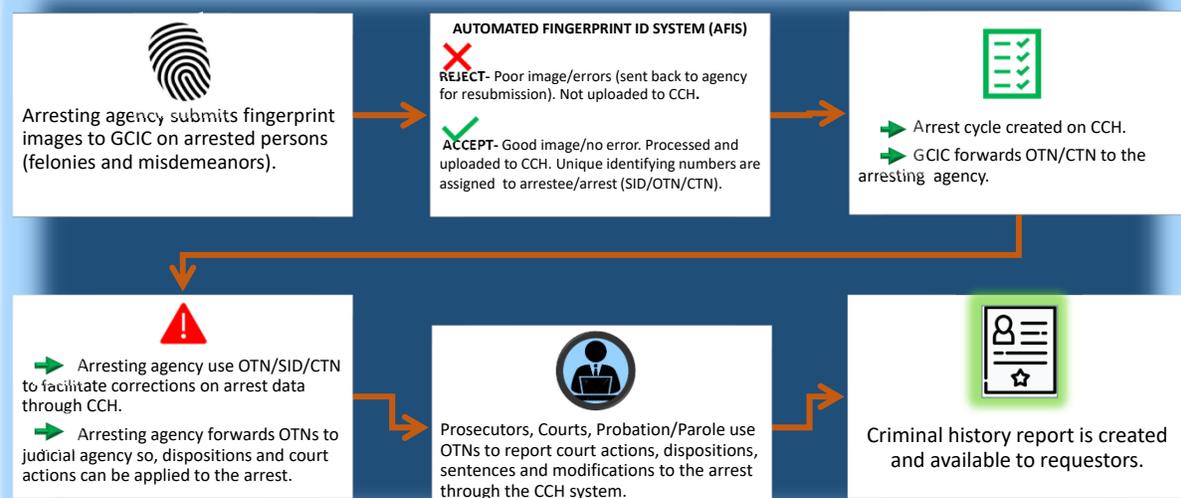
## The Computerized Criminal History (CCH) system



## What is the CCH System?

- The GCIC system that houses Georgia criminal history record information.
- System for criminal justice officials to enter, update and/or modify information on arrests, prosecutor actions and any disposition, sentencing, and correctional supervision of offenders.
- Georgia system- contains **Georgia** criminal history records only
  - No national data

## Creating a criminal history record



## CCH Interface Login

**Georgia Bureau of Investigation**  
Computerized Criminal History System

Your session has timed out. Please re-login.

**System Login**

Enter your user ID and password to continue

\*User ID:

\*Password:

Change password after login:

LOGIN

## OTN Creation/Maintenance Screen

**OTN/CTN Creation and Maintenance**

**Cycle Information**

OTN  QUERY CLEAR

**Subject Information**

**Segment Information**

SAVE RESET RETURN

**OTN/CTN Creation and Maintenance**

**The transaction status is: PROCESS SUCCESSFUL**

**Cycle Information**

OTN: 88399471521

SID: GA00844903 FBI/UCN: 9004400 \*Arrest Date: 20151101 \*Arresting ORI: GAGBI0000 Arresting Agency: GBI HEADQUARTERS

**Subject Information**

*Last Name	First	Middle	Suffix	*DOB	SOC	Sex	Race	Juvenile
RECORD	PAUL	UNIQUE	III	19540710		MALE	WHITE	<input type="checkbox"/>

**Segment Information**

CTN	*Offense Date	*Offense Code	Statute	Description	Last Action	Warrant #	Severity
+	1	19840630	0948	16 5 1	MURDER	PROSECUTOR	F <input type="button" value="D"/>
+	3	20151101	3517	16-13-30(j)	PURCHASE, POSSESSION, MANUFACTURE, DISTRIBUTION, OR SALE	PROSECUTOR	F <input type="button" value="D"/>
+	4	20151101	3517	16-13-30(j)	PURCHASE, POSSESSION, MANUFACTURE, DISTRIBUTION, OR SALE	TRIALCOURT	F <input type="button" value="D"/>
+	8	20151030	0955	16-5-5(b)	ANY PERSON WITH ACTUAL KNOWLEDGE THAT PERSON INTENTS TO	ARREST	F <input type="button" value="D"/>
+	9	20151101	3514	16-13-2(b)	MARIJUANA-POSSESS LESS THAN 1 OZ.	TRIALCOURT	M <input type="button" value="D"/>

# Reporting Segments

**Subject Information**

*Last Name	First	Middle	Suffix	*DOB	SOC	Sex	Race	Juvenile
RECORD	PAUL	UNIQUE	III	19540710		MALE	WHITE	<input type="checkbox"/>

**Segment Information**

CTN	*Offense Date	*Offense Code	Statute	Description	Last Action	Warrant #	Severity
-	1	19840630	0948	16-5-1	MURDER	PROSECUTOR	F <input type="button" value="D"/>

Charge Comments

	*Action	Action Description	*Action Date	*Action Owner	Reported By	Date Reported
<a href="#">Arrest</a>	AFT	ARREST FINGERPRINTS TAKEN	20151101	GAGBI0000	GAGBI0092	20150507
<a href="#">Charging Court</a>	505	BIND-OVER	20151104	GAGCIC11J	GAGCIC000	20240522
<a href="#">Prosecutor</a>	502	INDICTED	20210601	GAGCIC15A	GAGCIC000	20240522
<a href="#">Trial Court</a>	310	GUILTY (CONVICTED / ADJUDICATED)	20160115	GAGCIC15J	GAGCIC000	20240522
<a href="#">Corrections</a>						

**Trial Court Segment**

**The transaction status is: PROCESS SUCCESSFUL**

**Cycle Information**

\*OTN 88399471521 \*CTN 1

SID	FBI/UCN	Arrest Date	First Offender Completion Date	FOA Set Manually
GA00844903	9004400	20151101		<input type="checkbox"/>

**Subject Information**

Last Name	First	Middle	Suffix	DOB	SOC	Juvenile
RECORD	PAUL	UNIQUE	III	19540710		<input type="checkbox"/>

**Charge Information**

*Offense Date	*Offense Code	Statute	Description	Warrant #	Severity	CTN Amended From	CTN Amended To	
19840630	0948	16-5-1	MURDER		F			<input type="button" value="AMEND"/>

**Disposition**

*Disposition	Disp Description	*Disposition Date	*Court ORI	Docket Number	
310	GUILTY (CONVICTED / ADJUDICATED)	20210621	GAGCIC15J	21-CR-0187	<input type="button" value="D"/>

**Sentencing**

*Type	*Sentence Date	*Court ORI	
CONFINEMENT	20210621	GAGCIC15J	<input type="button" value="D"/>

## CCH Entries → RAP Sheet

OTN 88399471521 (Cycle 3 of 3)

<b>Offender Tracking Number (OTN)</b>	88399471521
<b>Earliest Event Date</b>	2015-11-01
<b>Offense Date</b>	1984-06-30

---

<b>Arrest</b>	(Cycle 3)
<b>Arrest Date</b>	2015-11-01
<b>Case Number</b>	TEST
<b>Arresting Agency</b>	GAGBI0000; GBI HEADQUARTERS
<b>Subject Name(s)</b>	RECORD, PAUL UNIQUE, III
	Arrest Type ADULT

**Charge 1**

Charge Tracking Number 88399471521-001
Charge Literal MURDER
Statute 16-5-1; GA
NCIC Offense Code 0999
State Offense Code 0948
Severity FELONY

<b>Magistrate</b>	
<b>Magistrate Agency</b>	GAGCIC11J (GIC TEST MAGISTRATE COURT)
<b>Magistrate Action</b>	BIND-OVER
<b>Magistrate Action Date</b>	2015-11-04

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**Prosecutor Disposition** (Cycle 3)  
**Prosecutor Agency** GAGCIC15A; GCIC PROSECUTOR ORI  
**Subject Name(s)** RECORD, PAUL UNIQUE, III  
**Charge 1**

Charge Tracking Number 88399471521-001  
Charge Literal MURDER  
Statute 16-5-1; GA  
NCIC Offense Code 0999  
State Offense Code 0948  
Severity FELONY  
Disposition INDICTED (2021-06-01; Other)

**Court Disposition** (Cycle 3)  
**Case Number** 21-CR-0187  
**Court Agency** GAGCIC15J; GEORGIA CRIME INFORMATION CENTER  
**Subject Name(s)** RECORD, PAUL UNIQUE, III  
**Charge 1**

Charge Tracking Number 88399471521-001  
Charge Literal MURDER  
Statute 16-5-1; GA  
NCIC Offense Code 0999  
State Offense Code 0948  
Severity FELONY  
Disposition GUILTY (CONVICTED / ADJUDICATED) (2021-06-21; Convicted)

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**Sentencing** (Cycle 3)  
**Sentence Date** 2021-06-21  
**Sentencing Agency** GAGCIC15J; GEORGIA CRIME INFORMATION CENTER  
**Charge 1**

Charge Tracking Number 88399471521-001  
Charge Literal MURDER  
Sentence CONFINEMENT 20 YEARS

## Responsibility to Report – Record Challenge Process



Who is required to forward criminal history record information to GCIC?

- **O.C.G.A. § 35-3-36(b)** It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, parole and probation officers, wardens, or other persons in charge of penal and correctional institutions in this state to furnish the center with any other data deemed necessary by the center to carry out its responsibilities under this article.

## O.C.G.A. § 35-3-36(g)

- (1) Criminal justice agencies within this state, all persons in charge of law enforcement agencies, clerks of court, municipal judges when such judges do not have a clerk, magistrates, persons in charge of community supervision, juvenile probation, or Article 6 of Chapter 8 of Title 42 probation offices, and the State Board of Pardons and Paroles shall transmit to the center the information described in Code Section 35-3-33 within 30 days of the creation or receipt of such information, except as provided in subsection (d) of this Code section, on the basis of the forms and instructions to be provided by the center. Such forms and instructions shall not be inconsistent with the uniform standards promulgated pursuant to paragraph (5) of subsection (h) of Code Section 15-6-50.3 issued by The Council of Superior Court Clerks of Georgia.
- (2) Compliance with the provisions in paragraph (1) of this subsection is mandatory, regardless of whether the center requests the information described in Code Section 35-3-33.

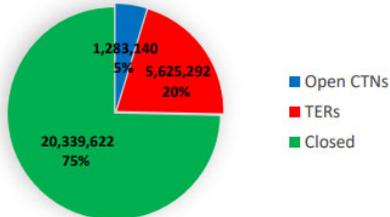
## Transmitting First Offender Information

- **O.C.G.A. § 42-8-62** - When an individual is placed on probation or in confinement under this article, within 30 days of the filing of such sentence, the clerk of court shall transmit a record of the first offender sentence to the Georgia Crime Information Center. The clerk shall also transmit any subsequent order or notification regarding a first offender's sentence, including, but not limited to, notification that the defendant completed active probation supervision, was released early from probation supervision, or completed the term of probation, notification that the defendant completed the term of prison or parole, an order revoking a first offender sentence, an order of exoneration of guilt and discharge, and tolling orders, to the Georgia Crime Information Center within 30 days of receiving such order for filing or notification.

# Disposition Report Card

Updated January 2024

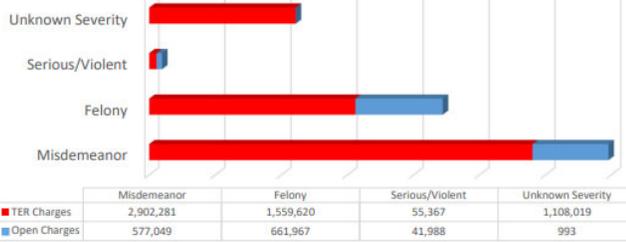
## Charge Overview State of Georgia



Please contact [LMSHelp@gbj.ga.gov](mailto:LMSHelp@gbj.ga.gov) for further assistance and support!

**Open Charges** – Charges (CTNs) on the Criminal History (CCH) Database that do not have a disposition but have not time expired and restricted  
**Closed Charges** – Charges (CTNs) on the CCH Database that contain a disposition  
**TER (Time Expired Restricted) Charges** – Charges that do not contain a disposition and have restricted per §35-3-37. These charges are not available for non-criminal justice purposes (employment, licensing, etc.)

## State of Georgia Charge by Category



## Reasons an individual may challenge a criminal history record...



I thought I was charged with a misdemeanor.

I have never been arrested. This is **NOT** my record!



## Where to direct the applicant?



- Arrest Charge
- PII from the arrest
  - Name
  - SSN
  - DOB
- Arrest Date



- Charges
- Disposition
- Sentence

## Record Inspections

Georgia Arrest Only

To contest the accuracy of information in your criminal history record, or if your identification data was used in another individual's criminal history record, fingerprints must be submitted to GCIC for comparison.

The individual should contact the FBI to contest out-of-state information.

Contact GCIC at 404-244-2639 Option 2



## In-Person Record Inspections

- GBI HQ
- Hours of Operation:  
Monday - Friday  
9:00 – 4:00pm (appointment only)
- \$25.00 Record Inspection Fee



## Mail-in Record Inspections

- Applicant can mail-in fingerprints with the appropriate fee.
- GCIC will compare applicants prints to the arrest prints on file.
- \$10.00 Record Inspection Fee



August 18, 2017

**CERTIFICATE**

At the request of the applicant below, the Georgia Crime Information Center (GCIC) has searched the applicant's fingerprints against the State central repository for any criminal history records for the named applicant.

Applicant Name:  
Maiden Name/ Other:  
Alias:  
Sex:  
Race:  
Date of Birth:  
Social Security Number:

**Applicant Search Results:**

It has been determined that the applicant named above as of mm/dd/yyyy:

- Does not have a criminal history record in the State of Georgia.
- Has a criminal history record in the State of Georgia. (record attached) SID GAXXXXXXXX
- Additionally, the applicant's demographic data was used in the following arrest records. A comparison has determined that the fingerprints on file for the arrest record(s) listed does not match the fingerprints of the applicant.

<u>Georgia State ID#</u>	<u>Name was used</u>	<u>Date of Birth was used</u>	<u>SSN was used</u>
GAXXXXXXXX	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

NAG:ac

Neil A. Gerstenberger  
Assistant Deputy Director  
Georgia Crime Information Center

Sworn to and Subscribed before me on the \_\_\_\_ day of \_\_\_\_\_, year \_\_\_\_\_

# Record Restrictions



## What is a Restriction?

- OCGA 35-3-37(a)(6)
- “The criminal history record information of an individual relating to a particular offense shall be available only to judicial officials and criminal justice agencies for law enforcement or criminal investigative purposes or to criminal justice agencies for purposes of employment...”
- It is released for no other purpose unless otherwise authorized by law
  - 35-3-37(u)
  - 35-3-37(v)

## Record Restrictions Still Visible

- **u)** A restriction or sealing pursuant to this Code section may be used to disqualify an individual for employment or appointment to office in the same manner that a discharge under Article 3 of Chapter 8 of Title 42 may be used to disqualify an individual from employment as set forth in *Code Section 42-8-63.1*, and such restriction or sealing shall not supersede any disclosure or consideration of criminal history record information required by federal law, including, but not limited to, those disclosures required by financial institutions, as such term is defined in *Code Section 7-1-4*.

## Record Restrictions Still Visible

- This means **ANY** record restriction pursuant to the entire code section may disseminated and used to disqualify in the same manner as a sealed First Offender Discharge.
- Record restrictions will be returned for charges specific to working with Children Elderly, Mentally disabled.
- Affects Purpose Codes M, N, and W.

## How to Obtain Record Restriction

- Via application for arrests prior to July 1, 2013 – 35-3-37(n)
- Via disposition that statutorily qualifies – 35-3-37(h)
- Via petition which results in court order – 35-3-37(j)

## Record Restriction Application

- For arrests prior to July 1, 2013
- May be obtained from the GBI or GCIC websites
- Three-part form
  - Part 1: Completed by the applicant
  - Part 2: Completed by the arresting agency
  - Part 3: Completed by the prosecutor
- \$50.00 processing fee (\$25 to arresting agency, \$25 to GCIC)
- May be approved or denied by prosecutor

## Record Restrictions by Statute

- OCGA 35-3-37(h) list all dispositions that shall be restricted unless of exceptions as defined in subsection (i)
- KEEP A COPY OF THIS STATUTE HANDY
- Paragraph (1) describes actions before indictment, accusation, or other charging instruments
- Paragraph (2) describes actions after accusation or indictment
- Exceptions as defined in subsection (i) ONLY apply to Paragraph (2)

## Record Restrictions by Statute – Paragraph 1

- Not forwarded for prosecution by arresting agency (LEA Closure)
- Time expired records
- Prosecutorial dismissal before charging instrument
- Grand jury return of two no bills
- Grand jury return of one no bill and the TER timeframe has passed

## Record Restrictions by Statute – Paragraph 2

- All charges dismissed, nolle prossed, or reduced to an ordinance
- Drug conditional discharge
- Minor in possession of alcohol conditional discharge
- Pre-trial intervention program
- Acquittal of all charges except for:
  - Prosecutor barred from introducing material evidence on legal grounds
  - Individual was formally charged with same or similar offense within the previous five years

## Subsection (i) – Exceptions Post-Charge-Filing

- The prosecutor indicates a dismissal, nolle prosequere, reduction to ordinance because of:
  - Plea agreement resulting in conviction for an offense arising out of the same underlying transaction or occurrence
  - Barred from introducing material evidence on legal grounds
  - Charges were prosecuted in another court
  - Individual had diplomatic, consular, or similar immunity
- Some, but not all, resulted in acquittal
- Acquitted of all charges, but later determines jury tampering or jury misconduct

## Court Order Record Restrictions

### **O.C.G.A. § 35-3-37(j) Court Order Scenarios:**

- Felony charge dismissed/nolle prosequere/acquitted with an unrelated misdemeanor conviction
- Vacated convictions
- Dead docket charges after 12+ months on the dead docket
- Certain misdemeanor convictions
- Fugitive from justice arrest warrants
- Convictions related to human trafficking victims
- Certain pardoned convictions

# Misdemeanor Convictions Not Allowed

**(B)** Record restriction under this subsection shall not be appropriate if the individual was convicted of:

- (i)** Family violence simple assault in violation of subsection (d) of [Code Section 16-5-20](#), unless the individual was a youthful offender;
- (ii)** Family violence simple battery in violation of subsection (f) of [Code Section 16-5-23](#), unless the individual was a youthful offender;
- (iii)** Family violence battery in violation of subsection (f) of [Code Section 16-5-23.1](#), unless the individual was a youthful offender;
- (iv)** Family violence stalking in violation of [Code Section 16-5-90](#);
- (v)** Violating a family violence order in violation of [Code Section 16-5-95](#);
- (vi)** Child molestation in violation of [Code Section 16-6-4](#);
- (vii)** Enticing a child for indecent purposes in violation of [Code Section 16-6-5](#);
- (viii)** Improper sexual contact by employee or agent, improper sexual contact by a foster parent, and improper sexual contact by person in a position of trust in violation of [Code Section 16-6-5.1](#);
- (ix)** Public indecency in violation of subsection (b) of [Code Section 16-6-8](#);
- (x)** Keeping a place of prostitution in violation of [Code Section 16-6-10](#);
- (xi)** Pimping in violation of [Code Section 16-6-11](#);
- (xii)** Pandering by compulsion in violation of [Code Section 16-6-12](#);
- (xiii)** Sexual battery in violation of [Code Section 16-6-22.1](#);
- (xiv)** Obstructing or hindering persons making emergency telephone call in violation of [Code Section 16-10-24.3](#);
- (xv)** Peeping Toms in violation of [Code Section 16-11-61](#);
- (xvi)** Any offense related to minors generally in violation of Part 2 of Article 3 of Chapter 12 of Title 16;
- (xvii)** Theft in violation of Chapter 8 of Title 16; provided, however, that such prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud in violation of [Code Section 16-8-14](#) or [16-8-14.1](#), as applicable; or
- (xviii)** Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.



## Point of Contact

Jordan North

CCH/Identification Services Manager

Georgia Crime Information Center

Phone: 404-270-8388

[Jordan.north1@gbi.ga.gov](mailto:Jordan.north1@gbi.ga.gov)

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INSTITUTE OF  
CONTINUING JUDICIAL  
EDUCATION  
OF GEORGIA

# **Abandoned Mobile Homes & Abandoned Vessels**

Hon. Michael Barker

Hon. Michael Barker:

Judge Barker is a lifelong resident of Savannah, and has served the Chatham County Magistrate Court since December 1, 2003.

He has two lifetime goals approaching over the horizon:

- Becoming an empty nester
- Retirement!

Fun Fact:

I've been trying to reach all of you about your car's extended warranty.

# Left Behind



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

# ABANDONED MOBILE HOMES



## Prerequisites to Relief

- ▶ The mobile home must be “abandoned”
- ▶ The landowner must request the local government to assess the condition of the abandoned mobile home

## Derelict Mobile Home Removal



## Derelict Mobile Homes -- Notice

The local government will post a statutorily prescribed notice on the abandoned mobile home in a conspicuous place.

ON THE SAME DAY THE NOTICE IS POSTED, the landowner shall send a similar notice to all responsible parties and last known addresses by registered or certified mail or statutory overnight delivery. The notice must include a listing of **all responsible parties** and last known addresses.

## Who is a “responsible party?”

- (A) Any person with an ownership interest in an abandoned mobile home as evidenced by the last payor of record as identified by a search of deeds or instruments of title;
- (B) Any holder of a recorded lien or the holder of any type of secured interest in such abandoned mobile home; or
- (C) Local government with a claim for unpaid taxes.

## What if you cannot identify a “responsible party?”

The landowner shall place an advertisement in a newspaper of general circulation in the county where such mobile home is located.

No newspaper? Post it at the county courthouse in such place where other public notices are posted.

Such advertisement shall run in the newspaper once a week for two consecutive weeks or shall remain posted at the courthouse for two consecutive weeks.

## Court Action

A responsible party can request a hearing within the 90 day period described in OCGA § 44-7-113.

A landowner can request a hearing after the expiration of the 90 day period.

A hearing to confirm or deny the decision of the local government agent shall be held within 10 days of receiving a petition for such a hearing.

## Court Action (continued)

If, after a full hearing, the court determines the abandoned mobile home to be derelict, the court shall issue an order finding such mobile home to be derelict and authorizing the landowner to dispose of such derelict mobile home. A landowner issued such order shall dispose of such derelict mobile home within 180 days of the date of such order.

## Lien Foreclosure on Intact Mobile Home



## Prerequisites to Lien Foreclosure

A lien must be filed in the superior court in which the abandoned mobile home is located.

Demand must be made upon the responsible party (see OCGA § 44-7-112 (9)) for the amount of the lien plus any rent and fees accruing after the filing of the lien.

## Lien Foreclosure Procedure

A proceeding to foreclose on the lien must be filed in the magistrate court of the county in which the abandoned mobile home is located within one year from the time the lien is recorded .

## Filing and Service

The landowner begins the foreclosure procedure by filing an affidavit alleging the existence of the lien, the amount due, notice requirements of OCGA § 44-7-113 have been complied with, and a demand for payment has been made and refused or that the identity of the responsible party cannot be ascertained.

## Filing and Service (continued)

The person asserting the lien shall give the clerk or judge of the court the address, if known, of all responsible parties.

The clerk or judge of the court shall serve notice on such responsible parties by certified mail or statutory overnight delivery or, if the responsible party is unknown, by posting such notice at the county courthouse in such place where other public notices are posted.

## Filing and Service (continued)

The notice shall inform the responsible party:

- (A) of a right to a hearing to determine if reasonable cause exists to believe that a valid debt exists;
- (B) that such hearing shall be petitioned for within 30 days of receipt of such notice; and
- (C) that, if no petition for such hearing is filed within the time allowed, the lien shall conclusively be deemed a valid one, foreclosure thereof allowed, and a public sale pursuant to OCGA § 44-7-116 shall be authorized.

## Hearings and Disposition

If no hearing is requested, the court shall authorize foreclosure upon and sale of the mobile home subject to the lien to satisfy the debt if such debt is not otherwise immediately paid.

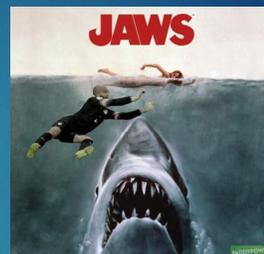
If a hearing is requested, it must be held within 10 days.

## Hearings and Disposition (continued)

If, at the hearing, the magistrate court determines there is reasonable cause to believe that a valid debt exists, then the person asserting the lien shall retain possession of the mobile home or the court shall obtain possession of the mobile home, as ordered by the court.

If, after a full hearing, the magistrate court determines that a valid debt exists, the court shall authorize foreclosure upon and sale of the mobile home subject to the lien to satisfy the debt if such debt is not otherwise immediately paid.

## Security Interest Holder Save



## Security Interest Holder Save

If the holder of a security interest or lien pays the debt and court costs, such person shall have the right to possession of the mobile home, and that person's security interest in or lien on such mobile home shall be increased by the amount so paid.

This must be done within 15 days of the order authorizing foreclosure.

A magistrate court order shall be issued to this effect, and the mobile home shall not be sold.

## Security Interest Holder Save (continued)

If the debt owed is not timely paid by the holder of a security interest or an appeal of the magistrate court decision has not been timely filed, the court shall issue an order authorizing the sale of such mobile home.

## Bad faith?

If the person asserting the lien did not act in good faith, damages may be awarded to the mobile home owner and any party which has been deprived of the rightful use of the mobile home.

## Clerk's Duties After Sale

- (A) Retain the remaining balance of the proceeds of a sale, after satisfaction of liens, security interests, and debts, for a period of 12 months.
- (B) If no claim has been filed against such proceeds by the owner of the abandoned mobile home or any interested party, then the clerk shall pay such remaining balance into the general fund of the municipality or county that employs the local government agent that made the determination that such mobile home was intact.

# WHAT?!?

“Nothing in this article shall be construed to require a local governing authority to appoint a local government agent.” OCGA § 44-7-119.

## Abandoned Vessels



# Petition

The person/entity asserting such lien may move to foreclose by making an affidavit to the Magistrate Court showing all facts necessary to constitute such lien and the amount claimed.

The lien may not exceed \$15,000. OCGA § 52-7-73 (b).

# Petition (continued)

With the filing of the affidavit, the lien claimant shall give the clerk the address, if known, of the owner, lessor, lessee, security interest holder, and lien holders of the vessel. OCGA § 52-7-74 (4)(A).

Any action to foreclose a lien on an abandoned vessel must be instituted within one (1) year from the time the lien is recorded or asserted by retention. OCGA § 52-7-74 (1).

## Duties of Clerk

The clerk shall send notice to each address, informing the recipient:

- (1) Of the right to a hearing to determine if reasonable cause exists to believe that a valid debt exist;
- (2) A hearing must be petitioned for within ten (10) days after receipt of such notice; and
- (3) If no petition is forthcoming within time allowed, the lien will conclusively be deemed valid.

OCGA § 52-7-74 (4)(A).

## Duties of Clerk (continued)

Any notice required above shall be by certified, registered, or overnight mail.

If the owner, lessor, lessee, security holder, and/or lienholder are not known, notice is posted at the courthouse.

OCGA § 52-7-74 (4)(B).

# Court Action

If a petition for a hearing is filed, the court shall set such hearing within ten (10) days.

If, at the hearing, the court determines that reasonable cause exists of the valid debt, the person/entity asserting the lien shall retain possession of the vessel or the court shall obtain possession of the vessel by court order. The owner-debtor may obtain possession of the vessel by giving bond and security in the amount due, plus costs of the action.

OCGA § 52-7-74 (5).

# Court Action (continued)

Within five (5) days of the probable cause hearing, any party defendant must petition the court for a full hearing on the question of the valid debt.

(1) If no such petition is filed, the debt will be conclusively valid, and the foreclosure granted.

(2) If the petition for a full hearing is filed, the court shall set the hearing within fifteen (15) days.

OCGA § 52-7-74 (6).

## Court Action (continued)

If, after all hearings, the Court finds the debt valid, the Court shall grant the foreclosure upon and sale of vessel subject to the lien if such debt is not otherwise immediately paid.

If the Court finds that the actions of the person/entity asserting the lien in retaining possession of the vessel were not taken in good faith, the court may award damages to the owner, or any interested party, due to the deprivation of the use of the vessel.

OCGA § 52-7-74 (7), (8).

## Default

If no petition for a hearing is filed, the court shall enter an order allowing the lien and authorizing the sale of the vessel.

OCGA § 52-7-74 (9).

## Security Interest Holder Save

A third-person holder of a security interest/lien on the vessel shall have the right, in order of priority of such interest, to pay the debt and costs.

If this occurs, that person shall have the right to possession of the vessel, and that person's interest in the vessel shall be increased by the amount paid.

A court order shall be issued to this effect, and no sale of the vessel shall occur. OCGA § 52-7-74 (9).

## Clerks' Duties After Sale

After satisfaction of the lien, the person/entity selling such vessel shall turn the remaining proceeds of such sale, if any, over to the clerk of the court.

The clerk of the court shall retain the remaining balance for a period of 12 months; and, if no claim has been filed against such proceeds by the owner of the abandoned vessel or any interested party, then he shall pay such remaining balance as follows:



MAIN RULE: If no peace officer or State employee was involved, the proceeds of the sale shall be paid to the general fund of the county in which the sale was made and into the general fund of the municipality, if any, in which the sale was made.



EXCEPTION 1: If a municipal police officer was involved, the proceeds of the sale shall be paid into the general fund of the municipality.

EXCEPTION 2: If a county or State officer/employee was involved, the proceeds of the sale shall be paid into the general fund of the county in which the sale was made.

OCGA § 52-7-77.



# QUESTIONS?

[mbarker@chathamcounty.org](mailto:mbarker@chathamcounty.org)

## 6 Abandoned Motor Vehicles

### 6. ABANDONED MOTOR VEHICLES

#### **6.1 Breach of Contract Cases**

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) “Day” means a business day unless otherwise stated and shall not include Saturdays, Sundays, and legal holidays recognized by the state.

(B) “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.

(C) “Motor vehicle” means every trailer and vehicle which is self-propelled.

(D) “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.

(E) “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.

(F) “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.

(G) “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.

(H) “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.

(I) “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 business days of removal, the company must request owner/lienholder information from department, due back no later than 5 business days from when the request was received. If the vehicle has an out-of-state license plate, the request shall be to the state where the vehicle is registered or to an entity with access to such state’s vehicle registration information. OCGA § 40-11-15 (d).

#### B. NOTICE OF CLAIM

##### (1) IF OWNERS ARE KNOWN

(a) Notification letter form 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 *calendar* days of removal. OCGA § 40-11-19 (a)(1).

##### (2) IF OWNERS ARE UNKNOWN

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

(b) If owners become known while the advertisement is running, notice must be sent as provided in OCGA § 40-11-19 (a)(1) within 10 business 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 business days of removal, the company must request owner/lienholder information from the department, due back no later than 5 business days from when the request was received. If the vehicle has an out-of-state license plate, the request shall be to the state where the vehicle is registered or to an entity with access to such state's vehicle registration information. OCGA § 40-11-16 (a) (1).

(2) Within 1 business day of requesting owner/lienholder info, the company must submit information to law enforcement with jurisdiction over the location from where the motor vehicle was removed for a 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 form 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 *calendar* days of removal. OCGA § 40-11-19 (a)(1).

##### (2) IF OWNERS ARE UNKNOWN

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

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

#### 6.33 VEHICLE LEFT AT REPAIR FACILITY

A. If after at least 15 business days without communication from an owner or insurance company a repair facility desires to file a petition, the company shall request owner/lienholder information from department, due back no later than 5 business days from when the request was received. If the vehicle has an out-of-state license plate, the request shall be to the state where the vehicle is registered or to an entity with access to such state's vehicle registration information. OCGA § 40-11-16 (b)(1).

#### B. NOTICE OF CLAIM

##### (1) IF OWNERS ARE KNOWN

(a) If a motor vehicle has been left for at least 15 business days and not later than 180 business days without payment, the notification letter form shall be sent to all owners via certified mail. OCGA § 40-11-19 (b)(1).

NOTE: Because repair facilities must seek information from the department on *additional* owners (see below), the notice form must be sent to the person/company who contracted with the repair facility (if the address is known) *in addition* to any owners identified by the department.

(2) IF OWNERS ARE UNKNOWN

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

(b) If owners become known while the advertisement is running, notice must be sent as provided in OCGA § 40-11-19 (b)(1) within 10 business 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) PRIOR TO FILING A PETITION TO FORECLOSE A LIEN, THE REPAIR FACILITY HAS 30 BUSINESS 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. If after at least 15 business days without communication from an owner or insurance company a salvage dealer desires to file a petition, the company shall request owner/lienholder information from the department, due back no later than 5 business days from when the request was received. If the vehicle has an out-of-state license plate, the request shall be to the state where the vehicle is registered or to an entity with access to such state's vehicle registration. OCGA § 40-11-16 (b).

B. NOTICE OF CLAIM

(1) IF OWNERS ARE KNOWN

(a) After 15 business days, but no later than 60 business days, after communication of an insurance company's denial of an owner's claim, the notification letter form shall be sent to all owners via certified mail. OCGA § 40-11-19 (c)(1).

(2) IF OWNERS ARE UNKNOWN

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

(b) If owners become known while the advertisement is running, notice must be sent as provided in OCGA § 40-11-19 (c)(1) within 10 business 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, that 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 *calendar* days but no later than six months after complying with the notice requirements, the company may file to foreclose on the lien in the magistrate court where the motor vehicle is located. The clerk accepts the filing along with a filing fee of no more than \$11.00. The company is responsible for serving the petition in accordance with OCGA § 40-11-19.1 (b).

NOTE: The statutory filing fee is subject to the same add-on fees as other civil actions filed in that county's magistrate court.

##### 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 petition 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 required by OCGA § 40-11-19.1 (b)(1) has not been returned after ten business days of such mailing or is returned as unclaimed, the company has 60 business days to place an advertisement once a week for two consecutive weeks in the newspaper of general circulation or legal organ *where the action has been filed*. OCGA § 40-11-19.1 (b)(2).

NOTE: For towing companies that tow a motor vehicle from a county other than where it is stored, the pre- and post-petition advertisements may need to be placed in different newspapers.

NOTE: The advertisement form provided by the council requires the company to compute the answer by date, which is ten business days after the expiration of the advertisement.

C. If owners become known while the 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) (It is the opinion of this author that because this request is required, it should be attached to the petition.)

D. Owner information obtained from the department or agency

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

#### 6.53 ANSWER TO PETITION

A. The owner has 10 business days after receipt to file an answer. If service is accomplished by advertisement, an answer must be filed within 10 business days after 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 business days of receipt of the answer. 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. The court shall decide whether to foreclose the lien for recoverable fees. OCGA § 40-11-19.1 (e)(2).

NOTE: While a trial is to be held upon an owner's answer, and the court shall decide whether to foreclose the lien at the conclusion of the trial, a final decision on the lien foreclosure cannot be made unless and until all owners have been served, through either mail or advertisement, and the time to file all answers has passed.

(It is the opinion of the author that at a trial where not all owners have answered, and where the service requirements of O.C.G.A. § 40-11-19.1 were followed, but either the mailing has yet to be delivered to all owners, a required advertisement has yet to run for both weeks, or an answer by date has yet to pass, the court can continue the trial for good cause to allow for service to be perfected and the answer time period to pass for all remaining owners.)

NOTE: Because the scope of the trial is limited to whether the petitioner has satisfied the requirements to foreclose the lien for recoverable fees, and because owners are not defendants in the action, any counterclaim and/or third-party claim filed by an owner are outside of the scope of the Act. It is the opinion of this author that any such counterclaim and third-party claim should be dismissed.

#### 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 business days of submission of the motion. Within 5 business days of a judgment being granted, the court shall enter an order authorizing sale of the vehicle pursuant to OCGA § 40-11-19.2. OCGA § 40-11-19.1 (d).

NOTE: The company must comply with the SCRA by attaching to the motion an affidavit and printed SCRA certificate for each owner who is an individual.

NOTE: The judgment and order for disposition of the motor vehicle are combined on a single order form – See MAG 40-12.

(2) If the motion is denied, petitioner may refile a 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 prior to and including the filing of the petition. An alternative to a denial for cases in which evidence was not attached to the petition or the motion is to schedule the case for a hearing to give the petitioner the opportunity to supply the missing documents.)

#### C. JUDGMENT

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

##### (A) Removal (Towing) Fee

(1) 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

(2) 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 (The Court must calculate per day from the date of filing the petition through 25 days after judgment is rendered)

(1) 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), for the number of days the motor vehicle has been stored through 25 days after the judgment is issued

(2) If towed from public property at the request of a peace officer, the rate specified pursuant to an agreement with a local governing authority for the number of days the motor vehicle has been stored through 25 days after the judgment is issued

(3) For repair facilities and salvage dealers, the maximum allowable rate 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 from the date notification required pursuant to O.C.G.A. §40-11-19 was received through 25 days after the judgment is issued;

NOTE: The beginning date for calculation of storage fees is different for repair and salvage companies than for towing companies.(C) Repair Fees for a repair facility (if applicable) – copies of any invoices should be provided to substantiate the repair fee;

NOTE: Only a petitioner that is a repair facility may seek repair fees under the lien.

(D) Cost of Obtaining Owner Information from the Department (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) Any prejudgment interest at the rate of 4% per annum from the date which the OCGA § 40-11-19 notification was received;

(G) filing costs (no more than \$11.00 plus add-on civil fees) and the cost of the certified order (no more than \$14.00); and

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

NOTE: The judgment foreclosing the lien is not a judgment against the owners.

Appendix A

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

## C. OTHER RATES AND CHARGES

Operator Fee

1. If vehicle has been hooked with hoisting apparatus or loaded by the wrecker service and the vehicle has not left the premises and the owner or operator produces ignition key and removes vehicle immediately.

(a)	Operator Fee for vehicles with a GVWR of 19,999 or less	Not to exceed \$ 100.00
(b)	Operator Fee for vehicles with a GVWR of 20,000 or more	Not to exceed \$150.00

Notification Fee

2.	Notification fee may be charged within the first 24 hours where local law enforcement is notified in writing, by facsimile or other electronic means, in a manner acceptable to local law enforcement	Not to exceed \$ 20.00
3.	Notification fee may be charged after the first 72 hours	Not to exceed \$50.00

4. The Notification Fees provided for herein SHALL NOT EXCEED a maximum total Notification Fee of \$70.00, cumulatively

5. After 30 days, the process outlined in Chapter 11 of Title 40 of the Official Code of Georgia, related to abandoned motor vehicles, applies.

After Hours Fee

6.	After hours fee may be charged if the vehicle's owner wishes to claim an impounded vehicle after the carrier's posted business hours	Not to exceed \$50.00
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ISSUED: 09/25/2017

EFFECTIVE: 11/10/2017

**PRIVATE TOW – KNOWN OWNER**

Tow Date	
Request Owner Info from Department	Within 3 business days of removal
Notify Law Enforcement of Removal	Within 1 day of receiving owner info
Send First Notices	Within 15 calendar 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 receiving 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 the last day falls on a Saturday, Sunday, or legal holiday, the last day shall fall on the next business day. OCGA § 1-3-1 (d)(3).

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).

**PUBLIC TOW – KNOWN OWNER**

Tow Date	
Request Owner Info from Department	Within 3 days of removal
Send First Notices	Within 15 calendar 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 the last day falls on a Saturday, Sunday, or legal holiday, the last day shall fall on the next business day. OCGA § 1-3-1 (d)(3).

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.

**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.

## 7 Abandoned Vessels

### 7. ABANDONED VESSELS

#### 7.1 DEFINITIONS (OCGA § 52-7-70)

(A) "Abandoned vessel" means a vessel:

(1) Which has been left by the owner or some person acting for the owner with a vessel dealer, repairman, or wrecker service for repair or for some other reason and has not been called for by such owner or other person within a period of thirty (30) days after the time agreed upon; or within thirty (30) days after such vessel is turned over to such dealer, repairman, or wrecker service when no time is agreed upon; or within thirty (30) days after the completion of necessary repairs;

(2) Which is left unattended upon or in any public water or at any port in this state without the consent of the agency having jurisdiction or docked at any private property without the consent of the owner of such property for a period of at least five (5) days and when it reasonably appears to a law enforcement officer that the individual who left such vessel unattended does not intend to return and remove such vessel;

(3) Which has been lawfully towed onto the property of another at the request of a law enforcement officer and left there for a period of not less than thirty (30) days without anyone's having made claim thereto;

(4) Which has been lawfully towed onto the property of another at the request of a property owner on whose property the vessel was abandoned and left there for a period of not less than thirty (30) days without the owner's having made claim thereto; or

(5) Which has been left unattended on private property for a period of not less than thirty (30) days without anyone's having made claim thereto.

(B) "Owner" means the owner, lessor, lessee, security interest holders, and all lienholders as shown on the records of the Department of Natural Resources.

(C) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water and specifically includes, but is not limited to, inflatable rafts.

#### 7.2 CREATION OF LIEN (OCGA § 52-7-73)

(A) After complying with the notification requirements set forth in 7.3, *infra*, any person/entity who removes or stores any vessel which is or becomes an abandoned vessel shall have a lien on such vessel for the reasonable fees connected with such removal or storage plus the cost of any advertisement.

(B) The lien may be foreclosed in magistrate courts only when the amount of the lien does not exceed \$15,000.00.

### 7.3 NOTIFICATION PROCEDURE (OCGA § 52-7-71)

(A) If the vessel was removed from public property or public water at request of law enforcement, and the vessel owner is not known, that person/entity must seek the identity and address of the last known registered owner from local law enforcement within 72 hours of removal.

(B) (1) If vessel was removed from private property or private water at request of property owner, and the vessel owner is not known, that person/entity must provide written notice to local law enforcement within 72 hours of removal of the following:

(a) Location of vessel;

(b) Certificate number;

(c) Hull identification number;

(d) Model;

(e) Year; and

(f) Make of vessel.

(2) Also, that person/entity must:

(a) Seek the identity and address of the last known registered owner from local law enforcement within 72 hours of removal; and

(b) Inquire if the vessel has been reported stolen.

(C) If the owner is known and the vessel is not stolen, being repaired by a repair facility, or being stored by an insurance company providing coverage, the person/entity must notify the vessel owner within seven (7) days of removal by certified or registered mail of the following:

(1) Location of vessel;

(2) Fees connected with removal and storage; and

(3) That vessel deemed abandoned unless redeemed within thirty (30) days of removal.

(D) (1) If the owner fails to redeem or if vessel is being repaired by a repair facility or vessel is being stored by an insurance company providing coverage becomes abandoned, the person/entity removing or storing vessel shall within seven (7) days after abandonment notify the Georgia Department of Natural Resources by sworn statement of the following:

- (a) Vessel number;
- (b) Hull identification number;
- (c) The fact that vessel is abandoned;
- (d) Model;
- (e) Year;
- (f) Make, if known;
- (g) The date vessel became abandoned;
- (h) The date of removal; and
- (i) Present location of vessel.

(2) Such notification to the Georgia Department of Natural Resources shall also request the name and address of all owners, lessors, lessees, security interest holders, and lienholders of such vessel.

(3) If a person/entity removing or storing the vessel has knowledge of facts which reasonably indicate that the vessel is registered or titled in a certain other state, such person shall check the vessel records of that other state in the attempt to ascertain the identity of the owner of the vessel.

(E) (1) If person/entity removing or storing a vessel becomes aware of the identity of the owner of said vessel, that person/entity shall notify all owners, lessors, security interest holders, and lien holders, of:

- (a) The location of the vessel;
- (b) That the vessel is deemed abandoned; and
- (c) That the vessel will be disposed of if not redeemed.

(2) Said notification must be sent within five (5) calendar days, by certified or registered mail.

(F) If the vessel owner's information cannot be ascertained, the person/entity removing or storing the vessel shall place a notice in the legal organ in the county where the vessel was removed. If no such paper exists, the notice shall be posted at the county courthouse where such public notices are posted. The notice shall run or remain posted for two (2) consecutive weeks. The advertisement shall contain:

- (1) A complete description of the vessel;

- (2) Certificate number;
- (3) Hull identification number;
- (4) The location where removed;
- (5) The present location of the vessel;
- (6) That the vessel is deemed abandoned; and
- (7) That the vessel will be disposed of if not redeemed.

(G) If a vessel is recovered by the owner, claimed by the owner, determined to be stolen, or for any other reason is no longer abandoned, the person/entity removing or storing the vessel shall notify the Georgia Department of Natural Resources within seven (7) days.

#### 7.4 LIEN FORECLOSURE PROCEDURE (OCGA § 52-7-74)

##### 7.41 DEMAND

(A) The demand upon the owner of the vessel for reasonable fees for removal and storage plus the costs of any advertisement, shall be made by certified or registered mail or statutory overnight delivery. Such written demand shall include an itemized statement of all charges. No such demand shall be required if the identity of the owner cannot be ascertained after complying with the requirements of 7.3, supra.

(B) If after the elapse of ten (10) days from the date of delivery, the owner fails to respond to said demand, refuses to pay, or if the owner cannot be ascertained, the person/entity removing or storing may foreclose such lien.

##### 7.42 FILING

(A) The person/entity asserting such lien may move to foreclose by making an affidavit to the Magistrate Court showing all facts necessary to constitute such lien and the amount claimed.

(B) The filing fee shall be \$5.00 per vessel, with statutory add-ons.

(C) With the filing of the affidavit, the lien claimant shall give the clerk the address, if known, of; the owner, lessor, lessee, security interest holder, and lien holders of the vessel. The clerk shall give notice to each of these addresses of the right to a hearing to determine if reasonable cause exists to believe that a valid debt exist, and a hearing must be petitioned for within ten (10) days after receipt of such notice; and if no petition is forthcoming within time allowed, the lien will conclusively be deemed valid.

(D) Any notice required above shall be by certified, registered, or overnight mail, and if the owner, lessor, lessee, security holder, and lienholder are not known, by posting notice at the courthouse.

### 7.43 COURT ACTION

(A) If a petition for a hearing is filed within ten (10) days of notice given by the owner, lessor, lessee, security holder, and lienholder, the court shall set such hearing within ten (10) days of the filing of petition.

(B) If the court determines that reasonable cause exists of the valid debt, the person/entity asserting the lien shall retain possession of the vessel or the court shall obtain possession of the vessel by court order. The owner-debtor may obtain possession of the vessel by giving bond and security in the amount due, plus costs of the action.

(C) Within five (5) days of the probable cause hearing, any party defendant must petition the court for a full hearing on the question of the valid debt.

(1) If no such petition is filed, the debt will be conclusively valid, and the foreclosure granted.

(2) If the petition for a full hearing is filed, the court shall set the hearing within fifteen (15) days of the filing of the petition.

(3) Upon the filing of the petition for a full hearing, neither the lien holder, nor the Court may sell or dispose of the vessel.

(D) If, after hearing on the petition for a full hearing, the Court finds the debt valid, the Court shall grant the foreclosure upon and sale of vessel subject to the lien if such debt is not otherwise immediately paid.

(E) If the court finds that the actions of the person/entity asserting the lien in retaining possession of the vessel were not taken in good faith, the court may award damages to the owner, or any interested party, due to the deprivation of the use of the vessel.

(F) If no petition for a full hearing is filed, or if, after full hearing on the petition, the court finds a valid debt exists, the court shall authorize, by order, the sale of the vessel. The holder of a security interest in or lien on the vessel, other than the holder of this lien, shall have the right, in order of priority of such interest, to pay the debt and costs. If this occurs, that person shall have the right to possession of the vessel, and that person's interest in the vessel shall be increased by the amount paid. A court order shall be issued to this effect, and no sale of the vessel shall occur.

(G) Any action to foreclose a lien on an abandoned vessel must be instituted within one (1) year from the time the lien is recorded or asserted by retention.

### 7.5 CLERKS' DUTIES AFTER SALE (OCGA §§ 52-7-75, 52-7-77)

(A) After satisfaction of the lien, the person/entity selling such vessel shall turn the remaining proceeds of such sale, if any, over to the clerk of the court.

(B) The clerk of the court shall retain the remaining balance of the proceeds of a sale, after satisfaction of liens, security interests, and debts, for a period of 12 months; and, if no claim has been filed against such proceeds by the owner of the abandoned vessel or any interested party, then he shall pay such remaining balance as follows:

(1) If the abandoned vessel came into the possession of the person creating the lien other than at the request of a peace officer, the proceeds of the sale shall be divided equally and paid into the general fund of the county in which the sale was made and into the general fund of the municipality, if any, in which the sale was made;

(2) If the abandoned vessel came into the possession of the person creating the lien at the request of a police officer of a municipality, the proceeds of the sale shall be paid into the general fund of the municipality;

(3) If the abandoned vessel came into the possession of the person creating the lien at the request of a county sheriff, deputy sheriff, or county police officer, the proceeds of the sale shall be paid into the general fund of the county in which the sale was made; or

(4) If the abandoned vessel came into the possession of the person creating the lien at the request of a member of the Georgia State Patrol or other employee of the State of Georgia, the proceeds of the sale shall be paid into the general fund of the county in which the sale was made.

**ABANDONED VESSEL NOTICE**

Date of this Notice:

To: Name/address of owner

**Pursuant to O.C.G.A § 52-7-74 this Court serves notice to you the (owner, lessor, lessee, security interest holds, and lienholder) of the abandoned vessel identified below of your right to a hearing to determine if reasonable cause exists to believe that a valid debt exists. Such hearing must be petitioned for within ten days after receipt of this 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.**

**You may petition a hearing by contacting this office within 10 days of receipt of this notice to the following address:**

In correspondence dated (date of letters) and (date of letters) you were identified by the Georgia Department of Natural Resources and the Georgia Bureau of Investigations as an owner, lessor, lessee, security interest holder, or lien-holder of the below – listed vessel. Pursuant to O.C.G.A. §52-7-71 (f) §52-7-74 (3) (A), you were notified and given opportunity redeem the vehicle.

\_\_\_\_\_(Plaintiff), desires to foreclose a lien on the below – listed vessel and has made a demand upon the owner for the payment of the reasonable fees for removal and storage plus the costs of any advertisements, by certified mail. This written demand included an itemized statement of all charges.

On (date), (Plaintiff) filed with this Court, a signed *Abandoned Vessel Affidavit* asserting that a lien existed and moved to foreclose this lien. This affidavit averred that the notice requirements of O.C.G.A §52-7-71 have been complied with, and such affidavit also averred that a demand for payment was made and refused.

Vessel Identification:

Certificate Number: \_\_\_\_\_

Hull Identification Number: \_\_\_\_\_

Year \_\_\_\_\_ Make of vessel: \_\_\_\_\_

Location of the vessel: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

If you would like to petition for a hearing to determine if reasonable cause exists to be believe that a valid debt exists, you must contact this court within **ten (10) days of receipt of this letter**. 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.

**THIS NOTICE MUST BE SENT VIA CERTIFIED, REGISTERED MAIL,  
OR STATUTORY OVERNIGHT DELIVERY.**

IN THE MAGISTRATE COURT OF \_\_\_\_\_ COUNTY  
STATE OF GEORGIA

Plaintiff,

v.

Vessel Owner.

Case No.

Abandoned Vessel

**JUDGMENT AGAINST ABANDONED VESSEL**

In Re: Abandoned Vessel

Certificate No.

Hull Identification No.

Year:                    Make:

Model:

This matter having been: [ ] heard in open court, or [ ]  
decided on the pleadings, the Court finds that this is not a  
case involving a stolen vessel, a vessel stored by a repair  
facility, or a vessel being stored by an insurance company.  
Whereupon it is hereby,

**ORDERED and ADJUDGED**, that a valid debt exists against the  
above-referenced vessel entitling the Plaintiff to a lien in the

amount of **\$9,995.00** plus future storage costs of **\$25.00** per day until said vessel is sold. And it is further,

**ORDERED**, that the Plaintiff is authorized to foreclose upon and satisfy his lien sell by selling said vessel at public auction pursuant to O.C.G.A. § 52-7-75. And it is further,

**ORDERED**, that the public auction sale of said vessel shall in all respects conform to the provisions of O.C.G.A. § 52-7-75 and the buyer shall take the vessel free and clear of all liens and encumbrances. And it is further,

**ORDERED**, that the Plaintiff shall give the purchaser of the vessel a certified copy of this Judgment. And if is further,

**ORDERED**, that within thirty (30) days after such sale, the Plaintiff shall file a return with the Court showing the date and amount of the sale and the amount retained for satisfaction of the lien, and pay over any excess amounts to the Clerk of Court pursuant to O.C.G.A. § 52-7-75(b).

**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Judge



INSTITUTE OF  
CONTINUING JUDICIAL  
EDUCATION  
OF GEORGIA

# Recovering Retention Schedules

Ms. Bobbie Yandell

BOBBIE YANDELL is the current Assistant Director of the Lee County Library System. She served the previous 10 years as the Director of Thronateeska Heritage Center and the South Georgia Archives and is the past President of the Georgia Records Association.

She holds the Certified Information Professional (CIP) designation from the Association for Intelligent Information Management (AIIM) and has earned the Records Management Professional certificate from the Georgia Records Association, as well as the Government Archives and Records Administrators certification from the National Association of Government Archives and Records Administrators (NAGARA).

Along with her work in collecting and preserving the history of South Georgia, she serves local governments, school systems, law enforcement, judicial systems, and non-profits as a trainer, consultant, and contractor in all phases of information management and data governance.

Records Information Management

# RECORDS AND RETENTION SCHEDULES



Records Information Management –  
RIM 101

The Basics  
Just the Basics



- ❑ What is a Record?
- ❑ How did we get here?
- ❑ Where did all this come from?
- ❑ What Now?



## What is Records Management or RIM?

### Georgia Records Act O.C.G.A § 50-18-91

- The application of management techniques to the creation, utilization, maintenance, retention, preservation, and disposal of records undertaken to reduce costs and improve efficiency of record keeping.
- "Records management" includes management of filing and microfilming equipment and supplies; filing and information retrieval systems; files, correspondence, reports, and forms management; historical documentation; micrographics; retention programming; and vital records protection.



## What is Records Management or RIM? Say What?....

- The function of Records Management is to maintain the records of an organization, regardless of the format, from the time they are created until their eventual disposal.
- This includes classifying, storing, securing, and destruction of records.
- In some cases, archival and preservation of records.



## There's just one more thing...



**You say you've gone electronic, yet  
you have all this paper lying around.**

## What is a Record?

The formal **ISO 15489** defines a record as:

- **Information** created, received, and *maintained* as evidence and information by an organization or person, in pursuance of legal obligations or in the transaction of business.



## What is a Document?

**ISO 145489** defines a 'document' as:

- Recorded information or object which can be treated as a unit.

**US DOD 5015.2** defines it as:

- Information set down in any physical form or characteristic. A document may or may not meet the definition of a record.





- A document, by definition, is not necessarily controlled.
- It can be changed by suitability-authorized people.



- At some point it can become a record.
- The key point is that at that time, it is protected against change.



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## Records Vs. Non-Records



### Records

Financial Documents  
Policies and Procedures  
Audit Trails and Logs  
Significant Memoranda  
Meeting Minutes



### Non Records

Press Cuttings  
Invitations  
Trade/Industry Publications  
Trivial Memoranda



# Characteristics of a Record

- Authenticity
- Reliability
- Integrity
- Usability



**Authenticity**

**Reliability**

**Usability**



One that is what it claims to be, created or sent by the agency claiming to have done so, and at the time purported.



Records must be usable, meaning that they can be searched for, retrieved, reviewed, and used in the course of business.



Especially important for electronic which may not be able to demonstrate authenticity in more traditional ways such as "wet-ink" signatures.



Trustworthy, complete, and accurate representation of what happened.

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# Integrity



A records demonstrates integrity by its completeness and by its not having been altered since its creation.



Any authorized changes to a record, for example, its conversion from one file format to another, must be documented and done only by authorized users as part of a formal records program. Integrity here also includes Metadata. (data about data)



## Records Retention Schedules-

A set of disposition instructions prescribing how long, where, and in what form a records series shall be kept.

## Records Series-

Means documents or records having similar physical characteristics or relating to a similar function or activity that are filed in a unified arrangement. May also be referred to as a *Record Category*.



## VOCABULARY: (SOME DEFINITIONS TAKEN FROM GEORGIAARCHIVES.ORG)

- Archive:** Refers to both a set of historical records, and the facility or digital repository where said records are kept.
- Disposition:** What should be done with a record when its retention is satisfied.
- Inventory:** The process by which you determine what you have. Also refers to the record of what you have.
- Intellectual Control:** Knowing what you have.
- Legal Citation:** The specific Federal and/or State Code which stipulates the retention period. This information may not exist for certain records.
- Permanent:** Information that for legal, historical, fiscal, or administrative reasons needs to be retained forever.
- Physical Control:** Knowing where what you have is located.
- Record:** Anything, be it paper, email, voicemail, digital disc, or otherwise, containing information. Medium does not matter: the information contained on it or in it does.
- Record Title:** The common name of the records and the information contained therein.



## Vocabulary - Continued

- Retention:** How long a record should be kept.
- Retention Schedule:** A list detailing retention for different types of records.
- Special Instructions:** Procedural instructions provided by the Georgia Archives to assist agencies in implementing retention classifications. These instructions may also denote vital records needed in the event of a disaster.
- Temporary – Short Term:** Information that needs to be retained for less than fifteen years.
- Temporary – Long Term:** Information that needs to be retained for fifteen years or longer, but which does not need to be retained permanently.
- Transitory:** Information of a temporary nature that does not meet the requirements for longer retention prescribed by O.C.G.A. §50-18-94(1).
- Vital Record:** Essential records that your agency needs to continue doing business in the event of a disaster. Georgia Code defines “Vital records” as “any record vital to the resumption or continuation of operations, or both; to the re-creation of the legal and financial status of government in the state; or to the protection and fulfillment of obligations to citizens of the state.” (O.C.G.A. §50-18-91 (10))



https://www.georgiaarchives.org/records/retention\_schedules

GEORGIA ARCHIVES  
UNIVERSITY SYSTEM OF GEORGIA

About Us - Visit - Research - Educators - Government Agencies - Partners - Caring for Records

Records Services  
Records Laws and Legislation  
Retention Schedules

## Retention Schedules

### State Agencies

State Government Records Retention Schedules  
State Agency Specific Schedules (records not covered in the General Schedule)  
Appoint a New Agency Records Management Officer (state agency heads only)  
University System of Georgia Retention Schedules

### Local Government Schedules

Local Government Records Retention Schedules  
Judicial Branch Retention Schedules (November 2018)

### Retention FAQs

I can't find the retention period for a specific record.

What does "Retain for useful life" mean?

What does "Vital Record" mean?

What is the retention period for email?

### CONTACT INFORMATION

Address: 5800 Jonesboro Road  
Morrow, GA 30260

Phone: 678-364-3710

Hours: Tuesday - Saturday  
9:00 AM - 12:00 PM  
and 1:00PM - 4:00PM  
Closed 12:00 - 1:00

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Virtual Vault

Finding Aids

Book & Manuscript Catalog (GIL)




## Official Judicial Branch Records Retention Schedules





# Official Judicial Branch Court Records Retention Schedules

The Supreme Court and Judicial Council of Georgia resolve that, other than wills, original evidence, and federal tax liens, all original documents can be digitized and originals can be destroyed provided that (1) digitizing or microfilming is done according to Georgia Imaging Standards or Microfilm Standards; (2) a security copy of the digital format or microfilm is deposited in the Georgia Archives; (3) a reference copy of the digital format or microfilm format is kept in the office of the clerk of superior court and a reader-printer is available to facilitate reference. Records created digitally can be managed completely digitally according to these schedules. The Court and Council also affirm, pursuant to OCGA § 50-18-120, the resolution approved by the State Records Committee on January 18, 1996, stating: "All paper records of State agencies and local governments, and all records of the Courts of the State of Georgia which have been microfilmed and verified in accordance with said Micrographic Standards (Georgia Micrographic Standards) may be destroyed, unless specifically prohibited by law, code, resolution, order or an approved State Records Committee records retention schedule."

Throughout these schedules the word "document" is used frequently. The Georgia Records Act at OCGA § 50-18-90 et seq. presents a number of formal definitions used broadly in the judiciary record retention schedules.

OCGA § 50-18-91 (2) "Court record" means all documents, papers, letters, maps, books (except books formally organized in libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or, in the necessary performance of any judicial function, created or received by an official of the Supreme Court, Court of Appeals, and any superior, state, juvenile, probate, or magistrate court. "Court record" includes records of the offices of the judge, clerk, prosecuting attorney, public defender, court reporter, or any employee of the court.

OCGA § 50-18-91 (5) "Records" means all documents, papers, letters, maps, books (except books in formally organized libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in performance of functions by any agency. "Digital" or

"Digitize" has been changed on each occurrence of "microfilm" throughout the retention schedules. This change reflects the application of scanning documents into electronic format. All imaging in the Judicial Branch must be in compliance with the imaging standards issued by the Department of Archives and History in the Board of Regents of the University System of Georgia.



## Magistrate Records

Record Type	Description	Retention	Schedule Number
Arrest and Search Warrants Files	Documents relating to arrest and search warrants. Included are audio and video applications for warrants, supporting affidavits, and evidence. Specifically excludes the original arrest warrants in which the defendant was bound over for trial by a magistrate to state or superior court. These original warrants should be transferred with the case file to the trial court.	10 years.	JB-080
Good Behavior Bonds	Documents relating to Good Behavior Warrants. Included are applications for warrants, supporting affidavits, and/or law enforcement reports or supplemental evidence, including audio and video of Good Behavior Warrant proceedings.	7 years. All original documents shall be kept in the magistrate court. See OCGA § 17-6-90.	JB-081
Civil Case Files	Documents relating to trying of civil cases in magistrate courts. Included are all pleadings, exhibits, transcripts, judgments, and related papers appropriate for inclusion in case files as required by statute or by the Uniform Rules for the Magistrate Courts. (Some courts maintain indexes to their case files and dockets. The retention of these indexes is covered in the schedule Magistrate Court Civil Dockets.) Includes affidavits for summons of dispossessory, applications for summons of foreclosure of personal property, and abandonment of automobiles or vessels.	10 years after disposition. If a judgment is renewed or enforcement is actively pursued in accordance with OCGA § 9-12-60 within the 10-year period, transfer case back to current files area and treat as a newly closed case.	JB-082
Transcripts, Recordings or Notes of Proceedings as Court Inquiry	Documents relating to certified verbatim records, digital recordings, and any other audio recordings or video recordings, including certified records of court reporters' transcriptions.	3 years from end of each calendar year or duration of sentence, whichever is longer.	JB-083

## Official Judicial Branch Administrative Records Retention Schedules

### ACCOUNTING (01)

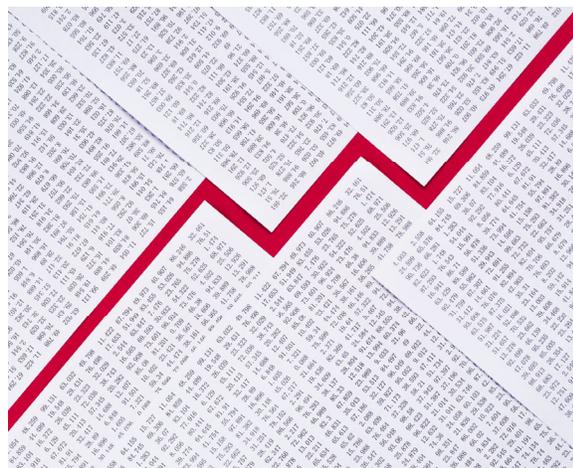
Records	Description	Retention	Number
Accounting Records	Records include: accounts payable files; accounts receivable files; bank statements; cancelled checks, vouchers, and EFTS; cash balances and reconciliations; cost accounting records; deposit slips and reconciliations; invoices; journal entries (journal vouchers); outstanding obligations; payment schedules; purchase orders; receipts; returned checks; reconciliations; refund/disbursement requests; moving expenses; agency-paid individual memberships and activities in professional organizations; registration fees; and travel authorization and reimbursement records.	5 years.	GASC-01-001
Annual Financial Statements	Records which provide an annual statement of net assets and activities; often called a comprehensive annual financial statement or report.	Permanent.	GASC-01-002
Audit Reports (Agency Copies)	Reports prepared by the Department of Audits examining and verifying the agency's financial activities for a defined period of time; does not include the record copy maintained by the Department of Audits.	5 years or 2 successive audits, whichever is longer.	GASC-01-003
Bids and Competitive Selection Records	This series documents the procurement of equipment and service valued in excess of bid limit. This series may include but is not limited to: requests for proposal (RFP); requests for invitations to bid (RFI); requests for quotes (RFQ); vendors' proposals and bids; records for all bids received; and competitive quotes.	Capital Improvement Projects: 11 years; All other records: 7 years.	GASC-01-004
Budgeting Records	Records documenting budget requests, maintenance, and reports as well as the budget approved by the Legislature.	Approved Budget: Permanent; All other records: 6 years.	GASC-01-005

## Vital Records or Essential Records

Generally classified as those records that would be needed to restart the government and/or continue to operate in the event of an emergency, no matter how destructive the disaster.

- Computer network ID
- AP/AR
- Tax Records
- Cemetery Plots
- Street & House numbers
- Voting and Precinct Information
- Payroll Records\*
- Personnel Files

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# Vital Records or Essential Records

Vital Records must have duplicates that are stored offsite in a secure location, and readily retrievable/accessible in the event of an emergency/disaster.



## BEST PRACTICES:



**Records Inventory-**



Know what you have, where it is, and what format it is in.



Performing a physical inventory is unavoidable.



This includes a physical (digital) inventory of your digital content that includes records as well as where the backup copies are located.



## BEST PRACTICES:

### Policies & Procedures-

25



- Your government may have adopted the required Ordinance from the 1984 GA Records Act, but there may not be a written formal policy on how your records are maintained.



Chain of Custody forms for the inventory- if the records or information is not kept in your department or direct control, you should have an inventory form that shows where those records are located, what format they are in, who authorized the transfer (this should have at least 2 departmental signatures, and the destination signatures if it is being transferred to an internal or external records department or archives).



## BEST PRACTICES:

### Policies & Procedures -continued

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Digital records also need to be inventoried as they are also subject to retention schedules and destruction requirements. You should know the back up status of your records kept in owned, third party, and cloud software. Multiple redundant backups are preferred.



How are you to access these backups if necessary?



If you no longer use the third-party vendor for your digital content, how do you obtain your information in a format that you can access. This is particularly important as it pertains to Legacy systems.





## BEST PRACTICES: Records Destruction

### **Paper and Digital destruction**

- All records must have a schedule before they can be legally destroyed.
- You should have an inventory of all items included in the destruction.

### **Your inventory should contain-**

- A full description providing the years of the series for the records being destroyed.
- The records series/category including the class code (LG or O.C.G.A) that applies , if applicable.
  - The retention period listed from the schedule.



## BEST PRACTICES: Records destruction – Paper and Digital destruction - continued

- The format and size of the content being destroyed i.e., box size (1.15cf/96gallon shred bin) or size of the file if it is digital.
- Your destruction inventory sheet should also clearly list your department and 2 departmental signatures as well as that of the destruction company being utilized.
- Records covered under a retention schedule must be securely destroyed.
- A Certificate of Destruction is a Best Practice to obtain from your Vendor upon the destruction of your records for verification purposes.





## Bobbie Yandell

CIP, GARA, GRMP

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# **Garnishments – What the Clerks are supposed to do**

Hon. Jim Altman

Judge Jim Altman

**Judge Jim Altman** is a senior magistrate court judge and most recently a Probate Court Judge. He earned his JD from Georgia State College of Law in 1985.

Judge Altman has 17 years of experience being a Judge, and 35 years being a lawyer, and he considers it a duty to stay current in the law.

Judge Altman would like the audience to know that he truly enjoys what he does!

# Garnishments

James Altman  
Senior Magistrate

SUCH  
EXCITEMENT!!

## 1. Three Kinds of Garnishments

a. Regular

b. Continuing

c. Child Support

## 2. Jurisdictional Amount applies

### 3. 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.

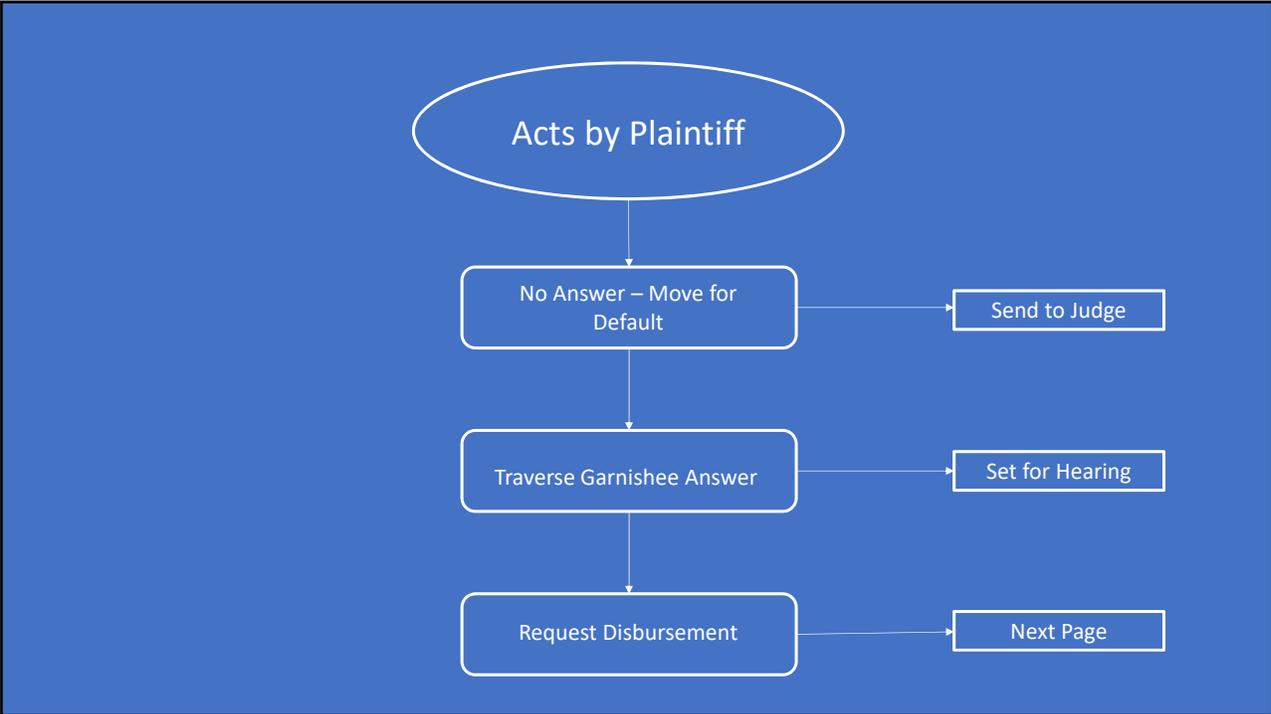
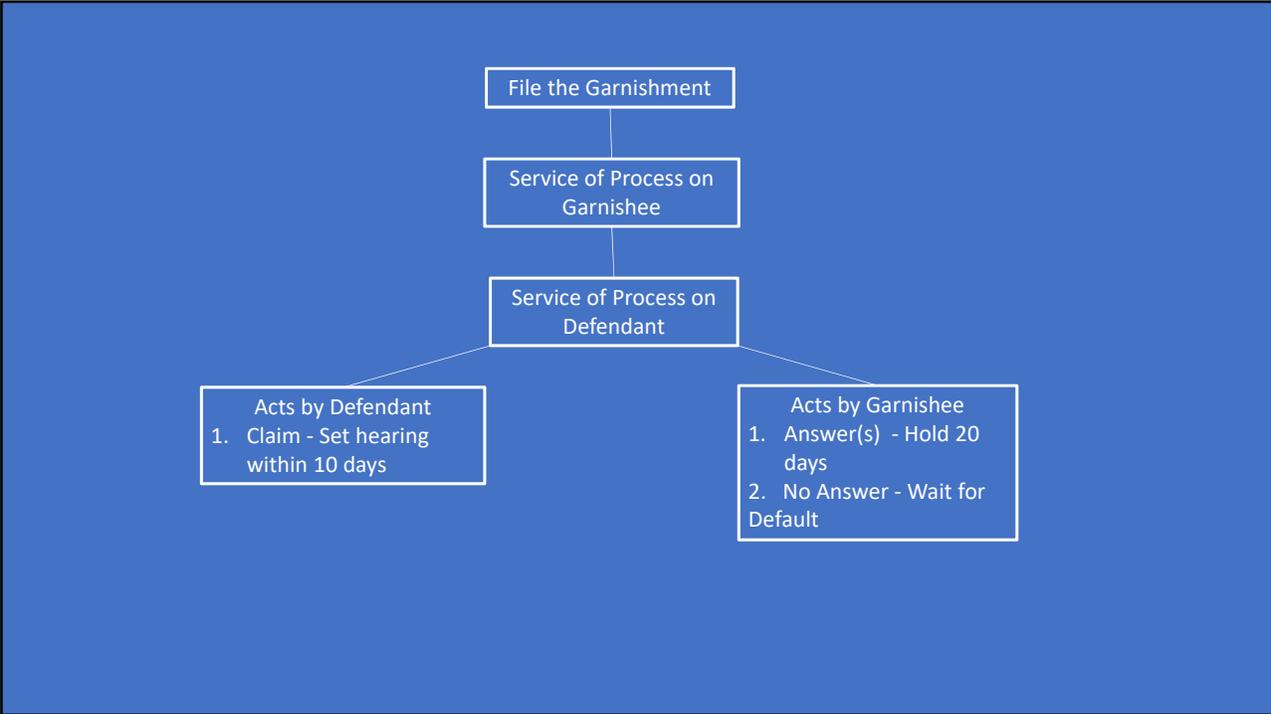
d. Took Defendant out of the 3<sup>rd</sup> party claims, but: N.B. Defendant can raise the 3<sup>rd</sup> party claim, but claimant must come in to prove it.

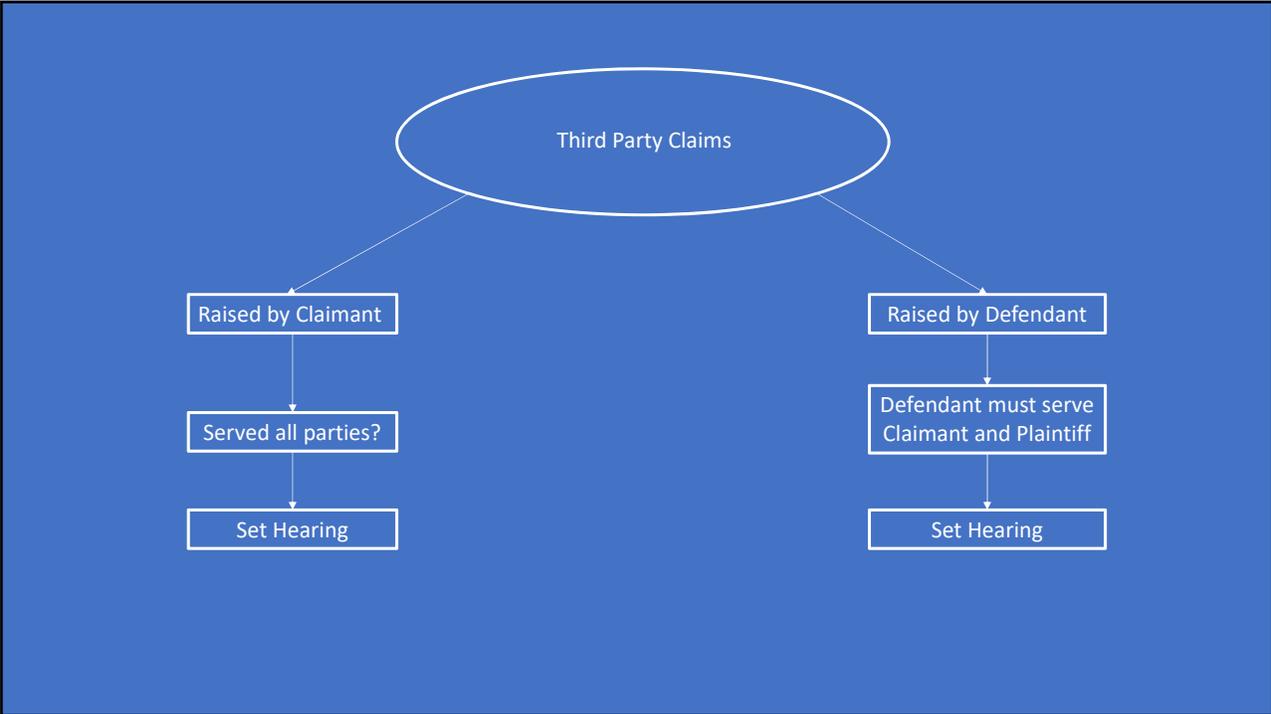
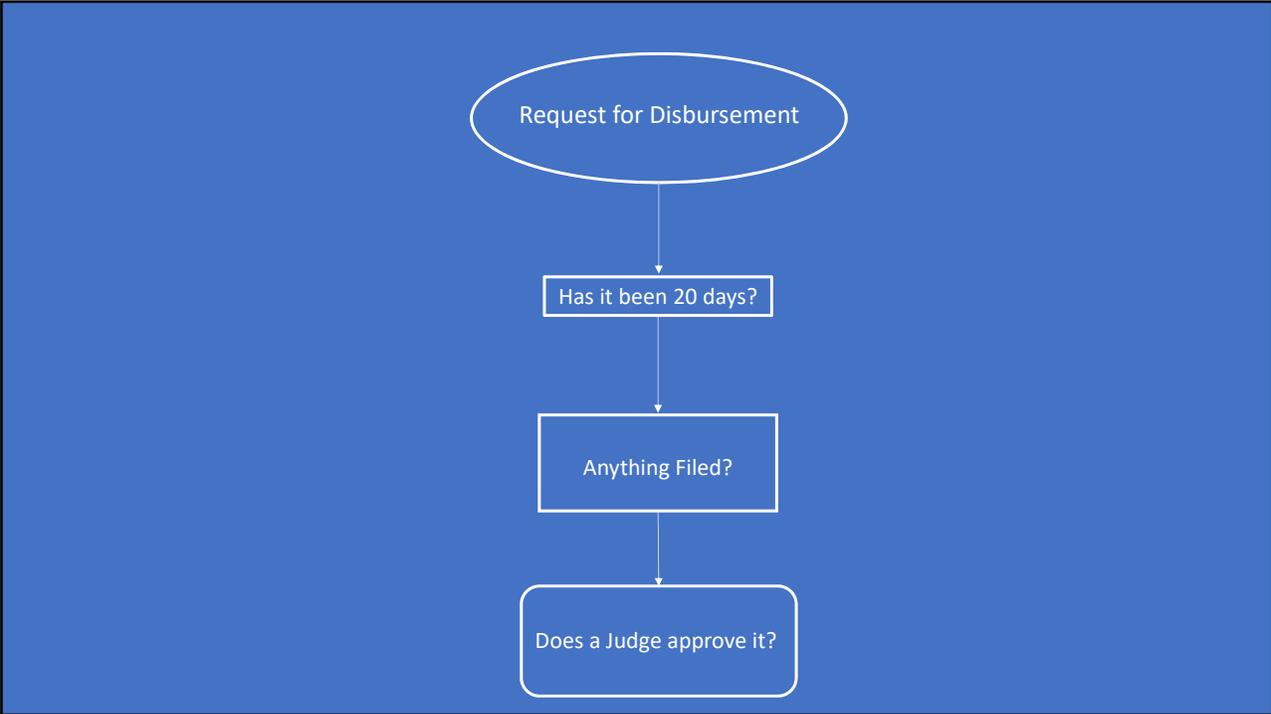
e. Recent Interesting Cases

- 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. You have to read between the lines. THIS Garnishee missed his chance to raise the lack of service on Defendant and could not raise.
- iii. Rivers v. Rivers et al., Civil (2019-01-16, 2019-02-01) A18A1725 No statutory time limit to move for default.

iv. Not garnishment but important to your lives.

1. Prince v. Rawls, Civil (2018-06-13, 2018-07-23) A18A0212 Clerk closed early due to snow storm. 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





- Do you have to have a copy of a judgment (fifa) in order to file a garnishment?
- Copy of Motion form for the one time disbursement on continuing garnishments (needed)?
- What step need to know when a motion is filed for a default judgement on continuing garnishment? – forms needed and accepting motion to open up. \$50 fee plus 100% due to the Plaintiff to open out of default – who get the funds when paid into the registry of the court? What changes are made in process of default on garnishee? Does the court issue an automatic default after the 45 days or is a motion needed from the Plaintiff? What to do if answer from Garnishee certificate of service is not signed? Can the Court accept an answer from Garnishee before the 30 days? What should the frequency of the answers be from Garnishee? If Defendant is no longer employed by Garnishee, is the first answer the only one they need to file?
- If a business answers that they have moved from “x” county to “y” county does the clerk issue a release of garnishment?
- If answer is filed is Defendant is no longer employed, does the clerk issue a release?

## Changes to the Garnishment Act – 2020

1. Adopts definition of “Statutory Overnight Delivery,” see OCGA 9-10-12. 18-4-1(7).
2. Exempts Garnishments in Magistrate Court from the Civil Practice Act. 18-4-2(c).
3. No adding new parties as Garnishee, correct or clarify Garnishee only. 18-4-2(d).
4. Amount due may include costs and service fees from other garnishments. 18-4-3(e).
5. Collateral securities held by Garnishee exempt for debt to Garnishee, even if not yet due. 18-4-4(b).

6. N.B. Continuing Garnishment now lasts 1095 days!!! That's 3 years! 18-4-4(c)(1).
7. Underlying debt consisting of private student loans now limited to 15%. Summons must show that it is based on such loan conspicuously on the face of the summons. 18-4-5(a)(2)(A), 18-4-5(a)(5).
8. Employers of Independent Contractors, i.e. not subject to withholding, deemed to have no knowledge of disposable income. May answer without regard to exemptions. 18-4-5(a)(4)
9. Plaintiff and Defendant can agree to reduce amount due. Form for such agreement provided. 18-4-5(d) Amounts can be paid directly to Plaintiff. 18-4-10(a).

10. Clarification that Defendant service can be anytime after filing of affidavit, but not more than three days after service on Garnishee. The 3-day rule survives, but clarified early is ok after filing. 18-4-8(b)(1).
11. No more return receipts on Defendant service. But written proof of service still required. Copies of envelopes showing refused, website printouts all ok. 18-4-8(b)(1)(A)(ii).
12. No new summons after two years changed to exclude Support Garnishments. 18-4-9(b).

13. After two years from such original filing date and provided that no unadjudicated claims, traverses, appeals, motions, or other pleadings remain before the court, the garnishment proceeding, other than a continuing garnishment or continuing garnishment for support, based on such affidavit shall automatically stand dismissed unless there are funds remaining in the registry of the court or a new summons of garnishment has been issued in the preceding 30 days.

In the event funds remain in the registry at such time and the plaintiff has filed its certificate of compliance pursuant to subparagraph (b)(3)(A) of Code Section 18-4-8 and has made its application for disbursement, all such funds will be deemed abandoned by the defendant and disbursed to the plaintiff, notwithstanding any other provision of this Code section. (I thought it was just easier to quote that). 18-4-9(b).

14. Paper answer acceptance by court required notwithstanding e-file rules. 18-4-11(f).

15. Payroll services may file answer on behalf of Garnishee. 18-4-12(b).

16. Claims filed after dismissal do not need to be heard. 18-4-15(d). More importantly, res judicata applies to claims. Claims already adjudicated or *could have been* raised and adjudicated. I think this means claims must be raised on the first answer of a continuing garnishment. 18-4-15(d).

17. Fixes problem of no Plaintiff Traverse of defaulting Garnishee's "answer" in Motion to Open Default. 30 days to Traverse. 18-4-16(b).

18. Plaintiff's Traverse found to have no reasonable justification may have attorney's fees assessed. 18-4-19(d)(2).

19. Request for Disbursement may be filed with the action. Only one is required. 18-4-20(b).

20. Plaintiff and Garnishee not liable to any party or nonparty for wrong personal identifying information reasonably believed to be correct. 18-4-23(c) and (d).

21. There are a bunch of little stylistic or conforming changes not mentioned here. Many forms changed or added to suit changes.

Intentionally left blank.



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# **Magistrate Court Clerks' Annual Business Meeting**

# Council of Magistrate Court Clerks, Inc.

Minutes from February 2<sup>nd</sup>, 2024 in Forsyth, Georgia

President Carla Brown called the meeting to order and welcomed everyone in attendance.

Council Officers were introduced as follows;

**President:** Judge Carla Brown, Lee County  
**Vice President:** Judge Cynthia Kelly, Burke County  
**Secretary/Treasurer:** Judge Cheryl McMillan, Charlton County  
**Advisor:** Judge Connie Holt, Morgan County

Those in attendance were as follows; Connie Holt, Carla Brown, Cheryl McMillan, Cynthia Kelly, Shelly Herndon, Renea Daniels, Alecia Lawrence, Connie Griffith, Patricia Carreker, Monica Welchel, Jackie Norman, Hayley Holston, Timothy Ezell. Shirley Roberts, Thomas Erwin and Susan Mason of ICJE

A motion was made to approve the minutes by Shelly Herndon and seconded by Renee Daniles.

## BUDGET REPORT

Copy of the budget was passed out for the year 2023. Motion was made to approve the budget by Alicia Lawrence and seconded by Cynthia Kelly.

## OLD BUSINESS

None

## NEW BUSINESS

Training for Clerks will be held at Sea Palms on St. Simons Island on June 19<sup>th</sup> – June 20<sup>th</sup>, 2025. District representatives were asked to contact those in their district concerning training and paying for their clerk dues.

The group spoke about having clerk training Mandated. Judge Holt will be looking into it.

Thomas Erwin talked about registration and explained the “new” on-line registration. He said there were only 33 registered for clerk training.

A motion was made to give \$5,000.00 to ICJE to help with expenses of training only if it is needed Shelly Herndon approved the motion, Jackie Norman seconded.

The topic of gift cards, door prizes and gift bags with cups were discussed. A motion was made for ten door prizes @ \$25.00, and gift bags for all clerks with snacks included in attendance with a budget of up to \$5,000.00 was made. Alisha Lawrence approved the motion and Patricia Carreker seconded the motion.

Clerk certificates will be handed out at the end of class on Friday, June 20<sup>th</sup>, 2025

Carla Brown adjourned the meeting.

# Council of Magistrate Court Clerks, Inc.

Minutes from June 15<sup>th</sup>, and 16<sup>th</sup>, 2023 at Mariotte Riverfront, Savannah, GA

President Carla Brown called the meeting to order and welcomed everyone in attendance.

Council Officers and District Representatives were introduced as follows;

**President:** Judge Carla Brown, Lee County  
**Vice President:** Judge Cynthia Kelly, Burke County  
**Secretary/Treasurer:** Judge Cheryl McMillan, Charlton County  
**Advisor:** Judge Connie Holt, Morgan County

**District 1:** Renea Daniels, Brantley County  
**District 2:** Victoria Warren, Brooks County  
**District 3:** Jackie Norman, Lee County  
**District 4:**  
**District 5:** Che' Alexander, Fulton County  
**District 6:** Haley Holston, Upson County  
**District 7:** Monika Welchel, Bartow County  
**District 8:**  
**District 9:** Connie Griffith, Forsyth County  
**District 10:**

**Nominating Committee:** Shelly Herndon and Alecia Lawrence

## GREETING/PRESENCE:

President, Carla Brown welcomed everyone. She stated she was glad to see everyone and hope they enjoy the conference and learn from others as well as our instructors.

## MINUTES AND BUDGET REPORT

Cheryl McMillan the Secretary/Treasurer read the minutes from the Board/Executive Committee Meeting in Forsyth, February 3<sup>rd</sup>, 2023, and the minutes from our clerk business meeting at Mariotte Riverfront in Savannah that was on held on June 23<sup>rd</sup>, 2022. Motion to approve both minutes was made by Jackie Norman and seconded by Shawanna Richards. The financial report was read and approved, motioned by Alecia Lawrence and seconded by Julie Ruark.

## ELECTION REPORT

The meeting was turned over to Alecia Lawrence for the election of the Board Members and District Representatives. We are voting this year on District 4, 8 and 10 for a Representative, those districts were vacant. Nominations for District 8 was Julie Ruark and Tawney Bloodsaw. After the vote the District Representatives are as follows.

- District 1: Renea Daniels, Brantley County  
District 2: Victoria Warren, Brooks County  
District 3: Jackie Norman, Lee County  
District 4: Patricia Carreker, Rockdale County  
District 5: Che' Alexander, Fulton County  
District 6: Haley Holston, Upson County  
District 7: Monika Welchel, Bartow County  
District 8: Tawney Bloodsaw, Washington County  
District 9: Connie Griffith, Forsyth County  
District 10: De'Lisa Johnson, Richmond County

### OLD BUSINESS

No Old Business

### NEW BUSINESS

No New Business

### PRESIDENT REPORT:

I know that you get tired of hearing from me about how important it is to join our council. I would like to see all 159 Counties join. Our year runs from July 1<sup>st</sup> to June 30<sup>th</sup> of the following year. So please join so we can keep our awesome training at a low cost. It is only \$15.00 per clerk. Let's push for 100% participation this year. 84 Counties have paid dues for "2023"

### ANNOUNCEMENTS:

Jeffery Thorpe needs 10 clerks to volunteer to help with a project that the AOC is doing. The working group will help decide the court-specific data elements from the National Open Data Standards document sent to all clerks a few months ago. We anticipate having no more than two meetings to determine and approve those items before going to the Committee for final approval.

As usual we will be handing out the certificates on Friday after the training. No certificates will be mailed out as this saves on the expenses bore by the council. You will have to be present at the end of class to receive your certificate.

The training for "2024" will be at Lake Lanier on June 6th and 7<sup>th</sup>, 2024  
"2025" Sea Palms

Door prizes were given out.

Emily Ruark made a motion to adjourned, Tawney Bloodsaw seconded it.

**Meeting Adjourned!**

# Council of Magistrate Court Clerks, Inc.

~2024 Register~

<b>01-01-2024</b>	<b>Beginning Balance</b>	<b>\$ 9,178.12</b>
	<b>January Deposits</b>	<b>\$ 630.00</b>
<b>01.08.2024</b>	<b>Check # 1026 VOID</b>	
<b>01.22.2024</b>	<b>Check # 1027 Secretary of State</b>	<b>\$ 40.00</b>
	<b>Balance</b>	<b>\$ 9,768.12</b>
	<b>February Deposits</b>	<b>\$ 780.00</b>
<b>02.27.2024</b>	<b>Debit Card 4-Imprints Clerks Bags &amp; Cups</b>	<b>\$ 2,165.79</b>
	<b>Balance</b>	<b>\$ 8,382.33</b>
	<b>March Deposits</b>	<b>\$ 1,935.00</b>
	<b>Balance</b>	<b>\$ 10,317.33</b>
	<b>April Deposits</b>	<b>\$ .00</b>
	<b>Balance</b>	<b>\$ 10,317.33</b>
	<b>May Deposits</b>	<b>\$ .00</b>
	<b>Balance</b>	<b>\$ 10,317.33</b>
	<b>June Deposits</b>	<b>\$</b>
	<b>Balance</b>	<b>\$</b>
	<b>July Deposits</b>	<b>\$</b>
	<b>August Deposits</b>	<b>\$</b>
	<b>Balance</b>	<b>\$</b>
	<b>September Deposits</b>	<b>\$</b>
	<b>October Deposits</b>	<b>\$</b>
	<b>Balance</b>	<b>\$</b>
	<b>November Deposits</b>	<b>\$</b>
	<b>December Deposits</b>	<b>\$</b>

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# **Transfers to other Counties & Petitions to Review/ New Case Law Update**

Hon. Megan Kinsey

Hon. Megan Kinsey

Judge Megan Kinsey is a Magistrate Judge in Butts County. She also serves as the Current Chair of your magistrate court training council (MCTC).

She had attended Spalding High School, and has extensive experience issuing bonds and special condition bonds since she took the bench in 2016.

So far on Judge Kinsey's bucket list, she has visited 24 out of 63 National Parks!



# 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 between Magistrate Courts

- 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.

Fund Name	Amount
Magistrate Judge's Retirement	\$3.00
Sheriff's Retirement	\$1.00
Civil Filing Fees	\$22.00
Butts Co Law Library	\$3.00
GSCCCA	\$15.00
Sheriff's Service	\$100.00
Towaliga Judicial Circuit ADR Fund	\$10.00
Technology Fee	\$5.00

Total Amount Disbursed: 159.00

Total Amount Received: 159.00

Variance: 0.00

Clerk: Courtney English

## Transfers between Magistrate Courts

- Costs for Transfers Between Magistrate Courts UMCRC 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.

In the Magistrate Court of Butts County State of Georgia

Index for transfer of case number 22-985DS

1. Dispossessory Affidavit filed 11/07/22.
2. Sheriff's Entry of Service for defendant Chasity Dana Walker (Wheeler) and All Others filed 11/21/22.
3. Answer of Defendant filed 11/15/22.
4. Notice of Hearing for 11/29/22
5. Appearance of Counsel submitted 11/15/22.
6. Notice of Leave of Absence, Request for Continuance, and email correspondence dated 11/21/22.
7. Notice of Change of Hearing for 11/30/22.
8. Show Cause Hearing Notice for 12/13/22.
9. Plaintiff's Exhibit 1
10. Plaintiff's Exhibit 2
11. Plaintiff's Exhibit 3
12. Plaintiff's Exhibit 4
13. Copy of Case Law May V. May et al. submitted in court.
14. Defendant's Exhibit 1a
15. Defendant's Exhibit 1b
16. Defendant's Exhibit 2
17. Judgment Granting Writ filed December 14, 2022]
18. Dismissal of Counterclaim filed December 14, 2022
19. Notice of Appeal filed 12/21/22 and \$200.00 in currency for payment of past due rent.
20. Affidavit of Indigency filed 12/21/22.
21. Thumb drive containing Plaintiff's Exhibit 5

I, Megan Kinsey, Magistrate for the Magistrate Court in and for said County, do hereby certify that the within and foregoing contains the true and correct papers as filed in the case of 22-985DS as appears from the records in this office.

Given under my hand seal of said Court this 21st day of December 2022

\_\_\_\_\_  
Megan Kinsey, Magistrate

Certificate of Service-

I, Megan Kinsey, Magistrate for the Magistrate Court in and for said County, do hereby certify I have hand delivered the entire case file for 22-985DS on the 21st Day of December 2022 to the Butts County Clerk of Superior Court.

\_\_\_\_\_  
Megan Kinsey, Magistrate



# Superior and State Court Appellate Act

Judge Megan Kinsey, Magistrate Court of Butts County

[mkinsey@buttscounty.org](mailto:mkinsey@buttscounty.org)



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

## Objectives:



1. Why is there a new appeal process?



2. What is the new appeal process?



3. What are our responsibilities in the new process?

## Superior and State Court Appellate Act HB 916

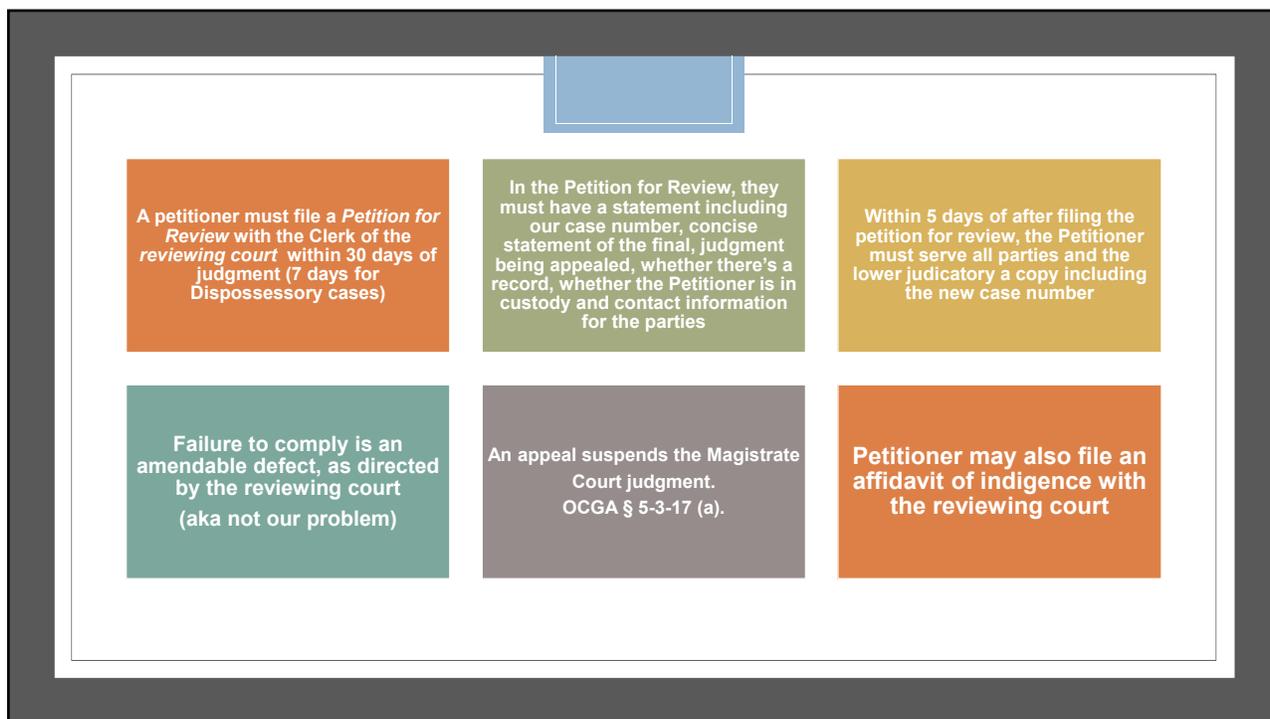
Committee formed because a municipal court judge in Atlanta didn't like being listed as a party in writs of certiorari (effected his credit)

Made for a "single, modern and uniform procedure called a "petition for review"

Replaces- Notice of Appeals, Direct Appeal and Writs of Certiorari

A petition for review from a Magistrate Court final judgement (not default) is a *de novo* proceeding





**Clerk's Responsibilities**

**I'M SORRY I ANNOYED YOU**

**WITH MY EXCELLENT CUSTOMER SERVICE**

- 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 OCGA § 5-3-15 (a).
- Magistrate court must send a bill for unpaid costs to the petitioner who will have 30 days to pay-OCGA § 5-3-16 (b)(1).
- Unless the affidavit of indigence has been filed, the petitioner must obtain a certificate from the Magistrate Court that costs have been paid, and file that with the reviewing court within 5 days after issuance. OCGA § 5-3-16 (f).



## 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?

# 2024 Legislation Relevant to Magistrate Court

Presented by Judge Megan Kinsey  
Presentation by Judge Brendan Murphy

## Agenda

- **HB 1017 – Ga. Squatter Reform Act**
- **HB 404 – Safe at Home Act**
- **HB 1203 – Dispossession set-outs**
- **SB 63 – Unsecured Judicial Release**
- **HB 166 – Constables**
- **SB 508 – Judicial Security**
- **SB 450 – Superior & State Court Appellate Act Clean-up**
- **SB 322-Sheriff's Retirement Fund Increase**
- **HB 1033- Utility Worker Protection Act**



## Squatters Reform Act HB 1017

- Georgia Squatter Reform Act effective upon signing by the Governor
- Adds new O.C.G.A. § 16-7-21.1
- “A person commits the offense of unlawful squatting when he or she enters upon the land or premises of another and resides on such land or premises for any period of time knowingly acting without the knowledge or consent of the owner, rightful occupant, or an authorized representative of the owner. For purposes of this Code section, the term ‘resides’ means to inhabit or live on or within any land or premises.”

## Squatters Reform Act HB 1017

- Law Enforcement issues a citation
- Stating that the accused must present to the head of the issuing law enforcement agency or their designee within 3 business days of receiving the citation for such alleged offense
- Properly executed documentation that authorizes the person’s entry on such land or premises.
  - Such documentation may include a properly executed lease or rental agreement or proof of rental payments.
- If the accused is unable to provide the documentation, such person shall be subject to arrest for unlawful squatting.
- **EDITOR’S NOTE:** O.C.G.A. § 16-7-21.1 (a)(3) provides for arrest and prosecution in this situation, but not the issuance of a writ of possession. In that case, the landowner still needs to file an affidavit with the sheriff, sheriff deputy, constable, marshal, or other POST-certified individual of the county where the land or tenement is located and follow OCGA § 44-11-30 *et seq.* to get possession of the property.

## Squatters Reform Act HB 1017- Criminal Hearing

- (3) Since an inquiry is going to be made and testimony taken, this should be considered a “critical stage” of the prosecution, invoking the accused’s right to counsel and right to remain silent. However, this process is quasi-civil, so an invocation of a trial by jury at this stage should not prohibit the hearing from proceeding.
- (4) The prosecuting attorney should be notified of all hearings.
- (5) The burden of proof is not specified in the statute, but a probable cause standard is likely given the nature of the inquiry and similarity to a preliminary hearing. The initial burden is on the state/victim to show the citation is supported by probable cause. Once that burden is met, Defendant’s documentation would be evaluated in the same way to show the citation is not supported by probable cause.

## Squatters Reform Act HB1017

- If the documents are in order, there is no probable cause to support the citation, and it should be dismissed.
- If the documents are insufficient, such person shall be subject to demand for possession and removal as provided in O.C.G.A. § 44-11-32. The writ should issue instant. O.C.G.A. § 44-11-33.
- This hearing does NOT result in a criminal conviction, and the criminal case now moves forward to trial.
- **EDITOR’S NOTE:** It is unclear if there is any method of review for this decision.

## Squatters Reform Act HB 1017

- Magistrate Court has jurisdiction to conduct non-jury trials for violations of O.C.G.A. § 16-7-21.1.
- EDITOR'S NOTE: Under Magistrate Court's normal misdemeanor jurisdiction, a written waiver of a trial by jury must be obtained before proceeding. O.C.G.A. § 15-10-261; compare O.C.G.A. § 15-10-61 (in ordinance cases, it is up to defendant to make a written demand for a jury trial). Best practices suggest obtaining a written waiver before proceeding. If waiver is not obtained, bind the case to your local State Court (or Superior Court if your county does not have a State Court).

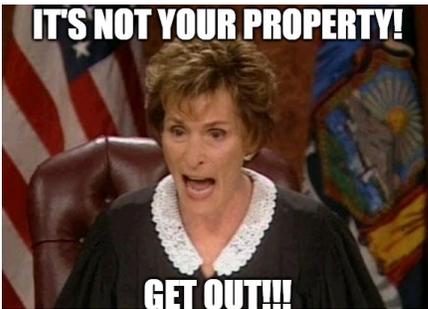
## Squatters Reform Act HB 1017

- If convicted, the Defendant may be punished as follows:
  - (1) By a fine ≤ \$1,000.00 or by confinement in the county or other jail, county correctional institution, or such other places as counties may provide for maintenance of county inmates, for a total term not to exceed 12 months, or both;
  - (2) By confinement under the jurisdiction of the Board of Corrections in a state probation detention center pursuant to O.C.G.A. § 42-8-35.4 for a determinate term of months ≤ 12 months;
  - (3) An additional mandatory fine based on the fair market monthly rental value of the land or premises;

## Squatters Reform Act HB 1017

- (4) Restitution as provided in O.C.G.A. § 17-4-1 *et seq.* Unless the parties have not agreed on the amount of restitution, the court shall set a hearing and make a determination as to the amount.
- ““Damages”” means all special damages which a victim could recover against an offender in a civil action, including a wrongful death action, based on the same act or acts for which the offender is sentenced, except punitive damages and damages for pain and suffering, mental anguish, or loss of consortium. Such special damages shall not be limited by any law which may cap economic damages. Special damages may include the reasonably determined costs of transportation to and from court proceedings related to the prosecution of the crime.” O.C.G.A. § 17-14-2 (2).
- The initial burden of proof is on the state/victim (preponderance of the evidence). The offender bears the burden of proving his/her financial resources (preponderance of the evidence). O.C.G.A. § 17-4-7 (b). When determining the nature and amount of restitution, the Court should consider the factors found in O.C.G.A. § 17-14-10. Written findings of fact are not required. *McCart v. State*, 289 Ga. App. 830, 658 S.E.2d 465 (2008). O.C.G.A. § § 17-10-3 (a); 16-7-21.1 (b).
- Fair market monthly rental value of the land or premises?

## Squatters Reform Act HB 1017-Civil Proceedings



- Amends O.C.G.A. § 44-11-30 *et seq.*
- Plaintiff (personally or through an agent or attorney in fact) presents an affidavit to the sheriff, sheriff deputy, constable, marshal, or other POST-certified individual alleging a right of possession over the disputed property.
- The sheriff exhibits said affidavit to the individual accused of unlawfully occupying the property at least 3 days prior to putting said person out of the property, unless said person swears a counter affidavit. **If so, the sheriff then returns both affidavits to the Magistrate Court clerk's office and status quo at property is maintained pending a hearing.** If not, the sheriff shall turn out such person once 3 days have elapsed, no Writ required.

## Squatters Reform Act HB 1017-Civil Proceedings

- The clerk should notify the plaintiff that court costs are due prior to a hearing being scheduled. Once court costs are received, the case should be scheduled expeditiously, no later than 30 days. Hill v. Sec. Loan & Abstract Co., 35 Ga. App. 93, 132 S.E. 107, 108 (1926); Uniform Magistrate Court Rule 10.
- **EDITOR'S NOTE:** Court costs should be the cost of a normal civil filing, less any service fee.
- If the party in possession submits any counter affidavit or other documentation at trial, upon the Magistrate's determination that the affidavit is not meritorious based on the preponderance of the evidence, the sheriff, sheriff deputy, constable, marshal, or other POST-certified individual shall turn him or her out of possession...as soon as practicable pursuant to a writ of possession.
- If there is a verdict for the plaintiff, the clerk of the court shall issue a writ of possession instanter and a fi. fa. for the costs of the proceeding and any other monetary relief awarded by the court. O.C.G.A. § 44-11-33.
- The court may award the plaintiff the fair market value rent for the duration of the party's occupancy, and other monetary relief found appropriate by the court. O.C.G.A. § 44-11-32 (a)(2-3).

## Squatters Reform Act HB 1017-Civil Proceedings

- The decision is directly appealable to the Georgia Appellate Courts.
- The aggrieved party has 30 days to appeal, initiated in Magistrate Court by filing a notice of appeal. O.C.G.A. § 5-6-38 (a).
- Magistrate clerk must prepare and transmit the record within 20 days of the date of filing a notice of appeal. O.C.G.A. § 5-6-43 (a).
- Notice of appeal acts as supersedeas, but Magistrate Court still retains jurisdiction to entertain a motion for supersedeas bond. "[U]pon motion by the appellee, made in the trial court before or after the appeal is docketed in the appellate court, the trial court shall require that supersedeas bond or other form of security be given with such surety and in such amount as the court may require, conditioned for the satisfaction of the judgment in full, together with costs, interest, and damages for delay if the appeal is found to be frivolous." O.C.G.A. § 5-6-46 (a).

## Safe at Home Act-Fit for Human Habitation HB 404

- Adds new O.C.G.A. § 44-7-13(b)
- Any contract, lease, license, or similar agreement
- Oral or written
- For the use of rental of real property as a dwelling place
- To include a provision that premises is fit for human habitation
- Utility Definition-Amends O.C.G.A. § 44-7-14.1(a)
- Adds “cooling” in the definition of “utilities”
- Remember, misdemeanor offense for landlord to knowingly & willfully suspend furnishing of utilities to a tenant until after any dispossessory proceeding



## Safe at Home Act-Fit for Human Habitation HB 404

- Adds O.C.G.A. § 44-7-30.1
- Security deposit cannot exceed two months' rent
- Amends O.C.G.A. § 44-7-50
- When tenant fails to pay the rent, late fees, utilities, or other charges owed when it becomes due
- If the tenant refuses to pay or fails to deliver possession when so demanded after being provided with a notice to vacate or pay all past due monies within three business days
- Then the owner, agent, attorney at law, or attorney in fact may file dispossessory affidavit Adds O.C.G.A. § 44-7-50(d)
- Demand for Possession – Holding over or tenants at will or sufferance (no 3 day requirement) and/or-
- 3 day notice to Vacate or Pay – Monies owed
- Posted in a sealed envelope
- Conspicuously on the door of the property AND
- Delivered via any additional method(s) in rental agreement

## Safe at Home Act-Fit for Human Habitation HB 404

- Applies to:
- Residential
- Lease agreements
- Entered into or renewed on or after July 1, 2024

## HB 1203: Dispossessory Set-outs



- Amends O.C.G.A. § 44-7-55(e)
- Effective upon approval by the Governor
- Review: Within 30 days of Writ-issuance, landlords must generally apply for Writ-execution
- BUT law enforcement not required to execute within 30 days
- Amends O.C.G.A. § 44-7-55(e)
- If sheriff, sheriff deputy, constable, or marshal is unable to execute Writ within 14 days of landlord's request
- Then landlord entitled to utilize the services of an off-duty sheriff, sheriff deputy, constable, marshal, or other POST-certified individual with authority in the jurisdiction where premises located
- At landlord's sole cost and expense
  - What about the fee already paid to the relevant Agency?
- Landlord shall provide written notice to the relevant Agency of the date & time of the execution of the Writ at least 5 calendar days in advance of such execution in order to permit Agency to note the same within their own records.

## HB 1203: Disposessory Set-outs

- Amends O.C.G.A. § 44-7-55(e)
- Relevant law enforcement Agency shall maintain a list of authorized LEOs and make list available upon request by the landlord
- Relevant law enforcement Agency shall maintain “administrative authority” over any persons executing writs under this subsection
- Effective upon signing by Governor

2024/10/11

11:11 AM

11

## SB 63: Unsecured Judicial Release

- Amends O.C.G.A. 17-6-1(i)
- Removes UJR from definition of bail
- Defines bail as release by secured means, professional bondsmen, or property
- SB 63 still allows UJRs
- Amends O.C.G.A. § 17-6-2(b)
- In misdemeanor cases, sheriffs and constables “shall accept bail in such sufficient amount as may be just and fair for any person...”
- Amends “reasonable” to “sufficient”
- Requires secured means, professional bondman, or property



## SB 63: Unsecured Judicial Release

- Amends O.C.G.A. § 17-6-1(f)(1)
- No bail schedule, local standing order, official policy, or local ordinance shall mandate UJR prior to the accused appearing before a judge of any court of inquiry
- Includes violations of local ordinances
- “Nothing in this paragraph shall prohibit UJR for any person charged under any provision of local or state law not providing for a sentence of confinement in a penal institution or state, county, or local jail.”
- Amends O.C.G.A. § 17-6-12(d)
- “No person charged with a bail restricted offense shall be eligible for release by any judge on an unsecured judicial release...”
- Release only pursuant to secured means, bondsman, or property

## SB 63: Unsecured Judicial Release

- Amends O.C.G.A. § 17-6-12
- Eliminates distinction between felony & misdemeanor for purposes of defining bail restricted offenses
- All bail restricted offenses listed—both their misdemeanor and felony versions—are now prohibited from having a UJR set

## SB 63: Unsecured Judicial Release Added bail restricted offenses:

- Reckless Stunt Driving – 2d or subsequent offense
- Promoting/organizing Drag Races/Laying Drags
- Laying Drags
- Reckless Driving – 2d or subsequent offense
- Fleeing or attempting to elude a police officer
- Obstruction of a law enforcement officer, as described in Code Section 16-10-29
  - Note: O.C.G.A. § 16-10-29 governs false ambulance service requests and § 16-10-24 is Obstruction
- Criminal Trespass § 16-7-21 – 2d or subsequent offense
  - Does not include new unlawful squatting statute O.C.G.A. § 16-7-21.1
- Theft by Taking – 2d or subsequent offense
- Theft by Deception
- Theft by Extortion
- Destruction/removal/concealment/encumbrance/transfer of property subject to security interest
- Bribery
- “Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana, as described in Code Section 16-13-30”
  - Misdemeanor amount of marijuana? O.C.G.A. § 16-13-2?
- Forgery

## SB 63: Unsecured Judicial Release Added bail restricted offenses:

- Exploitation/intimidation of disabled adults, elder persons, and residents or obstruction of an investigation
- Battery
- Voluntary manslaughter
- Cruelty to animals
- Violation of oath by public officer
- Financial Transaction Card Fraud
- Financial Transaction Card Theft
- Identity Fraud
- Racketeering and conspiracy
- Trafficking of persons for labor or sexual servitude
- Failure to appear on certain traffic citations per O.C.G.A. § 40-13-63
- Domestic Terrorism
- Riot and Inciting to Riot
- Unlawful assembly
- Possession of tools for commission of a crime

## Constables-HB 166

- Amends O.C.G.A. § 15-10-101
- No longer required to reside in the county
- ≥ 21 years old
- U.S. citizen
- Registered voter
- H.S. diploma or GED
- Local law may set additional qualification for Chief Constable or constables
- Thanks Judge Cavanaugh!

2024/04/11

Meeting: 4/11/24

11

## Judicial Security-SB 508



- Adds new O.C.G.A. §§ 15-5-110 *et seq.* and 15-10-7(d-e)
- Protects judges' personally identifiable information on an opt-in basis
- Covers elected or appointed judge and his/her spouse
- Effective July 1, 2025
- Within 30 days of Magistrate election, appointment, resignation, retirement, and/or removal
- Provide written notification to the Council of Magistrate Court Judges
- Council shall notify the Administrative Office of the Courts ("AOC")
- AOC shall develop/manage a process for protected persons to submit phone numbers and addresses for inclusion in a database as personally identifiable information to be restricted from publicly available content and public posting or display
- AOC provides written notice to state/local governments to restrict such info
- State/local governments shall generally restrict such info
- Individual may seek injunctive relief; not money damages
- AOC also manages reverse process when a judge leaves

## Superior & State Court Appellate Act Clean up Bill-SB 450

- This presentation covers Magistrate Court appeals
- Effective on signing by Governor
- Adds new O.C.G.A. § 5-3-12(e)
- Consent of all parties shall be required for voluntary dismissal of a petition for review if:
  - Appeal is a de novo proceeding and a counterclaim is pending OR
  - Motion for Relief under O.C.G.A. § 9-15-14 (litigation & attorney's fees) is pending

## Superior & State Court Appellate Act Clean up Bill-SB 450

### **Default Judgments**

- Amends O.C.G.A. § 15-10-41
- Upon reversal of a default judgment or reversal of a refusal to open a default judgment,
- Magistrate Court shall retain jurisdiction to hear the merits of the case *de novo*.

### **Dispossessory Cases**

- Amends O.C.G.A. § 44-7-56
- Tenant pays rent due into registry of reviewing Superior or State Court
- Once appeal is to the Court of Appeals or Supreme Court, then tenant shall pay all sums due into registry of the trial court that rendered the judgment appealed.

## Sheriff's Retirement Fund Increase SB 322

- O.C.G.A. 47-16-61(b) starting from Page 4, line 66 of the bill: increases the tack-on in civil cases for the Sheriffs' Retirement from \$1 to \$5 per case, effective July 1.
- (b) In addition to all other legal costs, the sum of ~~\$1.00~~ \$5.00 shall be charged and collected in each civil action, case, or proceeding, including, without limiting the generality of the foregoing, all adoptions, charters, petitions for review, applications by personal representative for leave to sell or invest, trade name registrations, applications for change of name, and all other proceedings of a civil nature filed in the state courts and magistrate courts of this state in which the sheriff of the superior court also fulfills the function as sheriff of such inferior court. The clerks of such state courts and magistrate courts shall collect such fees, and the fees so collected shall be remitted to the board quarterly or at such other time as the board may provide. It shall be the duty of the clerks of such state courts and magistrate courts to keep accurate records of the amounts due the board under this subsection, and such records may be audited by the board at any time. The sums remitted to the board under this subsection shall be used only for the purposes provided for in this chapter.



## HB 1033- Utility Worker Protection Act

- Adds definition of a utility worker
- 'Utility worker' means any employee of, including any person employed by or under contract with, an organization, entity, or company, whether a state created authority or privately, municipally, county, or cooperatively owned, that provides gas, heat, electricity, water, telecommunications services, sewer services, cable or video services, internet services, or railroad services.
- "(i) Any person who commits the offense of simple assault upon a utility worker while such worker is acting within the course and scope of their employment or is performing 25 official duties at the time of the offense shall, upon conviction thereof, be punished for a 26 misdemeanor of a high and aggravated nature.
- Any person who commits the offense of aggravated assault upon a utility worker while such worker is acting within the course and scope of their employment or is performing official duties shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years



INSTITUTE OF  
CONTINUING JUDICIAL  
EDUCATION  
OF GEORGIA

# **Post Judgement – Interrogatories, Scire Facias, Alias Fifas**

Hon. Jennifer Lewis

Judge Jennifer Lewis completed her undergraduate degrees at the University of Georgia in 1998 majoring in Criminal Justice and Sociology. After graduating from UGA, she began working for the Camden County court system in 1998 when she was hired to serve as a part-time file clerk in the Magistrate Court.

She worked her way through the various positions within the Magistrate Court office and began attending Florida Coastal School of Law in 2002 through their part-time evening program while serving as the Clerk of the Magistrate Court. In 2005, she earned her Juris Doctorate from Florida Coastal School of Law and she is licensed to practice law in the state of Georgia.

Judge Lewis served Camden County from 2005-2008 as an appointed full-time Magistrate Judge and was elected and has served as the Chief Magistrate of Camden County since January 1, 2009.

Judge Lewis and her husband Brian and three boys, Jacob, Joshua and Jackson, reside in Kingsland, Georgia with their sweet puppy Humphrey.

Fun fact: Judge Lewis is a military brat and was born in Hawaii.

# POST JUDGMENT REMEDIES

## Focusing on interrogatories and FiFa's

Chief Magistrate Jennifer Lewis  
Camden County  
912-576-5658 / [jlewis@camdencountyga.gov](mailto:jlewis@camdencountyga.gov)



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



# THREE MAIN COLLECTION REMEDIES

## POST-JUDGMENT GARNISHMENT

- Most common collection remedy
- Can garnish wages and/or bank account
- Pros: Almost always guaranteed to get money
- Cons: Expensive to file; may not have info to file; debtor may quit their job or have pre-existing judgment that has priority

## POST-JUDGMENT INTERROGATORIES

- A series of 7 questions that allows the judgment holder to learn information that can be used to satisfy the debt
- Pros: Inexpensive way to play detective (\$10 filing fee)
- Cons: Debtor may not file answers as required

## RECORDING A FIFA AKA LEVY AND SALE

- A lien that is filed in Superior Court against real property located in the county where it is filed
- Can also be used to levy real property
- Pros: Inexpensive way to record the judgment
- Cons: Debtor may not own any real property; must know that personal property is unencumbered

# GARNISHMENT MAY BE FILED IN YOUR MAGISTRATE COURT IF:

#1 – The Plaintiff has a **valid** judgment

#2 – The **valid** judgment does not exceed \$15,000.00

#3 – The Garnishee is located in your county

## POST JUDGMENT INTERROGATORIES

- Post-judgment discovery is allowed in the magistrate court to aid in satisfying a judgment
- A specific form with seven questions is provided by statute
- The magistrate court can enforce a response to the interrogatories through contempt powers
- An evasive or incomplete answer to any of the questions is treated as considered a failure to answer

## HOW TO FILE INTERROGATORIES

- #1 – Ensure that the plaintiff has a VALID judgment
- Judgment will likely be from your court – you should be able to pull the file and quickly verify.
  - Judgment could be from another court if the unpaid balance on the judgment does not exceed \$15,000.00. Ask for a copy of the judgment for your file.

# HOW TO FILE INTERROGATORIES

## #2 – Collect the filing fee

- If judgment was issued in **your** court, interrogatories can be filed in **your** court for \$10. They will then be served via certified mail or statutory overnight delivery. O.C.G.A. 15-10-50(d)
- If judgment is from **another** court, they are considered a new civil action and must pay the civil filing and service fee. They will then be served on the debtor. O.C.G.A. 15-10-50(c)

# 7 STATUTORY QUESTIONS O.C.G.A. 15-10-50(D)

#1 - List your full name, home phone number, and address, including apartment number and ZIP Code.

#2 - List the name, address, and phone number of your employer(s).

#3 - Describe and state the location of each piece of real estate in which you own any interest.

#4 - Give the name, address, phone number, and a description of the nature of any business venture in which you own any interest.

#5 - List the names, addresses, and phone numbers of all persons who owe money to you and specify the amounts owed.

#6 - List the names and addresses of all banks or savings institutions where you have any sums of money deposited and identify the accounts by number.

#7 - List and give the present location of all items of personal property owned by you that have a value of more than \$100.00.

## REMEMBER.....

- The “goal” for the judgment holder is to get information that they can then use to pursue additional collection remedies.
- In a perfect world, the debtor will **completely** answer the questions and file their answers with the court in a timely manner (30 days from service).
- The judgment holder will then pursue additional collection remedies by filing a garnishment or fifa.



## WHAT HAPPENS WHEN THEY DO NOT FILE COMPLETE, TIMELY ANSWERS?

- The interrogatory form contains a mandate to answer and a warning of the sanctions for contempt for failure to answer
- Evasive or incomplete answers are equivalent to a failure to answer
- The judgment holder can then move to have the court find the defendant in contempt

- The judgment holder will file a Request for Show Cause Hearing
- The court will then schedule a hearing and issue a Rule Nisi notice that explains the alleged contemptuous behavior and the court date, time and location
- The Rule Nisi will be personally served on the defendant
- The parties will then come to court and the burden is on the judgment holder to show a failure to answer OR a failure to answer fully and truthfully

## WHAT HAPPENS AT THE HEARING?

- If failure to answer fully is shown but court is not satisfied that failure is willful, then court should order full answers to be filed at new hearing date, continue case, and serve Debtor with new hearing date.
- If court is satisfied that failure is willful, then court may order debtor imprisoned until debtor answers interrogatories. Court may require that answers be filed with court and reviewed by judge prior to release. Court may not require debtor to pay judgment.

## WHAT IS A FI FA?

- A Writ of Fieri Facias (or Writ of Fi Fa) is a document issued by the Clerk of Magistrate Court for the purpose of recording a lien on the judgment debtor's property.
- It is also a legal instrument by which the sheriff of a county may seize the assets of a judgment debtor. A Writ of Fi Fa is recorded upon the general execution docket (GED), which is maintained by the Clerk of Superior Court in each county.
- A Fi Fa can be recorded in any county where the judgment debtor owns real property or seizable assets.

## HOW TO FILE A FI FA

#1 – Ensure that the plaintiff has a VALID judgment

- Judgment will be from your court – you should be able to pull the file and quickly verify.

#2 – Collect the filing fees (Magistrate & Superior)

\$4.00 for Magistrate Court to issue

\$25.00 for Superior Court to record

#3 – Prepare the Fi Fa and send it to your Superior Court

## WHAT HAPPENS AFTER IT IS RECORDED?

This will vary between counties. In my county the clerk of superior court will record the Fi Fa and then send the original back to my office. My clerk will then make a copy of the Fi Fa for our case file, docket that it was recorded in superior court and then mail the original to the plaintiff. In some counties the clerk of superior court will record the Fi Fa and then immediately mail it to the plaintiff.

NOTE: Either way the **ORIGINAL** will go to the plaintiff

## HOW DOES THE SHERIFF EXECUTE A FI FA?

This process will also vary based upon county and is not an “easy” or free process. See attached example from White County. The sheriff can seize personal property and/or real property and it will be entirely up to the judgment holder to do all of the research ahead of time to ensure that the items are unencumbered (free and clear of any and all liens) before the levy and sale process can occur. They can also take the Fi Fa to the Department of Revenue Motor Vehicle Division to determine if the defendant has any vehicles registered in their name.

## LEVY AGAINST PERSONAL PROPERTY

There are a variety of different fees involved in order for the sheriff to execute a Fi Fa. They can include:

- Costs for legal advertisements in the newspaper
- Wrecker and wrecker storage fees if a vehicle is seized
- Storage fees associated with holding the property prior to the sale
- Labor and transportation costs associated with the seizure

## LEVY AGAINST REAL PROPERTY

This process will also vary based upon county and is not an “easy” or free process. Real property is typically seized as a last resort and only if there is not sufficient personal property to seize. Notice will then run in the local newspaper and the property will be sold at a Sheriff's Sale.

- Keep in mind that a judgment holder will be working directly with the sheriff's office if they want to execute a Fi Fa and have property seized.
- The court DOES NOT get involved with this part of the process.
- Kindly direct anyone that has questions to your sheriff's office. Many sheriff's offices have handouts and/or materials available online that explain the process.
- I have included an example from White County in your materials.

## WHAT IN THE WORLD IS A NULLA BONA?

A Fi Fa will automatically expire after seven years from the date of the filing with the Superior Court Clerks office. But, what if the judgment still has not been satisfied? A judgment holder can renew their Fi Fa by requesting a Nulla Bona from the Sheriff's Office. Nulla Bona means that there are "no goods" that can be seized to satisfy the judgment. The sheriff's office will place a Nulla Bona stamp on the judgment and then the superior court clerk will re-record the Fi Fa marked Nulla Bona on the GED. The renewed judgment is good for another seven years.

## WHAT HAPPENS IF THE ORIGINAL FI FA IS LOST?

Remember earlier when I said that the ORIGINAL Fi Fa is given to the plaintiff? It is VERY IMPORTANT that they put it in a safe place. They will not be able to execute, cancel or renew the document without the ORIGINAL. If the original is lost, they can petition the court to have an Alias Fi Fa issued. When preparing the Alias Fi Fa, you will date it the same date as the original and mark the top of the document with "ALIAS." It will then be recorded on the GED by the clerk of superior court.

## **YAY!!! I COLLECTED MY JUDGMENT! NOW WHAT DO I DO?**

Duties of judgment creditor: Upon payment of the entire debt upon which a judgment or Fi Fa has been issued, the judgment creditor shall timely (within 60 days) direct the clerk(s) of the appropriate court(s) in writing to: (1) cancel the writ of Fi Fa, if a writ was issued; (2) mark the judgment satisfied. Failure to timely comply may subject the judgment creditor to monetary damages, O.C.G.A 9-13-80.



## OFFICE OF SHERIFF WHITE COUNTY, GEORGIA

**Sheriff Rick Kelley**

1210 Hulsey Road  
Cleveland, Georgia 30528

**ADMINISTRATION**

706-865-6370  
706-865-6977 (FAX)

**DETENTION CENTER**

706-865-5177  
706-865-3037 (FAX)

## Writ of Fieri Facias & the Process of Levying on Property

### *Writ of Fieri Facias*

A Writ of Fieri Facias or Fi-Fa is a writ of execution obtained by the plaintiff after a judgment is granted on their behalf through a legal action for debt or damages. A Fi-Fa gives the Sheriff the legal authority to collect a judgement by way of either a demand for money or levy. A “levy” is a legal seizure of property to satisfy a debt. Keep in mind that the White County Sheriff’s Office does not have the authority to collect on a judgement until it is converted into a Fi-Fa. This can be done through the White County Clerk of Courts.

### *Fi-Fa Information for the Plaintiff*

The White County Sheriff’s Office will make a 10-day money demand on the defendant either in person or by mail. If the defendant says they cannot or will not pay, the Sheriff’s Office will return the original Fi-Fa to the plaintiff with the results of the money demand.

It is the Plaintiff’s responsibility to provide the Sheriff’s Office with any known assets of the defendant to be seized. The Plaintiff can take their original Fi-Fa to the Department of Motor Vehicles in Hapeville, Ga and that agency will provide a printout of any vehicle(s) owned by the Defendant and/or corporation (if applicable). These vehicles, personal or real properties must be unencumbered (no security interest, no UCC filing, no secured debt, no liens etc.).

Once the Plaintiff has identified any assets, he/she must:

- Provide the Sheriff’s Office a letter requesting the levy with a full description of these assets and the address in which the levy is to take place.
- Either provide a printout from the Motor Vehicle Division showing the vehicles owned by the defendant, or a letter certifying a UCC search was completed and that there are no liens on the assets to be levied upon.



## OFFICE OF SHERIFF WHITE COUNTY, GEORGIA

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**DETENTION CENTER**

706-865-5177  
706-865-3037 (FAX)

Prior to levying, the Plaintiff must pay specified fees to include but not limited to:

- Legal advertising in the White County News for four weeks
- Wrecker and wrecker storage lot fees (for vehicle seizure)
- Storage fees at a secured storage facility approved by the White County Sheriff's Office and located in White County if appropriate
- Labor and transportation cost for the seizure of the property to be levied upon, if applicable

These fees must be paid by the Plaintiff before levying.

### *Real Property Levy*

Requirements for a Real Property Levy:

- A request in writing to the White County Sheriff's Office of the property to be levied upon and sold - to include an address and complete legal description (metes and bounds) of the property. In addition, the request must include a statement that there is either no personal property to be levied upon to satisfy the judgement or that there is insufficient personal property found to be levied upon to satisfy the judgement.
- The White County Sheriff's Office must have the original Fi-Fa. Copies will not be accepted. The Fi-Fa must be recorded in the county where the judgement originated. If the judgement originated outside of White County, the judgement must also be recorded in White County.
- A certificate of Title, certified by an attorney authorized to practice law in the State of Georgia. The Certificate of Title must be less than 30 days old and the name of the current owner of the property must be shown. Also, it must include a list of all lien holders with their name(s).
- A certified copy of the warranty deed for the property.
- A check for the levy fee in the amount of \$50 to be made out to the White County Sheriff's Office.
- The cost and running of the newspaper ad will be the responsibility of the Plaintiff listed on the Fi-Fa
- Any outstanding mortgages and/or liens must be paid off before levying. The Plaintiff must provide proof to the Sheriff's Office that this has been completed.



## OFFICE OF SHERIFF WHITE COUNTY, GEORGIA

**Sheriff Rick Kelley**

1210 Hulsey Road  
Cleveland, Georgia 30528

**ADMINISTRATION**

706-865-6370  
706-865-6977 (FAX)

**DETENTION CENTER**

706-865-5177  
706-865-3037 (FAX)

### *Post Levy Procedures*

Upon completion of the levy, items seized are to be transported by the Plaintiff to an approved storage facility within White County. The Plaintiff must provide enough manpower and trucks to effectively move the seized items safely to the storage location. The storage location should be pre-paid and in the name of the Sheriff – not the Plaintiff. The Plaintiff is financially responsible for not only the transportation of seized items but for the storage location as well – up until the day of the sale.

The seized property will then be advertised for four consecutive weeks in the White County News Paper and subsequently sold on the first Tuesday of the month between 10am – 4pm. If the first Tuesday of the month falls on New Year's Day or Independence Day, the sale will commence on Wednesday between 10am – 4pm.

Any fees incurred during the FiFa process that were not satisfied before the levy are to be paid prior to the sale.

\*\*\*The Sheriff's Office will not levy on more property than is necessary to satisfy the judgment.

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INSTITUTE OF  
CONTINUING JUDICIAL  
EDUCATION  
OF GEORGIA

# **Dormant Judgments – Reviving, Foreign & Scire Facias**

Hon. Jennifer Lewis

Judge Jennifer Lewis completed her undergraduate degrees at the University of Georgia in 1998 majoring in Criminal Justice and Sociology. After graduating from UGA, she began working for the Camden County court system in 1998 when she was hired to serve as a part-time file clerk in the Magistrate Court.

She worked her way through the various positions within the Magistrate Court office and began attending Florida Coastal School of Law in 2002 through their part-time evening program while serving as the Clerk of the Magistrate Court. In 2005, she earned her Juris Doctorate from Florida Coastal School of Law and she is licensed to practice law in the state of Georgia.

Judge Lewis served Camden County from 2005-2008 as an appointed full-time Magistrate Judge and was elected and has served as the Chief Magistrate of Camden County since January 1, 2009.

Judge Lewis and her husband Brian and three boys, Jacob, Joshua and Jackson, reside in Kingsland, Georgia with their sweet puppy Humphrey.

Fun fact: Judge Lewis is a military brat and was born in Hawaii.

# What is a Foreign Judgment and what can I do to revive a Dormant Judgment?

Judge Jennifer Lewis

Chief Magistrate

Camden County

912-576-5658 / [jlewis@co.camden.ga.us](mailto:jlewis@co.camden.ga.us)

## There are two types of Foreign Judgments

- Those that are issued in another country or nation
- The Foreign Money Judgments Recognition Act applies
- Those that are issued in another states court in the United States
- The Uniform Enforcement of Foreign Judgments Law applies
- The UEFJA has been formally adopted by 48 states and the District of Columbia
  - The holdouts are California and Vermont

First – the creditor must have a valid final judgment in another state.

Next – the creditor will need an authenticated copy of that judgment. See Example 3

The authenticated copy of the judgment will come from the court where the judgment was rendered and will have an attestation by the Clerk of the issuing court with the Seal of the Court (if one exists). It will also have a certification from a Judge of the issuing court that that Attestation is in proper form.

**NOTE: THIS IS NOT THE SAME AS A CERTIFIED COPY OF THE JUDGMENT**

## What needs to be filed with the Georgia court?

- (1) Affidavit of Filing a Foreign Judgment
  - OCGA 9-12-133(a) See Example 1
- (2) Notice of Filing Foreign Judgment
  - OCGA 9-12-133(b) See Example 2
- (3) Authenticated Copy of the Foreign Judgment
  - OCGA 9-12-132 See Example 3
- (4) Your normal filing fee for a civil case
- (5) Note: Venue is in the county where the judgment debtor resides

## What do I do now?

The clerk **shall promptly mail notice of the filing** of the foreign judgment to the judgment debtor at the address given and shall note the mailing the in docket.

NOTE: OCGA 9-12-133(b) says “mail.” It does not say mail via certified return receipt or to personally serve the judgment debtor.

## What can the judgment debtor file?

Remember – the case is **NOT** being re-tried in the state of Georgia. We are simply trying to make a determination of whether or not the judgment should be given full faith and credit in the state of Georgia. They will not be filing a traditional “Answer” to the claim.

The judgment debtor must file a Motion for Stay with the court and show cause why the judgement should not be domesticated. For example, they may show the court that an appeal from the foreign judgment is pending or will be taken.

## What should you do with the file after mailing notice to the judgment debtor?

I suggest that you hold the file on your desk, or in your holding file to track the case. If after 30 days there has not been a Motion to Stay that has been filed, the judgment can be formally domesticated by the court. See Example 4

## What can the judgment creditor do with a domesticated judgment?

It's time for the to start the collection process. They can record the judgment through a FiFa, they can serve interrogatories, they can file garnishments, etc.

## What if someone requests an Exemplified Copy of a judgment rendered by my court?

- Make a copy of the judgment from the file
- Prepare an Exemplification Order See Example 5
- The clerk will sign in two areas and the judge will sign in one area and affix their court seals
- The fee is \$2.50

## Where can I find information on Foreign Judgments?

OCGA § 9-12-130 through OCGA § 9-12-138

## What is a Dormant Judgment?

- Georgia judgments are good for seven (7) years. If not renewed prior to the seventh year, the judgment will become DORMANT and will be unenforceable.
- However, Georgia does have a provision that will allow a creditor an additional three (3) years to file a judgment renewal action – known as a scire facias OR a by a new action to revive.
- If no renewal action is filed between years seven (7) and ten (10), the judgment will be forever time barred and void.
- A judgment can be renewed as many times as necessary to collect and each renewal extends the judgment life by another seven (7) years.

## What is a Petition for Scire Facias?

It is a request for a judicial writ, filed by the holder of a dormant judgment requiring the person or person against whom it is brought to show cause why the judgment should not be revived. It is not an original action, but is the continuation of the action in which the judgment was obtained.

See Example 6

## What is the writ of scire facias?

This is a writ, issued by the clerk where the judgment was obtained which requires the judgment debtor to appear and show cause why the dormant judgment should not be revived. It shall be served by the sheriff 20 days before the court date. Personal service is required.

See Example 7

## What happens now?

It will be up to the judgment debtor to show sufficient cause why the judgment should not be revived. Failure to do so will result in the judge signing the Order Reviving Dormant Judgment.

See Example 8

## What can the judgment creditor do with a revived judgment?

It's time for the to start the collection process. They can record the judgment through a FiFa, they can serve interrogatories, they can file garnishments, etc.

# Where can I find information on Foreign Judgments?

OCGA § 9-12-60 through OCGA § 9-12-68

**IN THE MAGISTRATE COURT OF \_\_\_\_\_ COUNTY, GEORGIA**

DATE FILED \_\_\_\_\_

CASE NO. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Plaintiff's/Judgment Creditor's Name & Address

vs.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant's/ Judgment Debtor's Name & Address

---

**AFFIDAVIT TO DOMESTICATE FOREIGN JUDGMENT**

COMES NOW the Plaintiff or Plaintiff's Attorney, and shows this Court in compliance with the law as regards to the Uniform Enforcement of Foreign Judgments Act pursuant to the provisions of O.C.G.A. § 9-12-133 that the name and last known address of the judgment debtor is as follows:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

The Plaintiff attaches hereto a properly Authenticated Copy of the Foreign Judgment which was previously obtained against the Defendant in the State of \_\_\_\_\_ and requests that the Clerk mail notice of this to the Judgment Debtor at the address shown above. Plaintiff accordingly requests that upon proper mailing this judgment be Domesticated herein and be made the Judgment of this Court.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

\_\_\_\_\_  
 Plaintiff  Plaintiff's Attorney

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Deputy Clerk/ Notary Public

**IN THE MAGISTRATE COURT OF \_\_\_\_\_ COUNTY, GEORGIA**

DATE FILED \_\_\_\_\_

CASE NO. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff's/Judgment Creditor's Name & Address

vs.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Defendant's/ Judgment Debtor's Name & Address

---

**NOTICE OF FILING FOREIGN JUDGMENT**

To the above-named Defendant: The attached herewith in compliance with the law as regards to the Uniform Enforcement of Foreign Judgments Law pursuant to the provisions of OCGA § 9-12-130 through § 9-12-138.

You are hereby notified that the above-named Plaintiff has filed with the above Court the attached Affidavit to Domesticated Foreign Judgment and an Authenticated Copy of the Foreign Judgment.

The Judgment Debtor shall file a Motion with the Court and show cause why the Foreign Judgment should not be Domesticated within thirty (30) days of the mailing of this notice.

You are further notified that no execution or other process for enforcement of this Foreign Judgment shall be issued until thirty (30) days after the date the Affidavit to Domesticated Foreign Judgment is mailed to the Defendant.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

\_\_\_\_\_  
Deputy Clerk/ Notary Public

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY  
STATE OF \_\_\_\_\_

AUTHENTICATED COPY OF THE FOREIGN JUDGMENT  
CASE NO. \_\_\_\_\_

I, \_\_\_\_\_, Clerk of the \_\_\_\_\_ Court of \_\_\_\_\_  
County, do hereby certify that I have compared the foregoing copy of Judgment \$ \_\_\_\_\_ principal and \$ \_\_\_\_\_  
\_\_\_\_\_ cost of court with the original record thereof, now remaining in this Court, and the same is a correct  
transcript therefrom, and the whole of such original record, and that said court of Competent Jurisdiction.

In Witness Whereof, I have hereunto set my hand with seal,

This \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Clerk of the \_\_\_\_\_ Court of \_\_\_\_\_  
County; State of \_\_\_\_\_

STATE OF \_\_\_\_\_  
\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, do certify that I am Judge of the \_\_\_\_\_ Court of said  
County, and that I am the Presiding Judge of said court and that the above attestation, subscribed by the Clerk of  
said court, is sufficient and in due form of law, and that the signature thereto is genuine.

Witness my hand and official signature, this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Judge of the \_\_\_\_\_ Court of \_\_\_\_\_  
County; State of \_\_\_\_\_

STATE OF \_\_\_\_\_  
\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Clerk of the \_\_\_\_\_ Court in and for this county, hereby  
certify that the above attestation of Honorable \_\_\_\_\_, Judge of the \_\_\_\_\_ Court  
of \_\_\_\_\_ County, State of \_\_\_\_\_, his genuine signature, and that he is Judge of said  
court, and said certificate is in due form of law.

Given under my hand, with seal, this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Clerk of the \_\_\_\_\_ Court of \_\_\_\_\_  
County; State of \_\_\_\_\_

**IN THE MAGISTRATE COURT OF \_\_\_\_\_ COUNTY, GEORGIA**

DATE FILED \_\_\_\_\_

CASE NO. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff's/Judgment Creditor's Name & Address

vs.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Defendant's/ Judgment Debtor's Name & Address

---

---

**ORDER TO DOMESTICATE FOREIGN JUDGMENT**

It appearing to the Court that the Plaintiff or Plaintiff's Attorney herein, has properly complied with the provisions of the Uniform Enforcement of Judgments Act and has specifically complied with the requirements of O.C.G.A. § 9-12-133, it is therefore ORDERED AND ADJUDGED that the properly Authenticated Judgment of the State of \_\_\_\_\_ filed herein now be made the Judgment of this Court and that the Plaintiff now have Judgment of the Defendant in the amount of \$ \_\_\_\_\_ principal, and \$ \_\_\_\_\_ costs of court.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

\_\_\_\_\_  
Judge of the Magistrate Court

# Example 1 - Real Case

IN THE MAGISTRATE COURT OF CAMDEN COUNTY, GEORGIA

DISCOVER BANK )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MICHELLE MYLES )  
 Defendant(s). )

CASE NO: 23-745CS

AFFIDAVIT OF FILING FOREIGN JUDGMENT

FILED  
 2023 MAY 19 PM 2:18  
 CAMDEN COUNTY  
 MAGISTRATE COURT

State of Georgia)  
 ss.  
 County of Fulton)

COMES NOW the Judgment Creditor, Discover Bank, who after first being duly sworn, deposes and states as follows:

1.

This Affidavit is made by me to be used pursuant to O.C.G.A. Sec. 9-12-133 and for all other purposes allowed under Georgia law. The information contained in this Affidavit is true and correct, and is based upon my personal knowledge and information. I am over 18 years of age and I am competent to testify as to the matters contained in this affidavit.

2.

I am the Attorney for Discover Bank (the "Judgment Creditor").

3.

The name of the Judgment Creditor is Discover Bank, whose last known address is 6500 New Albany Road East, New Albany, OH 43054.

4.

The name of the Judgment Debtor is MICHELLE MYLES, PO BOX 803 , KINGSLAND, Georgia 315480803.

5.

The State of North Carolina, where the judgment originated, has adopted and is currently under effect, the Uniform Enforcement of Foreign Judgment Act in substantially the same form as Georgia's law pursuant to O.C.G.A. Sec. 9-12-138.

6.

Attached hereto and incorporated herein by reference is a copy of the Notice of Filing Foreign Judgment which was mailed to the Judgment Debtor on April 19, 2023, by depositing same in the United States Mail in a properly addressed envelope with adequate postage thereon to assure delivery.

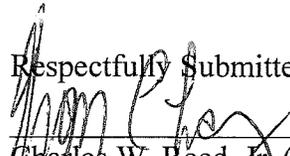
7.

Attached hereto and incorporated herein by reference is an exemplified copy of the Judgment from the State of North Carolina rendered in favor of the Judgment-Creditor against Judgment-Debtor.

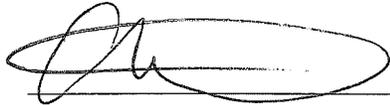
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

FURTHER AFFIANT SAYEHT NOT

This 27<sup>th</sup> day of April, 2023.

Respectfully Submitted,  
  
\_\_\_\_\_  
Charles W. Reed, Jr (343942)  
Katie Tubbs (349040)  
Richard McCarthy (704023))  
Karen E. Lahey (155255)  
Justin M. Pawluk (394705)  
Edmund Harrington (432187)  
Attorney(s) for Plaintiff  
Nathan & Nathan, P.C.  
P.O. Box 1715  
Birmingham, AL 35201-1715  
(205) 323-5400

Subscribed and sworn to before me this 27 day of April, 2023.

  
\_\_\_\_\_

Notary Public



IN THE MAGISTRATE COURT OF CAMDEN COUNTY, GEORGIA

DISCOVER BANK

Plaintiff,

vs.

MICHELLE MYLES

Defendant(s).

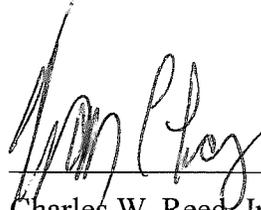
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)

CASE NO: 23-745CS

CERTIFICATE OF SERVICE

I hereby certify that I have on April 19, 2023 served a copy of the foregoing Filing of Foreign Judgment upon the Judgment Debtor in this action by depositing said copy in the United State Mail, via certified mail, return receipt requested, and via first class mail, postage prepaid and addressed as follows:

MICHELLE MYLES  
PO BOX 803  
KINGSLAND, GA 315480803



Charles W. Reed, Jr. (343942)  
Katie Tubbs (349040)  
Richard McCarthy (704023))  
Karen E. Lahey (155255)  
Justin M. Pawluk (394705)  
Edmund Harrington (432187)  
Attorney(s) for Plaintiff  
Nathan & Nathan, P.C.  
P.O. Box 1715  
Birmingham, AL 35201-1715  
(205) 323-5400

# Example 2 - Real Case

IN THE MAGISTRATE COURT OF CAMDEN COUNTY, GEORGIA

DISCOVER BANK  
Plaintiff,

vs.

MICHELLE MYLES  
Defendant(s).

)  
)  
)  
)  
)  
)  
)

CASE NO: 23-745CS

CAMDEN COUNTY  
MAGISTRATE COURT

FILED  
2023 MAY 19 PM 2:15

## NOTICE OF FILING FOREIGN JUDGMENT

COMES NOW, Discover Bank, Judgment Creditor herein, and pursuant to O.C.G.A. Sec. 9-12-133, hereby notifies MICHELLE MYLES, Judgment Debtor, of the following:

1.

On or about December 1, 2020, a judgment was obtained by the Judgment Creditor against the Judgment Debtor in the Guilford County General Court of Justice District Court Division, State of North Carolina in the total sum of \$11,804.29. An exemplified copy of said judgment is attached hereto as Exhibit "A" and incorporated by reference.

2.

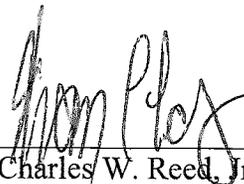
The name of the Judgment Creditor is Discover Bank whose address is 6500 New Albany Road East, New Albany, OH 43054.

3.

The name of the attorneys for the Judgment Creditor in the State of Georgia is Charles W. Reed, Jr., Katie L. Tubbs, Richard, McCarthy, Justin M. Pawluk, Karen E. Lahey, Edmund L. Harrington of the law firm Nathan & Nathan, P.C. whose address is 2215 1st Avenue S, Birmingham, AL 35233.

4.

The Judgment Creditor has caused the aforesaid judgment to be filed with the Magistrate Court of Camden County, Georgia, on April 19, 2023.



Charles W. Reed, Jr. (343942)  
Katie Tubbs (349040)  
Richard McCarthy (704023))  
Karen E. Lahey (155255)

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

Justin M. Pawluk (394705)  
Edmund Harrington (432187)  
Attorney(s) for Plaintiff  
Nathan & Nathan, P.C.  
P.O. Box 1715  
Birmingham, AL 35201-1715  
(205) 323-5400

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

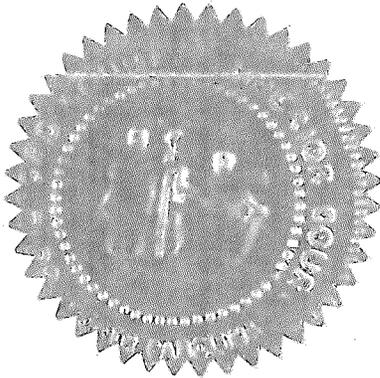
# Example 3 - Real case

<b>STATE OF NORTH CAROLINA</b> In The General Court Of Justice  <u>GUILFORD</u> County	<b>EXEMPLIFICATION</b>  <div style="text-align: right;">28 U.S.C. 1738</div>
---	--

As a Clerk of the Superior Court of this County, State of North Carolina, I certify that the attached copies of the documents described below are true and accurate copies of the originals now on file in this office.

*Number And Description Of Attached Documents*

1 page from file 20CVD4159 consisting of the a Default Judgment between the following parties: Discover Bank vs. Michelle Myles.

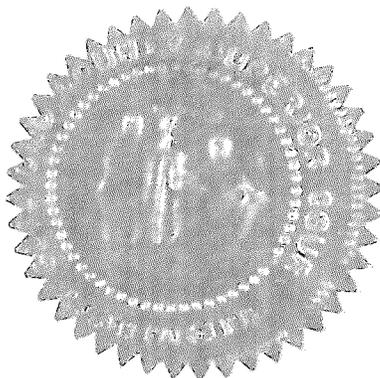


Date	10/08/2021
Clerk Of Superior Court	Lisa Johnson-Tonkins
Name Of Undersigned Clerk (type or print)	Evelyn Garner
Signature	
<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	

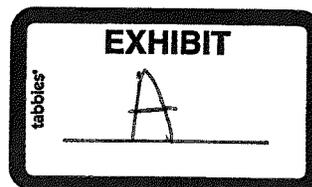
As a Judge of the General Court of Justice, State of North Carolina, I certify that the signature appearing above is that of the Clerk, Assistant Clerk, or Deputy Clerk of Superior Court for this County, who is duly sworn. I further certify that the seal affixed to the certificate appearing above is the seal of this Court and that it has been used here in good form by the proper officer.

Date	10/8/21
Signature Of Judge	
Name Of Judge (type or print)	Angela B. Fox

As a Clerk of the Superior Court of this County, State of North Carolina, I certify that the signature appearing above is that of a duly sworn Judge of the General Court of Justice, State of North Carolina.



Date	10/08/2021
Clerk Of Superior Court	Lisa Johnson-Tonkins
Name Of Undersigned Clerk (type or print)	Phillip Wheeler
Signature	
<input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	



B\_S/N2000470/T024A  
NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

GUILFORD COUNTY

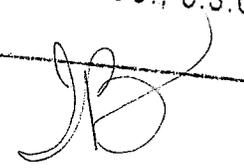
DISTRICT COURT DIVISION

FILE NO. 20 CVD 4159

DISCOVER BANK  
Plaintiff

vs.

DEFAULT JUDGMENT  
(DEFJ)

FILED  
2020 DEC -1 P 3:43  
GUILFORD CO., C.S.C  
BY 

MICHELLE MYLES  
Defendant

That whereas it has been made to appear to the undersigned Clerk of Superior Court of Guilford County, that a complaint, verified or upon affidavit, was filed and summons was issued in this action, and said summons, together with a copy of said complaint, was served on the Defendant;

And it further appearing to the Court that no answer, motion to dismiss, or pleading has been filed by the Defendant, and that no extension of time to file pleadings has been granted, and that the time for pleading or otherwise defending expired;

And it further appearing to the Court that the default of Defendant has been entered according to the Rules of Civil Procedure. Upon the request of the Plaintiff, Judgment is hereby entered against the Defendant in pursuance of the prayer of said verified complaint or affidavit.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that the Plaintiff have and recover Judgment against the Defendant in the amount of \$11,804.29, with interest thereon at the statutory post judgment rate from the date of judgment until paid in full and court costs in the amount of \$201.65.

This the 1st day of December, 2020.

  
Assistant Clerk of Superior Court

DEC 07 2020



AW 174  
TMT1

# Example 4 - Real case

## IN THE MAGISTRATE COURT OF CAMDEN COUNTY STATE OF GEORGIA

AD FILED  
2023 JUL 17 AM 9:26  
CAMDEN COUNTY  
MAGISTRATE COURT

DISCOVER BANK,

Plaintiff,

v

MICHELLE MYLES,

Defendant.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

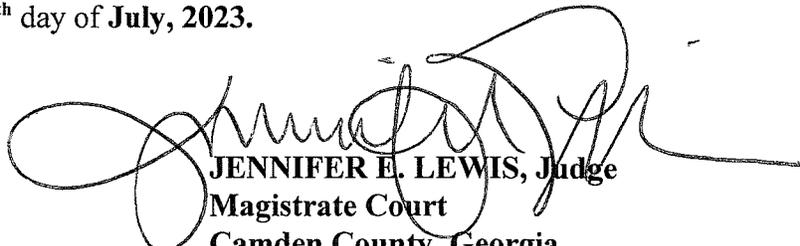
Civil Action No. 23-745CS

### ORDER TO DOMESTICATE FOREIGN JUDGMENT

It appearing to the Court that the Plaintiff herein, has properly complied with the provisions of the Uniform Enforcement of Judgments Law and has specifically complied with the requirements of O.C.G.A. § 9-12-133, it is therefore

ORDERED AND ADJUDGED that the properly authenticated judgment of the State of North Carolina filed herein now be made the judgment of this Court and that the Plaintiff now have judgment of the Defendant in the amount of \$11,804.29 principal and \$201.65 court costs.

SO ORDERED this 15<sup>th</sup> day of July, 2023.

  
JENNIFER E. LEWIS, Judge  
Magistrate Court  
Camden County, Georgia

D: PL  
I: AD  
S: AD

IN THE MAGISTRATE COURT OF \_\_\_\_\_ COUNTY, GEORGIA

DATE FILED \_\_\_\_\_

CASE NO. \_\_\_\_\_

EXEMPLIFICATION

I, \_\_\_\_\_, Clerk of the Magistrate Court of \_\_\_\_\_ County, do hereby certify that I have compared the foregoing copy of Judgment \$ \_\_\_\_\_ principal and \$ \_\_\_\_\_ cost of court with the original record thereof, now remaining in this Court, and the same is a correct transcript therefrom, and the whole of such original record, and that said court of Competent Jurisdiction.

In Witness Whereof, I have hereunto set my hand with seal

This \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Clerk of the Magistrate Court of \_\_\_\_\_ County  
State of Georgia

STATE OF GEORGIA  
\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, do certify that I am Chief Judge of the Magistrate Court of said County, and that I am the Presiding Judge of said court and that the above attestation, subscribed by the Clerk of said court, is sufficient and in due form of law, and that the signature thereto is genuine.

Witness my hand and official signature, this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Chief Judge of the Magistrate Court of \_\_\_\_\_  
County; State of Georgia

STATE OF GEORGIA  
\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Clerk of the Magistrate Court in and for this county, hereby certify that the above attestation of Honorable \_\_\_\_\_, Chief Judge of the Magistrate Court of \_\_\_\_\_ County, State of Georgia, his genuine signature, and that he is Judge of said court, and said certificate is in due form of law.

Given under my hand, with seal, this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Clerk of the Magistrate Court of \_\_\_\_\_ County  
State of Georgia

IN THE MAGISTRATE COURT OF \_\_\_\_\_ COUNTY, GEORGIA

DATE FILED \_\_\_\_\_

CASE NO. \_\_\_\_\_

**SCIRE FACIAS TO REVIVE  
DORMANT JUDGMENT**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff's Name & Address

vs.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Defendant's Name & Address

---

**PETITION FOR SCIRE FACIAS TO REVIVE DORMANT JUDGMENT**

Comes now \_\_\_\_\_, plaintiff in the above-styled action and shows the Court the following:

On \_\_\_\_\_ this court granted to Plaintiff a judgment against Defendant, a copy of which is attached hereto as Exhibit "A".

A fi.fa., if issued on said judgment, a copy is attached hereto as Exhibit "B".

The last entry of "Nulla bona" on said fi.fa. is more than seven years old, and the said judgment upon which said fi.fa. is based is therefore dormant. None of the debt for which said judgment was rendered and said fi.fa. issued has ever been paid. (If no fi.fa. was issued or no Nulla bona entry made, then modify this paragraph to say "The judgment entered in this case is more than seven years old and is therefore dormant." If part of the debt has been paid, then say "amount of said judgment has been paid but amount of said judgment has not been paid and amount remains outstanding and unpaid".)

Plaintiff further shows that the Defendant resides at (address) in the State of Georgia.

Wherefore, Plaintiff prays that scire facias issue directed to all and singular the Sheriffs of this State, and that the same be served as provided in O.C.G.A. 9-11-63 upon the said Defendant requiring him/her to show cause at term of said court (or put in a specific date rather than term) why said judgment should not be revived.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 Plaintiff  Plaintiff's Attorney

IN THE MAGISTRATE COURT OF \_\_\_\_\_ COUNTY, GEORGIA

DATE FILED \_\_\_\_\_

CASE NO. \_\_\_\_\_

**SCIRE FACIAS TO REVIVE  
DORMANT JUDGMENT**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff's Name & Address

vs.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Defendant's Name & Address

---

**WRIT OF SCIRE FACIAS**

TO ALL AND SINGULAR THE SHERIFFS OF SAID STATE:

The defendant \_\_\_\_\_, is hereby required, personally, or by attorney, to be and appear in this court, to be held in and for said County, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to show cause why a certain Judgment rendered in favor of the Plaintiff, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the regular term of court against the said Defendant for the sum of \$\_\_\_\_\_ as principal, \$\_\_\_\_\_ as interest to date of judgment, \$\_\_\_\_\_ as attorney's fees, and \$\_\_\_\_\_ as costs of court, should not be Revived as provided by O.C.G.A. 9-12-61 et seq., as in default of sufficient cause the court will proceed as to justice shall appertain.

Witness the Honorable Judge of said court.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk

---

This to be served by the sheriff 20 days before the court date. PERSONAL SERVICE IS REQUIRED.

IN THE MAGISTRATE COURT OF \_\_\_\_\_ COUNTY, GEORGIA

DATE FILED \_\_\_\_\_

CASE NO. \_\_\_\_\_

**SCIRE FACIAS TO REVIVE  
DORMANT JUDGMENT**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff's Name & Address

vs.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Defendant's Name & Address

---

**ORDER REVIVING DORMANT JUDGMENT**

Judgment rendered the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the regular term of the Magistrate Court of \_\_\_\_\_ County, \$ \_\_\_\_\_ as principal; \$ \_\_\_\_\_ as interest to date of judgment. \$ \_\_\_\_\_ as attorney's fees; and \$ \_\_\_\_\_ as costs of court. It appearing to the court in the above stated case that Scire Facias was duly issued and served upon the Defendant in said Judgment named, and no sufficient cause having been shown why said Judgment should not be revived,

It is hereby considered, ORDERED AND ADJUDGED by the court that said Judgment be, and the same is, REVIVED, for the sum of \$ \_\_\_\_\_ as principal, \$ \_\_\_\_\_ as interest to date of judgment, \$ \_\_\_\_\_ as attorney's fees, and \$ \_\_\_\_\_ as costs of court for a total of \$ \_\_\_\_\_, plus future interest as provided by law. Let execution issued hereupon according to the statute in such case made and provided.

ORDERED FURTHER, that plaintiff do have and recover of the said defendant the sum of \$ \_\_\_\_\_, the cost of this proceeding.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Judge of the Magistrate Court

# Example 6 - Real case

## IN THE MAGISTRATE COURT OF CAMDEN COUNTY MAGISTRATE OF GEORGIA

Date Filed 11.5.2015

Reference Case No: 15-1077CS

Case no: 15-1077CS

U.S. BANK N.A., AS TRUSTEE ON BEHALF  
OF MANUFACTURED HOUSING  
CONTRACT SENIOR/ SUBORDINATE  
PASS-THROUGH CERTIFICATE TRUST  
1997-2, BY GREEN TREE SERVICING LLC,  
AS SERVICER,  
*Plaintiff,*

**SCIRE FACIAS TO REVIVE**

**DORMANT JUDGMENT**

vs.  
LESTER T WAINWRIGHT  
*Defendant.*

FILED **RM**  
2023 SEP 25 PM 2:52  
CAMDEN COUNTY  
MAGISTRATE COURT

---

### PETITION FOR SCIRE FACIAS TO REVIVE DORMANT JUDGMENT

Comes now U.S. BANK N.A., AS TRUSTEE ON BEHALF OF MANUFACTURED HOUSING CONTRACT SENIOR/ SUBORDINATE PASS-THROUGH CERTIFICATE TRUST 1997-2, BY GREEN TREE SERVICING LLC, AS SERVICER, plaintiff in the above-styled action, and shows the Court the following:

On November 5, 2015, the Camden County Magistrate Court granted Plaintiff a Default Judgment against Defendant, a copy of which is attached hereto as **Exhibit A**.

The judgment entered in this case is more than seven years old and said judgment is therefore dormant. At this time zero dollars (\$0.00) of said judgment have been paid and \$10,723.32 remains outstanding and unpaid.

Plaintiff further shows that the Defendant resides at 2005 VACUNNA RD., KINGSLAND, GA 31548.

Wherefore, Plaintiff prays that scire facias issue directed to all and singular the sheriffs of this Magistrate, and that the same be served as provided in O.C.G.A. §9-12-63 upon the said Defendant requiring him/her to show cause at term of said court why said judgment should not be revived.

This 12<sup>th</sup> day September, 2023

BROCK & SCOTT, PLLC

Ayanna K. Abrams, Bar # 466513

BROCK & SCOTT, PLLC

Counsel for the Plaintiff

1315 Westbrook Plaza Drive

Winston-Salem, NC 27103

Telephone: (470) 351-4282

Telefax: (336) 354-1588

D: RM  
I: h  
S: \_\_\_\_\_

# EXHIBIT A

**IN THE MAGISTRATE COURT OF CAMDEN COUNTY**  
**STATE OF GEORGIA**

U.S. BANK, N.A. AS TRUSTEE FOR )  
 MANUFACTURED HOUSING CONTRACT )  
 SENIOR/SUBORDINATE PASS- THROUGH )  
 CERTIFICATE TRUST 1997-2 GREEN TREE )  
 SERVICING, LLC, )  
*Plaintiff,* )

**CIVIL ACTION**

Civil Action No. 15-1077CS

vs.

LESTER T WAINWRIGHT,  
*Defendant.*

**ORDER FOR DEFAULT JUDGMENT**

CAME TO BE HEARD, the Plaintiff, upon its Motion for Default Judgment, and it appearing to the Court that:

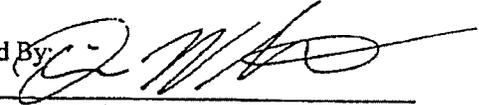
1. The Summons and Complaint have been duly served upon the Defendant as appears of record, and the Court has acquired personal jurisdiction over the Defendant;
2. The time within which the Defendant was to Answer the Complaint has expired, and no Answer to the Complaint has been filed by the Defendant, and the Defendant is therefore in Default pursuant to O.C.G.A. §9-11-55;
3. More than fifteen (15) days has elapsed since the Default of the Defendant, and the Default of the Defendant has not been reopened as a matter of right or by Order of this Court;
4. This civil action is for liquidated damages upon an account, as shown in the Exhibits to the Complaint.
5. The Defendant has not tendered payment in full of the principal and interest claimed within ten (10) days of written notice being served upon such Defendant, and the Plaintiff is accordingly entitled to an award of reasonable attorney's fees pursuant to O.C.G.A. §13-1-11.

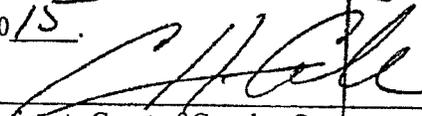
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

Judgment shall be entered in favor of the Plaintiff, and against the Defendant, LESTER T WAINWRIGHT,, as follows:

Amount	\$9,640.29	
Attorney's Fees	\$989.03	15% of principal balance up to \$500; 10% of all amounts above \$500.
Court Costs	\$94.00	
<b>Total Judgment</b>	<b>\$10,723.32</b>	

SO ORDERED, This the 5 day of Nov., 2015.

Presented By:   
 \_\_\_\_\_  
 Matthew C. Dickinson, Bar #537269  
 ✓ Dorian Woolaston, Bar #364919  
 Counsel for Plaintiff

  
 \_\_\_\_\_  
 Magistrate Court of Camden County  
 Judge Presiding

FILED   
 2015 NOV -5 A 11:50  
 CAMDEN COUNTY  
 MAGISTRATE COURT

NO 195PG1318

15-1077CS Docket Number  
11/05/15 Judgment Date

FI. FA.  
GEORGIA, CAMDEN COUNTY

U.S. Bank, N.A. as trustee for Manufactured Housing Contract

Plaintiff

C/O Brock & Scott PLLC  
1315 Westbrook Plaza Drive  
Winston Salem, NC 27103

Entered on General Execution Docket No. 195

this 25th day of January 2016



Clerk

Versus

Lester T. Wainwright

Defendant

2005 Vacunna Rd

Kingsland, GA 31548

TO ANY LAWFUL SHERIFF, CONSTABLE, OR BAILIFF OF SAID COUNTY, GREETINGS:

You are hereby commanded to levy on and sell a sufficiency of the property of the defendant(s) named above

To make the sum of:

\$9,640.29	Principal
\$0.00	Late Fee
	Already Paid
\$103.00	Cost
\$145.80	Interest
\$989.03	Attorney Fees
\$0.00	Other
\$4.00	Fi. Fa.
\$5.00	Recording Fee
\$10,887.12	TOTAL AMOUNT

CANCELLATION

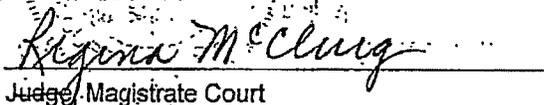
The within and foregoing FiFa having been satisfied in full the Clerk of Superior Court is hereby directed to cancel same from record

This \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

with future interest upon said principal amount from the date of judgment at the legal rate, which several sums were adjudged against him upon judgment at the Magistrate Court.

AND have you said sum of money, together with this execution, at the Court aforesaid at the next term thereof after said money can be lawfully made, to render satisfaction of said debt and costs.

Given under my hand and seal this 25 day of January 2016



Judge, Magistrate Court

DEPUTY CLERK



# Example 8- Real Case

## MAGISTRATE COURT OF CAMDEN COUNTY, GEORGIA

Date Filed 11-27-23

Case No: 15-1077CS

U.S. BANK, N.A. as trustee  
for manufactured housing contract

Plaintiff Name, Address

Vs. Lester T. Wainwright

Defendant(s) Name, Address

SCIRE FACIAS TO REVIVE  
DORMANT JUDGMENT

CAMDEN COUNTY  
MAGISTRATE COURT

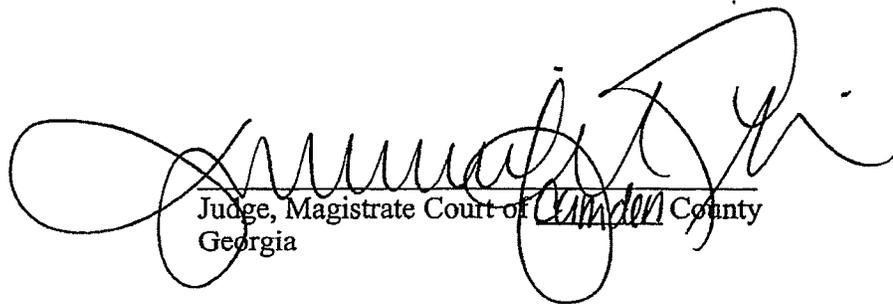
FILED RM  
2023 NOV 27 PM2:27

### ORDER REVIVING DORMANT JUDGMENT

Judgment rendered the 5 day of November, 2015, at the regular term of the Magistrate Court of Camden County, \$9,640.29 as principle; \$ 0 as interest to date of judgment. \$ 989.03 as attorney's fees; and \$ 94.00 as costs of this suit.

It appearing to the court in the above stated case that scire facias was duly issued and served upon November 14, 2023, the defendant in said judgment named, and no sufficient cause having been show why said judgment should not be revived, it is hereby considered, ordered and adjudged by the court that said judgment be, and the same is, revived, for the sum of \$9,640.29 as principle, \$ 0 as interest to date of judgment, \$ 989.03 as attorney's fees, and \$ 94.00 as costs of this suit for a total of \$ 10,723.32 plus future interest as provided by law. Let execution issued hereupon according to the statute in such case made and provided. Ordered further, that plaintiff do have and recover of the said defendant the sum of \$ 50.00, the cost of this proceeding.

This 27 day of November, 2023

  
Judge, Magistrate Court of Camden County  
Georgia

D: RM  
I: AC  
S: \_\_\_\_\_

Intentionally left blank.



INSTITUTE OF  
CONTINUING JUDICIAL  
EDUCATION  
OF GEORGIA

# **Criminal 101 Basics**

Hon. Carla Brown & Ms. Jackie Norman

Carla Brown started to work in Lee County Magistrate Court on July 11, 2003 as a deputy clerk. On May 4, 2005 I was appointed by Chief Magistrate Jim Thurman as a Magistrate Judge.

My husband Gilbert and I have 2 sons. Gil and his wife Jennifer live in Gainesville Ga and are both nurses. My baby boy Matt and his wife Kristen live on the island of Oahu HI. He works for the Department of Intelligence and she is also a nurse. My most prized gift is my grandson Tripp that is 7 months old. He is the joy of mine and my husband's lives. Just ask me if you want to see any pictures or videos. I have tons of them. Thank goodness he lives in Gainesville or I would be broke flying back and forth to HI all the time.

I enjoy spending my time outdoors gardening or walking with my dogs Ben and Clovis.

---

Jackie Norman

Jackie began working as a deputy clerk with the Lee County Magistrate in February 2010. She has resided in Lee County since 1988 and is the mother of two children, Cory Norman and Deanna Cross both being lifetime residents of Lee County. She has a stepson Matt Norman and his wife Kaitlyn who are also Lee County residents. She is the proud grandmother of a total of eleven grandchildren and so blessed with all of her family in the Lee County area. Her "pack" is a beagle named Scout who she loves dearly.

Jackie enjoys gardening, fishing or any outdoor activity.

# Criminal Basics 101

Carla Brown and Jackie Norman



## Uniform Rule of Magistrate Court 16.2. Maintenance of Criminal Evidence.

- The Clerk of Court or the Court Reporter in possession of documents, electronic documents, audio and video recordings of whatever form, exhibits, and other material objects or any other items admitted and retained as evidence in a criminal case shall maintain a log or inventory of all such items with the case number, party names, description of the item, the name and official position of the custodian, and the location of the storage of the items. All such items admitted by the parties as evidence and retained by the Court shall be identified or marked by the Clerk of Court, Court Reporter, or Judge with the case number, the exhibit number and recorded in the log or inventory and shall be in the custody of the Clerk of Court and shall not be removed from the courthouse or other such locations as ordered by the Court and shall be available during court proceeding and accessible to the Court Reporter. In all cases where Magistrate Court does not make a final disposition of the case, within 30 days after the conclusion of the proceedings, the Clerk of Court shall transfer custody of the items of evidence, along with the evidence log or inventory, to the Clerk of Court of the Court with authority to make a final disposition of the case. The Clerk of Court shall update the log or inventory to show the current custodian and the location of evidence.

## Uniform Rule of Magistrate Court 16.2. Maintenance of Criminal Evidence.

- Evidence in the possession of the Clerk of Court or Court Reporter which was admitted and retained by the Court shall be maintained in accordance with the law, particularly as found in **O.C.G.A. § 17-5-55**.

**Exculpatory Evidence** – Evidence indicating that a defendant did not commit the crime. (Innocent)

**Inculpatory Evidence** - Evidence indication a defendant did commit the crime. (Guilty)

**Heresay** – Evidence presented by a witness who did not see or hear the incident in question but heard it from someone else. With some exceptions, heresay generally is not admissible as evidence at trial.

## Uniform Rule of Magistrate Court Rule 23 Bail in Criminal Cases

- **Rule 23.1. Misdemeanor cases.**

Bail in misdemeanor cases shall be set as provided in **O.C.G.A. § 17-6-1** and **17-6-2**.

- **Rule 23.2. Felony cases.**

Bail in felony cases may be set by the magistrate court except for those offenses as to which **O.C.G.A. § 17-6-1** and **§ 17-6-2** provides that bail shall be set by the superior court or shall not be available. All defendants in custody must be presented to this court for initial appearance within the time requirements of **O.C.G.A. § 17-4-26** and **§ 17-4-62** for further consideration of bail.

- **Rule 23.3. Categories of bail.**

The court may set bail which may be secured by:

- (1) **Cash** by a deposit with the sheriff of an amount equal to the required cash bail; or
- (2) **Property** by real estate located within the State of Georgia with unencumbered equity, not exempted, owned by the accused or surety, valued at double the amount of bail set in the bond; or
- (3) **Unsecured Judicial Release/ Recognizance** in the discretion of the court;
- (4) **Professional** by a professional bail bondsman authorized by the sheriff and in compliance with the rules and regulations for execution of a surety bail bond.

Bail may be conditioned upon such other specified and reasonable conditions as the court may consider just and proper. The court may restrict the type of security permitted for the bond although the sheriff shall determine what sureties are acceptable when surety bond is permitted.

## Uniform Rule of Magistrate Court

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### **Rule 23.4. Amendment of bail.**

The magistrate court has the authority to amend any bail previously authorized by the magistrate court under the provisions of **O.C.G.A. § 17-6-18** .

## Uniform Rule of Magistrate Court

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- **Rule 24.1. Dismissal of warrant.**
- Any dismissal of a warrant of the magistrate court prior to the committal hearing and subsequent transfer to other courts shall be made exclusively by the magistrate court.

## Uniform Rule of Magistrate Court

---

### **Rule 24.2. Return of warrant to magistrate court.**

- Once arrest of the defendant is effectuated, the original warrant shall be returned to the magistrate court or its designee for transfer to the appropriate prosecuting agency

## Uniform Rule of Magistrate Court

### 25.2. Commitment hearing

---

- A magistrate, in his or her discretion, may hold a commitment hearing even though the defendant has posted a bail bond as provided in Rule 23.
- (1) The rules of evidence shall apply except that hearsay may be allowed;
- (2) The prosecuting entity shall have the burden of proving probable cause; and may be represented by a law enforcement officer, a district attorney, a solicitor, a private attorney or otherwise as is customary in that court;
- (3) The accused may be represented by an attorney or may appear pro se; and
- (4) The accused shall be permitted to introduce evidence

## Uniform Rule of Magistrate Court

### 29.1. Calendar Preparation

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- All cases shall be set for trial within a reasonable time after arraignment. The judge or designee shall prepare a trial calendar, shall deliver a copy thereof to the clerk of court, and shall give notice in person or by mail to each counsel of record, the bondsman (if any) and the defendant at the last address indicated in court records, not less than 7 days before the trial date. The calendar shall list the dates that cases are set for trial, the cases to be tried at that session of court, the case numbers, the names of the defendants and the names of the defense counsel.

## **Rule 29.2. Removal from calendar.**

- No case shall be postponed or removed from the calendar except by the judge.

## **O.C.G.A. 17-6-1.**

### **When offenses bailable; procedure; schedule of bails; appeal bonds.**

(a) The following offenses are bailable only before a judge of the superior court:

- (1) Treason;
- (2) Murder;
- (3) Rape;
- (4) Aggravated sodomy;
- (5) Armed robbery;

**O.C.G.A. 17-6-1. When offenses bailable; procedure; schedule of bails; appeal bonds.**

- (5.1) Home invasion in the first degree;
- (6) Aircraft hijacking and hijacking a motor vehicle in the first degree;
- (7) Aggravated child molestation;
- (8) Aggravated sexual battery;
- (9) Manufacturing, distributing, delivering, dispensing, administering, or selling any controlled substance classified under Code Section 16-13-25 as Schedule I or under Code Section 16-13-26 as Schedule II;

**First Appearance**

---

**O.C.G.A. 17-4-26.** Duty to bring persons arrested before judicial officer within 72 hours; notice to accused of time and place of commitment hearing; effect of failure to notify.

### **O.C.G.A. 19-13-1. “family violence” defined.**

As used in this article, the term “family violence” means the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household:

- (1) Any felony; or
- (2) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.

The term “family violence” shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.

### **Protective Order Registry**

- **O.C.G.A. 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. 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.

## Record Restriction

**O.C.G.A. 35-3-37.** Review of individual's criminal history record information; definitions; privacy considerations; written application requesting review; inspection.

## O.C.G.A. 15-10-2. General jurisdiction; authority of magistrate to act.

- The hearing of applications for and the issuance of arrest and search warrants
- The sentencing and trial of charges of violations of county ordinances and penal ordinances of state authorities. [Ex: Deposit Account Fraud, Criminal Trespass, Under Age Drinking, Marijuana LTO; Theft by Shoplifting]

## County Ordinances

---

- Code Enforcement issues the citation for the offense.
- The court receives the citation along with all the paperwork pertaining to case. (Usually this is their report)
- The court then enters the citation in the case management program with the court date that was given to the accused.
- In Lee County, all county ordinances must appear in court for adjudication. We do not allow anyone to pay before the court date.
- Our court system pulls a docket for all of our cases by court date.

## County Ordinances

Our court prints a plea sheet for each defendant with the offenses listed.

A public defender is appointed for the defendant review pleas options and a prosecutor is sent by the District Attorney's office to prosecute the cases.

Once the accused enters a plea, it is given to the judge for sentencing. We have a fine sheet that lists out the fines for the judge to reference. The base fine starts at \$20.00 and is done in \$20.00 increments. The sentence sheet is returned to the office, file stamped and use the sentencing to enter into our case management program.

## Pleas

---

An accused person's formal response of:

Guilty

Not-Guilty

No Contest "Nolo Contendere"

**Alford Plea:** A guilty plea that a defendant enters as part of a plea bargain, without actually admitting guilt.

**Blind Plea:** A guilty plea made without the promise of a concession from either the judge or the prosecutor.

**Conditional Plea:** A plea of guilty or nolo contendere entered with the court's approval and the government's consent.

**Guilty Plea:** An accused person's formal admission in court of having committed the charged offense.

**No Contest Plea - Nolo – Nolo Contendere :** A plea by which the defendant does not contest or admit guilt.

**Not-Guilty Plea:** An accused person's formal denial in court of having committed the charged offense. The prosecutor must then prove all elements of the charged offense beyond a reasonable doubt if the defendant is to be convicted.

**Negotiated Plea:** The plea agreed to by a criminal defendant and the prosecutor in a plea bargain.

## Example of Fine

	Base Fine	\$ 20.00
	REST:	
	POPIDF 1	\$ 2.00
	POPIDF 2	\$ 2.00
	JAIL	\$ 2.00
	DATE	
	LVAP	\$ 1.00
	CLF	
	POABF	\$ 10.00
	LL	\$ 5.00
	<b>Due:</b>	<b>\$ 42.00</b>
	Sheriff Service	\$ 25.00
	<b>Total Due</b>	<b>\$ 67.00</b>
	<b>Deductions:</b>	
	SRF	\$ 2.00
	Gen. Fund	\$ 18.00

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# **The Do's and Don'ts of a Magistrate Clerk**

Mr. Timothy Ezell

Timothy Ezell serves as the Chief Operations Officer and Chief Deputy Clerk of Fulton County State and Magistrate Court. With a proven track record in clerk's offices and court administration, Timothy has spearheaded numerous initiatives aimed at enhancing court operations. Notably, he led the implementation of the first Online Dispute Resolution system for a Magistrate Court in Georgia and introduced a text messaging reminder system to reduce the court's failure-to-appear rate. Additionally, he facilitated the deployment of Clerk Edition, a software that streamlines courtroom docketing.

Timothy's academic background includes a Bachelor of Arts in Political Science from Georgia State University, a Master of Public Administration with a concentration in Human Resource Management from Clark Atlanta University, and a Master of Business Administration with a concentration in International Business from Clayton State University.

Throughout his career, Timothy has held various leadership roles, including Chief Deputy Clerk for Fulton County State Court, Director of Administration/Court Administrator for Fulton County Magistrate Court Administration, Chief Administrative Officer/Court Administrator for Fulton County Juvenile Court, and Assistant Chief Deputy Clerk in Fulton County Clerk of Superior Court. Currently, he is the President-Elect for the Georgia Council of Court Administrators.

In his personal time, Timothy is dedicated to serving his community through various nonprofits, participates in his church's Toastmasters organization, and enjoys traveling around the world.

# Magistrate Court Clerk Do's & Don'ts

PRESENTED BY TIMOTHY EZELL, CHIEF OPERATIONS OFFICER/CHIEF DEPUTY CLERK

OFFICE OF THE FULTON COUNTY CLERK OF SUPERIOR AND MAGISTRATE COURTS, CHÉ ALEXANDER

2024 MAGISTRATE COURT CLERKS' ANNUAL TRAINING--JUNE 7, 2024



## Magistrate Court Jurisdiction

2

Magistrate court is governed by Chapter 10 of Title 15 of the Official Code of Georgia Annotated (O.C.G.A. §15-10, Articles 1-13)

### Magistrate court has jurisdiction over the following matters:

- Hearings of applications for and the issuance of arrest and search warrants.
- Trials of civil claims where the amount demanded does not exceed \$15,000 and exclusive jurisdiction is not vested in superior court.
- Punishment of contempts by fine not exceeding \$200 or by imprisonment not exceeding ten days or both.
- Granting of bail in all cases where the bail is not exclusively committed to some other court or officer.
- Trial and sentencing of certain misdemeanor violations, including those relating to criminal issuance of bad checks.
- Foreclosure of liens on animals, abandoned mobile homes, and abandoned motor vehicles.



# Clerk fundamentals to keep in mind

3

- 01**  
As clerks, we are the official recordkeepers. We are neutral and should avoid conduct that gives the appearance of partiality.
- 02**  
As clerks, we may be privy to information before it becomes public knowledge. We should not reveal any information prior to it becoming official and available to the public.
- 03**  
As clerks, we are very knowledgeable and should always provide excellent customer service, but we should never engage in the practice of law.

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# So what can magistrate court clerks do?

4

  
Do's

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5

- 1

To administer oaths and take affidavits in all cases permitted by law or where such authority is not confined to some other officer;
- 2

To receive the amounts of all costs due in the court of which he/she/they is/are clerk and to receive other sums whenever required to do so by law or by order of the judge, and not otherwise

Provide a plethora of information *without* providing legal advice

*O.C.G.A. 15-19-51 prohibits the unauthorized practice of law*

6

Procedures

Provide general information on procedures

FORMS

Provide general information on available legal forms

Resources

Provide general information about additional resources

Legal proceedings

Provide general information about proceedings/hearings



## Magistrate court clerks cannot....

9

- Hqjdjh#q#h{#sdwh frp p xqldwlrq
- Uhfirp p hqg#fdvh#wdwhj|#txhwlrqv#r#dvn#z lqhwvhw/#renfwlrqv/#ghhqvhw/#hybghqfh#wr#suhvhw#w#fkq#txhw/#ggwlrqds#sdg#bjv#wr#b/#hwf1,
- Iqwhusuh#wdwhv#wr#dsshow#frxw#ghfwlrqv
- Shuirp #bjd#uhvdufk#
- Suhgfw#wk#rxwfrp h#r#i#fdvh



## Magistrate court clerks cannot....

10

- Frp sown#d#irp #ir#d#sur#h#b#j#d#w-#k#h#h#h#h#f#h#wlrqv,  
 → **Uniform Magistrate Court Rule 34.1**-Oral answers and counterclaims, if any, to civil actions must be given in person to a clerk or judge of the magistrate court. The clerk or judge shall reduce such answer to writing, have the defendant sign it and then file it with other papers in the case. It's important that the information reduced to writing is written verbatim.
  - **Statement of Claim:** At the request of any individual, the judge or clerk may prepare the statement of claim and other papers required to be filed in an action. (O.C.G.A. § 15-10-43(a))
  - **Answer:** An answer to the claim shall be filed with the court or orally presented to the judge or clerk of the court within 30 days after service of the statement of claim on the defendant to avoid a default. If the answer is presented to the judge or clerk orally, the judge or clerk shall reduce the answer to writing. (O.C.G.A. § 15-10-43 (c))
- **O.C.G.A. § 44-7-51**
  - If the answer is oral, the substance thereof shall be endorsed on the dispossessory affidavit. (O.C.G.A. § 44-7-51(b))

# Let's take a closer look!

11



## General Information about procedures

12

Clerks can provide:

-the typical timeframe a defendant has to answer for the case type

-information about service options– marshal, sheriff, or private process server

-the typical process of a case (i.e. case filed, service, answer, court hearing, judge's decision)

Clerks cannot:

-look at a litigant's case and say how many days are remaining for a defendant to answer

-recommend a particular process server

-tell a litigant what to do next in their case depending on where they are in the process

## Provide general information on available legal forms

13

Clerks can:

- tell a litigant which forms are associated with which case types
- highlight what areas need to be completed on the form to be deemed complete
- provide access to the Guide and File system where they can enter information to generate the form

Clerks cannot:

- suggest language to add to a form
- suggest who should be named as a party in the suit
- tell the litigant the monetary amount to request in their lawsuit

## Provide general information about additional resources

14

Clerks can provide:

- phone numbers and websites of additional resources that are available (Legal Aid, State Bar of Georgia, pamphlets, local organizations that assist pro se litigants)

*Examples in Fulton: R.E.A.C.H. Clinic, Atlanta Volunteer Lawyers Foundation, housing clinic)*

Clerks cannot:

- suggest a particular attorney or representative
- contact an organization on behalf of the litigant

## Provide general information about proceedings/hearings 15

Clerks can provide:

- the typical flow of proceedings/hearings
- time and location of hearings
- appropriate court attire
- local courtroom decorum (including bringing all documents relevant to the case and copies)

Clerks cannot:

- predict the outcome of a proceeding/hearing
- suggest that the case should have gone a different way
- speak on a litigant's behalf at the hearing
- Engage in ex part communications

16

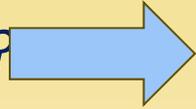


# Scenario 1

17

A litigant wants to sue a car dealership and wants to know what county and court he should file the case.

*How would you assist this litigant?*



18

As clerks, we cannot tell the litigant where to file his case (county or court) as that would be legal advice. There are numerous factors that determine the jurisdiction and venue of a case.

However, we can inform and provide the litigant with the following:

- Magistrate court addresses matters where the claim does not exceed \$15,000
- Procedural information (handouts, forms, guide and file, statutes)



## Scenario 2

19

A tenant came to file an answer after seven days.

*How would you assist this litigant?*



20

File the answer and allow the court to address the late filing.

*Mark the answer "late" if your court marks late answers as such.*

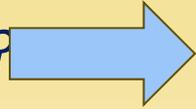


## Scenario 3

21

A litigant wants to file a garnishment case and needs help locating the bank the intended defendant uses.

*How would you assist this litigant?*



22

As clerks, it's important for us to remain impartial. In this situation, we can provide forms, pamphlets, handouts, statutes, and links to websites that may be helpful.



## Scenario 4

23

A person wants to file a warrant application but does not have the identifying information of the party (weight, height, eye color etc.).

*How would you assist this litigant?*



24

Accept the filing and allow the court to address it.

*Our court has a standing order that requires identifying information and does not allow us to accept this type of filing without it.*





# Questions?

**Timothy Ezell, COO/Chief Deputy Clerk**  
***Fulton County Clerk of Superior & Magistrate Courts***  
**Timothy.ezell@fultoncountyga.gov**

*\*Special thanks to Brittany Jacks, Esq.\**



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**Warrant Applications –  
Deposit Account Fraud  
How to do a Warrant without  
the 10-day letter**

Hon. Caroline Evans

Hon Caroline Evans

Judge Caroline Power Evans is the Chief Judge of Barrow County is also the current Chair of the Magistrate Mentor Program, for newly appointed Magistrate Judges.

Judge Evans attended the University of Georgia for her Core Classes, and Graduated with An Associate's Degree in Paralegal Studies, from The American Institute of Paralegal Studies in 1993.

Judge Evans started in Magistrate Court as a Clerk in 1994. Until she became an Associate Magistrate Judge in 1997. She then moved to Probate Court, and was over the Traffic Division, until she ran for Chief Magistrate in 2016.

Judge Evans is a cancer survivor, and has also survived a brown recluse spider bite, and is a mother to the future President of the United States!

# Warrant Applications and Deposit Account Fraud

Presented by: Caroline Power Evans, Chief Magistrate of Barrow County



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

## MAGISTRATE COURT OF BARROW COUNTY PROFILE:

- -Population of ~ 90,000 (50 Miles NE of Atlanta)
- -3 Deputy Clerks
- -1 Chief Clerk
- -1 Full Time Judge
- -2 Part Time Judges
- -1 Chief Magistrate



In 2021, The Magistrate Court of Barrow County held 42 Pre-Warrant Application Hearings and issued 0 warrants for Deposit Account Fraud

In 2022, The Magistrate Court of Barrow County held 23 Pre-Warrant Application Hearings and issued 3 warrants for Deposit Account Fraud

In 2023, The Magistrate Court of Barrow County held 20 Pre-Warrant Application Hearings and issued 2 warrants for Deposit Account Fraud

## PRE-WARRANT APPLICATIONS/HEARINGS O.C.G.A. § 17-4-40

-What is my role as a clerk when a private citizen applies for a warrant?

**MAGISTRATE COURT OF BARREN COUNTY - APPLICATION FOR CRIMINAL WARRANT**

**INFORMATION ABOUT YOU:**

NAME \_\_\_\_\_ Home phone \_\_\_\_\_  
 Address \_\_\_\_\_ Work phone \_\_\_\_\_  
 What do you work \_\_\_\_\_  
 What do you do? \_\_\_\_\_

THIS PERSON WILL KNOW HOW TO REACH ME? Name \_\_\_\_\_ Home Phone \_\_\_\_\_  
 Address \_\_\_\_\_ Work Phone \_\_\_\_\_

**I AM MAKING A COMPLAINT AGAINST THIS PERSON:**

NAME \_\_\_\_\_ Home phone \_\_\_\_\_  
 ADDRESS \_\_\_\_\_ Work phone \_\_\_\_\_  
 Other Address \_\_\_\_\_ Other phone \_\_\_\_\_  
 Race \_\_\_\_\_ Sex \_\_\_\_\_ Age \_\_\_\_\_  
 Height \_\_\_\_\_ Weight \_\_\_\_\_  
 Build?  Yes  No Mustache?  Yes  No  
 Hair Color? \_\_\_\_\_ Date of birth \_\_\_\_\_  
 No. of address \_\_\_\_\_  
 License or Soc. Sec. No. \_\_\_\_\_  
 Nickname(s) \_\_\_\_\_

Car/truck/van \_\_\_\_\_  
 or motorcycle: What kind? \_\_\_\_\_ color of motor vehicle \_\_\_\_\_ Gas, Tag? \_\_\_\_\_ Tag No. \_\_\_\_\_ Year \_\_\_\_\_

HOW DO YOU KNOW THIS PERSON? \_\_\_\_\_  
 WHAT DID THIS PERSON DO? \_\_\_\_\_

WHEN DATE? \_\_\_\_\_ W/ TIME? \_\_\_\_\_

Have you ever applied for a warrant before against this person? YES NO  
 Has this person ever taken out a warrant against you? YES NO  
 Have you ever applied for a warrant before against anyone else? YES NO  
 Have you ever asked for a warrant to be declared? YES NO

**WITNESSES:**

NAME \_\_\_\_\_ NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_ ADDRESS \_\_\_\_\_  
 Home phone \_\_\_\_\_ Home phone \_\_\_\_\_  
 Work phone \_\_\_\_\_ Work phone \_\_\_\_\_

I DO SOLEMNLY SWEAR (OR AFFIRM) THAT ALL INFORMATION CONTAINED IN THIS APPLICATION FOR A CRIMINAL WARRANT IS TRUE AND CORRECT, under penalty of perjury.

Sworn to and subscribed to before me \_\_\_\_\_  
 etc. \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Your Signature \_\_\_\_\_ Today's Date \_\_\_\_\_  
 DO NOT WRITE BELOW SOLID LINES OR OUTLINE USE ONLY

Warrant based \_\_\_\_\_ Warrant denied \_\_\_\_\_ P.O. Report No. \_\_\_\_\_  
 Vehicle involved \_\_\_\_\_ OCS# \_\_\_\_\_  
 Offense(s) \_\_\_\_\_ OCS# \_\_\_\_\_  
 Warrant language and/or other comments: \_\_\_\_\_

See Application for Criminal Warrant handout...



MAGISTRATE COURT OF BARROW COUNTY - APPLICATION FOR CRIMINAL WARRANT

INFORMATION ABOUT YOU:

NAME \_\_\_\_\_ Home phone \_\_\_\_\_ Work phone \_\_\_\_\_
ADDRESS \_\_\_\_\_ Where do you work? \_\_\_\_\_
City State Zip What do you do? \_\_\_\_\_

THIS PERSON WILL KNOW HOW TO REACH ME: Name \_\_\_\_\_ Home Phone \_\_\_\_\_
Address \_\_\_\_\_ Work Phone \_\_\_\_\_

I AM MAKING A COMPLAINT AGAINST THIS PERSON:

NAME \_\_\_\_\_ Home phone \_\_\_\_\_
ADDRESS \_\_\_\_\_ Work phone \_\_\_\_\_
Other Address \_\_\_\_\_ Other phone \_\_\_\_\_
Race \_\_\_\_\_ Sex \_\_\_\_\_ Age \_\_\_\_\_
Height \_\_\_\_\_ Weight \_\_\_\_\_
THIS PERSON LIVES IN \_\_\_\_\_ COUNTY Beard? [ ] Yes [ ] No Moustache [ ] Yes [ ] No
He/She works for \_\_\_\_\_ Hair Color? \_\_\_\_\_ Date of birth \_\_\_\_\_
Work address \_\_\_\_\_ Scars? \_\_\_\_\_
License or Soc. Sec. No. \_\_\_\_\_
Nicknames \_\_\_\_\_

Car/truck/van or motorcycle: What kind? \_\_\_\_\_ color of motor vehicle \_\_\_\_\_ Ga. Tag? \_\_\_\_\_ Tag No. \_\_\_\_\_ Year \_\_\_\_\_
HOW DO YOU KNOW THIS PERSON? \_\_\_\_\_
WHAT DID THIS PERSON DO? \_\_\_\_\_
WHEN? DATE? \_\_\_\_\_ WHERE? \_\_\_\_\_
TIME? \_\_\_\_\_

Have you ever applied for a warrant before against this person? [ ] YES [ ] NO
Has this person ever taken out a warrant against you? [ ] YES [ ] NO
Have you ever applied for a warrant before against anyone else? [ ] YES [ ] NO
Have you ever asked for a warrant to be dismissed? [ ] YES [ ] NO

WITNESSES:

NAME \_\_\_\_\_ NAME \_\_\_\_\_
ADDRESS \_\_\_\_\_ ADDRESS \_\_\_\_\_
Home phone \_\_\_\_\_ Work phone \_\_\_\_\_
Home phone \_\_\_\_\_ Work phone \_\_\_\_\_

I DO SOLEMNLY SWEAR (OR AFFIRM) THAT ALL INFORMATION CONTAINED IN THIS APPLICATION FOR A CRIMINAL WARRANT IS TRUE AND CORRECT. SIGN THIS NOW,

Sworn to and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Your Signature \_\_\_\_\_ Today's Date \_\_\_\_\_

DO NOT WRITE BELOW SOLID LINE/FOR COURT USE ONLY

Warrant issued \_\_\_\_\_ Warrant denied \_\_\_\_\_ P.D. Report No. \_\_\_\_\_

Visible injuries: \_\_\_\_\_
Offense(s) \_\_\_\_\_ OCGA§ \_\_\_\_\_
Warrant language and/or other comments: \_\_\_\_\_ OCGA§ \_\_\_\_\_

# WARRANT APPLICATION

- Have Applicant fill out application as detailed as possible.
  - The alleged crime must have occurred in YOUR Court's County
  - What else does your Chief Judge require?
    - Incident Report?
    - Child Support Order?
  - Collect \$20.00 per application

## WARRANT APPLICATION (CONT'D):

- NOTICE OF HEARING
  - Provide Notice of Hearing to both the Applicant and Accused
  - Must Include the Date, Time, and Location of the Hearing
  - Issue any additional subpoenas that either party may request
- ADDITIONAL REQUIREMENTS BY YOUR JUDGE?
  - Subpoena the LEO that wrote the incident report (if the officer didn't find probable cause to issue the warrant, I want that testimony)

QUESTIONS ON PRE-WARRANT  
APPLICATIONS AND YOUR ROLE AS A  
CLERK?

DEPOSIT ACCOUNT FRAUD APPLICATIONS  
O.C.G.A. § 16-9-20

**AFFIDAVIT/APPLICATION FOR CRIMINAL BAD CHECK ARREST WARRANT**

DATE \_\_\_\_\_

YOUR NAME \_\_\_\_\_

BUSINESS NAME \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_

I, do hereby file this application, for criminal prosecution for:

Name of person who signed check \_\_\_\_\_  
 Physical address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_  
 ZIP \_\_\_\_\_

Why was the check(s) returned from the Bank/Financial Institution?  NSF  Account Closed  
 Amount of Check \$ \_\_\_\_\_ Check Number \_\_\_\_\_  
 Date check was written \_\_\_\_\_ Certified Mail  Uninsured  Insured, Address \_\_\_\_\_  
 \_\_\_\_\_ Signed for on \_\_\_\_\_

Physical address where check was received \_\_\_\_\_

Yes No

Was the check deposited into the bank within 40 days of the date of the check?  
  Was the certified mail sent within 90 days of the date of the check?  
  Is the original check and certified mail attached?  
  At the customer's request, this check was held for \_\_\_\_\_ days?  
  Have you accepted any payments toward this check?

\_\_\_\_\_  
 Signature of Applicant

Office Use Only

Magistrate Clerk: \_\_\_\_\_  
 Warrant Approved:  Yes  No  
 If no, Why? \_\_\_\_\_  
 Criminal Code OCGA 16-9-20  Misdemeanor  Felony

See Application for Deposit Account Fraud handout...

AFFIDAVIT/APPLICATION FOR CRIMINAL BAD CHECK ARREST WARRANT

DATE \_\_\_\_\_

YOUR NAME \_\_\_\_\_

BUSINESS NAME \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_

I, do hereby file this application for criminal prosecution for:

Name of person who signed check \_\_\_\_\_

Physical address \_\_\_\_\_

DL# \_\_\_\_\_ SSN# \_\_\_\_\_

DOB \_\_\_\_\_ TEL# \_\_\_\_\_

Why was the check(s) returned from the Bank/Financial Institution?  NSF  Account Closed

Amount of Check \$ \_\_\_\_\_ Check Number \_\_\_\_\_

Date check was written \_\_\_\_\_ Certified Mail:  Unclaimed  Insuff. Address

Signed for on \_\_\_\_\_

Physical address where check was received \_\_\_\_\_

Yes No

\_\_\_ \_\_\_ Was the check deposited into the bank within 30 days of the date of the check?

\_\_\_ \_\_\_ Was the certified Mail sent within 90 days of the date of the check?

\_\_\_ \_\_\_ Is the original check and certified mail attached?

\_\_\_ \_\_\_ At the customer's request, this check was held for \_\_\_\_\_ days?

\_\_\_ \_\_\_ Have you accepted any payments toward this check?

\_\_\_\_\_  
Signature of Applicant

Office Use Only

Magistrate Clerk: \_\_\_\_\_

Warrant Approved:  Yes  No

If not, Why: \_\_\_\_\_

Criminal Code OCGA 16-9-20 Misdemeanor Felony

## WHAT IS MY ROLE AS CLERK

### Magistrate Court Rules

#### -Rule 17. Clerical Assistance for Pro Se Litigants

Magistrate Court clerks may not practice law, but may provide basic information regarding procedures, routine legal forms, available forms, and proceedings in the Magistrate Court.

## WHAT SHOULD I COLLECT ON A WARRANT FOR DEPOSIT ACCOUNT FRAUD?

- -Have Applicant fill out the Application for Deposit Account Fraud
- -Is the Instrument stamped either “Account Closed” or Insufficient Funds?
- -Instrument is defined 16-9-20(f)(5) “*a check, draft, debit card sales draft, or order for the payment of money*”
  - -If not, they must take it back to the bank for them to stamp the instrument for one of these two things, or they can file a civil action.
- -Was the check deposited within 30 days of the check? O.C.G.A 16-9-20(a)(2)
  - -If not, they will have to file a civil action

-Was the certified mail sent within 90 days of the date of the check? O.C.G.A. 16-9-20(a)(3)

-If not, they can either file a civil action OR the Court must set up a hearing notifying the accused. You do not have to set for a hearing if the certified mail was sent within 90 days of the date of the check. O.C.G.A 17-4-40(a)(E)

-Was the check presented to the applicant for present consideration.

-If not, and it was for a payment on an account, they must file a civil action.

-Have there been any payments made toward this check?

-If so, they must file a civil action.

Date: \_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby notified that the following instrument(s) numbered \_\_\_\_\_, issued by you on \_\_\_\_\_(Date), drawn upon \_\_\_\_\_(Name of Bank), and payable to \_\_\_\_\_ has been dishonored. Pursuant to O.C.G.A. 16-9-20, you have ten days from receipt of this notice to tender payment of the full amount of the check or instrument plus a service charge of \$30.00. The total amount due being \_\_\_\_\_dollars and \_\_\_\_\_cents. Unless this amount is paid in full within the specified time above, the holder of the check or instrument may turn over the dishonored check or instrument to the Magistrate Court for the issuance of a criminal warrant.

\_\_\_\_\_  
Name of individual or business holding the instrument: \_\_\_\_\_

\_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone Number: ( ) \_\_\_\_\_

See 10-Day Letter Deposit Account Fraud handout...

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Date: \_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

You are hereby notified that the following instrument(s) numbered \_\_\_\_\_, issued by you on \_\_\_\_\_ (Date), drawn upon \_\_\_\_\_ (Name of Bank), and payable to \_\_\_\_\_ has been dishonored. Pursuant to O.C.G.A. 16-9-20, you have ten days from receipt of this notice to tender payment of the full amount of the check or instrument plus a service charge of \$30.00. The total amount due being \_\_\_\_\_ dollars and \_\_\_\_\_ cents. Unless this amount is paid in full within the specified time above, the holder of the check or instrument may turn over the dishonored check or instrument to the Magistrate Court for the issuance of a criminal warrant.

\_\_\_\_\_  
Name of individual or business holding the instrument: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone Number: ( ) \_\_\_\_\_

## -DO YOU HAVE TIME TO PREPARE THE WARRANT WHILE THE APPLICANT IS THERE?

- -If so, and you have a judge, have the judge issue the oath and the applicant sign the warrant as the affiant.
- -If not, the applicant will have to come back once the warrant has been prepared

### DEFINITIONS UNDER 16-9-20 (F)

-”Bank” shall include a financial institution as defined in this Code Section.

-”Financial Institution” shall have the same meaning as defined in paragraph (21) of Code Section 7-1-4 and shall also include a national bank, a state or federal savings bank, a state or federal credit union, and a state or federal savings and loan association.

-”Present Consideration” shall include without limitation:

-An Obligation or debt of rent which is past due or presently due;

- An obligation or debt of state taxes which is past due or presently due;
- An obligation or debt which is past due or presently due for child support when made for the support of such minor child and which is given pursuant to an order of court or written agreement signed by the person making the payment;
- A simultaneous agreement for the extension of additional credit where additional credit is being denied; and
- A written waiver of mechanic's or materialmen's lien rights.

QUESTIONS??



MAGISTRATE COURT UNIFORM RULES  
Rule 17 Appendix A is an excellent resource for  
Clerks



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Barrow County, Georgia  
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INSTITUTE OF  
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EDUCATION  
OF GEORGIA

## Questions & Answers

Hon. Carla Brown







***INSTITUTE OF CONTINUING JUDICIAL EDUCATION OF GEORGIA  
(ICJE) POLICY ON FACULTY DIVERSITY AND INCLUSION***



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OF GEORGIA

**It is the policy of the ICJE of Georgia to encourage Diversity and Inclusion in the faculty recruited for ICJE-facilitated programming, as a diverse and an inclusive faculty pool with expertise on substantive legal and judicial issues will enhance the success of ICJE-facilitated programming.**

**This policy shall be communicated by ICJE staff to the leadership of all of the constituencies represented on the ICJE Board of Trustees; and, to the leadership of the educational apparatus of each ICJE constituent group at the beginning of the planning process for each period of programming. The ICJE Board of Trustees requests that ICJE constituent groups and educational apparatuses make every effort to implement this policy.**

(Adopted by ICJE Board of Trustees on March 9, 2018)

You Are AMAZING!!!!

