

House Bill 958 (AS PASSED HOUSE AND SENATE)

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

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"(2) No appeal shall lie from a default judgment or from a dismissal for want of prosecution after a nonappearance of a plaintiff for trial. Any voluntary dismissal by the plaintiff or by order of the court for want of prosecution shall be without prejudice except that the filing of a second such dismissal shall operate as an adjudication upon the merits. Review, including review of a denial of a postjudgment motion to vacate a judgment, shall be by certiorari to the state court of that county or to the superior court of that county."

SECTION 2.

Said article is further amended by revising subsections (a) and (g) and paragraph (1) of subsection (e) of Code Section 15-10-43, relating to statement of claim, service of process, and default judgments, as follows:

"(a) Actions shall be commenced by the filing of a statement of claim, including the last known address of the defendant, in concise form and free from technicalities. The plaintiff or his or her agent shall sign and verify the statement of claim by oath or affirmation. At

1 the request of any individual, the judge or clerk may prepare the statement of claim and
2 other papers required to be filed in an action. The statement of claim shall include a brief
3 statement of the claim giving the defendant reasonable notice of the basis for each claim
4 contained in the statement of claim and the address at which the plaintiff desires to receive
5 the notice of hearing."

6 "(e)(1) When a hearing is scheduled pursuant to subsection (c) of this Code section, upon
7 failure of the defendant to appear for the hearing, the plaintiff shall be entitled to have the
8 defendant's answer stricken and a default judgment entered; provided, however, that no
9 default judgment shall be granted if the defendant appears at trial through counsel. If the
10 claim is for liquidated damages, the plaintiff shall be entitled to take a judgment in the
11 amount set forth in the complaint without further proof. If the claim is for unliquidated
12 damages, the plaintiff shall proceed to prove his or her damages and take judgment in an
13 amount determined by the judge."

14 "(g) Notwithstanding the provisions of Code Section 15-10-42, the magistrate court may
15 grant relief from a judgment under the same circumstances as the state court may grant
16 such relief. Requests for relief from judgments pursuant to this Code section in the
17 magistrate court shall be by filing a ~~new action pursuant to this Code section~~ written
18 motion which sets forth the issues with reasonable specificity. The procedure shall then be
19 the same as in other cases except the court may assess costs as seem just."

20 SECTION 3.

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

23 "(c) If any defendant asserts a claim against the plaintiff, the defendant shall file with the
24 court a statement of the claim in concise form and free from technicalities. The
25 defendant's claim shall give the plaintiff reasonable notice of the basis for each claim
26 contained in the statement of claim. The defendant shall sign and verify the statement of
27 claim by oath or affirmation. At the request of a defendant, the judge or clerk may prepare
28 the statement."

29 SECTION 4.

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

32 "15-10-48.

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

Magistrate Court of _____ County
State of Georgia

Plaintiff

Address

v.

Defendant

Statement of Claim

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

STATE OF GEORGIA

COUNTY OF _____

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

Plaintiff or agent

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

Notary public
or attesting
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.