

House Bill 958

By: Representatives Rice of the 51st, Lindsey of the 54th, Mumford of the 95th, Coleman of the 97th, Casas of the 103rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated,
2 relating to civil proceedings in magistrate court, so as to clarify the appeal procedure for
3 certain judgments; to provide for additional information in statements of claim; to revise the
4 procedures for applying to vacate a judgment; to revise the requirements for use of
5 postjudgment interrogatories; to provide for related matters; to repeal conflicting laws; and
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 3 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated, relating to
10 civil proceedings in magistrate court, is amended by revising paragraph (2) of subsection (b)
11 of Code Section 15-10-41, relating to no jury trials in magistrate court, as follows:

12 "(2) No appeal shall lie from a default judgment, including a judgment or dismissal for
13 want of prosecution after a nonappearance of a party for trial. Review shall be by
14 certiorari to the state court of that county or to the superior court of that county. Review
15 of a denial of a postjudgment motion to vacate a judgment shall also be by certiorari to
16 the state or superior court of that county."

17 **SECTION 2.**

18 Said article is further amended by revising subsections (a) and (g) of Code Section 15-10-43,
19 relating to statement of claim, as follows:

20 "(a) Actions shall be commenced by the filing of a statement of claim, including the last
21 known address of the defendant, in concise form and free from technicalities. The plaintiff
22 or his or her agent shall sign and verify the statement of claim by oath or affirmation. At
23 the request of any individual, the judge or clerk may prepare the statement of claim and
24 other papers required to be filed in an action. The statement of claim shall include a brief
25 statement of the claim giving the defendant reasonable notice of the basis for each claim

1 contained in the statement of claim, reasonable notice of when each claim occurred, and
 2 the address at which the plaintiff desires to receive the notice of hearing."

3 "(g) Notwithstanding the provisions of Code Section 15-10-42, the magistrate court may
 4 grant relief from a judgment under the same circumstances as the state court may grant
 5 such relief. Requests for relief from judgments pursuant to this Code section in the
 6 magistrate court shall be by filing a ~~new action pursuant to this Code section~~ written
 7 motion which sets forth with reasonable specificity any of the following issues:

8 (1) Lack of jurisdiction over the person or the subject matter;

9 (2) Fraud, accident, mistake, or the acts of the adverse party unmixed with the negligence
 10 or fraud of the movant; or

11 (3) A nonamendable defect which appears on the face of the record or pleadings. Under
 12 this paragraph, it shall not be sufficient that the statement of claim fails to state a claim
 13 upon which relief may be granted, but the pleadings shall affirmatively show that no
 14 claim in fact existed.

15 The procedure shall then be the same as in other cases except the court may assess costs
 16 as seem just."

17 SECTION 3.

18 Said article is further amended by revising subsection (c) of Code Section 15-10-45, relating
 19 to compulsory and permissive counterclaims, as follows:

20 "(c) If any defendant asserts a claim against the plaintiff, the defendant shall file with the
 21 court a statement of the claim in concise form and free from technicalities. The
 22 defendant's claim shall give the plaintiff reasonable notice of the basis for each claim
 23 contained in the statement of claim and reasonable notice of when each claim occurred.

24 The defendant shall sign and verify the statement of claim by oath or affirmation. At the
 25 request of a defendant, the judge or clerk may prepare the statement."

26 SECTION 4.

27 Said article is further amended by revising Code Section 15-10-48, relating to form of
 28 statement of claim, verification, and notice, as follows:

29 "15-10-48.

30 The statement of claim, verification, and notice shall be in substantially the following form:

31 Magistrate Court of _____ County
 32 State of Georgia

1 _____

2 Plaintiff

3 _____

4 Address

5 v.

6 _____

7 Defendant

8 Statement of Claim

9 (Here the plaintiff or, at his or her request, the court will insert a brief statement of the
10 plaintiff's claim or claims giving the defendant reasonable notice of the basis for each
11 claim and reasonable notice of when each claim occurred, and, if the action is on a
12 contract, either express or implied, the original statement of the plaintiff's claim which
13 is to be filed with the court may be verified by the plaintiff or his or her agent as follows:)

14 STATE OF GEORGIA

15 COUNTY OF _____

16 _____, being first duly sworn on oath, says the foregoing is a just
17 and true statement of the amount owing by defendant to plaintiff, exclusive of all setoffs
18 and just grounds of defense.

19 _____
20 Plaintiff or agent

21 Sworn and subscribed
22 before me this _____ day
23 of _____, ____.

24 _____
25 Notary public
26 or attesting
27 official

Notice

TO: _____

Defendant

Home Address

or

Business Address

You are hereby notified that _____ has made a claim and is requesting judgment against you in the sum of _____ dollars (\$_____), as shown by the foregoing statement. The court will hold a hearing upon this claim at (address of court) at a time to be set after your answer is filed.

YOU ARE REQUIRED TO FILE OR PRESENT AN ANSWER TO THIS CLAIM WITHIN 30 DAYS AFTER SERVICE OF THIS CLAIM UPON YOU. IF YOU DO NOT ANSWER, JUDGMENT BY DEFAULT WILL BE ENTERED AGAINST YOU. YOUR ANSWER MAY BE FILED IN WRITING OR MAY BE GIVEN ORALLY TO THE JUDGE.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of hearing.

If you wish to have witnesses summoned, see the court at once for assistance.

If you have any claim against the plaintiff, you should notify the court at once.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

Magistrate of
_____ County"

SECTION 5.

Said article is further amended by revising subsections (b), (c), and (g) of Code Section 15-10-50, relating to propounding of interrogatories to judgment debtor, as follows:

"(b) If the judgment or execution concerning which interrogatories are being propounded was issued by the magistrate court the judgment creditor may, ~~within 30 days~~ after the entry of judgment, file the form interrogatories specified in this Code section with the clerk

1 of the same magistrate court, along with costs of \$10.00. Interrogatories filed under this
2 subsection shall be served upon the judgment debtor by certified mail or statutory overnight
3 delivery.

4 (c) Interrogatories propounded pursuant to a judgment ~~entered more than 30 days~~
5 ~~previously~~ or entered in any other court shall be filed as a new civil action and shall be
6 accompanied by the filing and service fees required for civil actions in that magistrate
7 court. Interrogatories propounded under this subsection shall be served upon the judgment
8 debtor in the manner provided for service of process in civil actions in magistrate court."

9 "(g) Notwithstanding the provisions of Code Section 15-10-42, ~~in any case involving writs~~
10 ~~and judgments in dispossessory or distress warrant proceedings under paragraph (6) of~~
11 ~~Code Section 15-10-2 in which the judgment exceeds the amount of \$5,000.00~~, the
12 judgment creditor or a successor in interest when that interest appears of record may, in
13 addition to any other process or remedy provided by law, utilize the discovery provisions
14 set forth in Code Section 9-11-69."

15 **SECTION 6.**

16 All laws and parts of laws in conflict with this Act are repealed.