

The Magistrate Court of Houston County
89 Cohen Walker Drive
Warner Robins, Georgia 31088
Phone (478) 987-4695
Fax (478) 987-5255

CIVIL FILING FEES:

ONE DEFENDANT \$105.00 - 2 Copies of All
Supporting Documents
TWO DEFENDANTS \$155.00 - 3 Copies of All
Supporting Documents
THREE DEFENDANTS \$205.00 - 4 Copies of All
Supporting Documents

If Defendant is unable to be served, you can provide another address for a re-service fee of \$50.00 per Defendant.

MILITARY AFFIDAVITS ARE REQUIRED ON
ALL DEFENDANTS

****The Court no longer provides copies ****

THE COURT DOES NOT ACCEPT PERSONAL CHECKS,
DEBIT OR CREDIT CARDS.

MAGISTRATE COURT OF _____ COUNTY, GEORGIA

Date Filed _____

Case No: _____

Plaintiff(s) Name, Address

vs

Defendant(s) Name, Address

STATEMENT OF CLAIM

[] Suit on Note [] Suit on Account [] Other

1. The Court has jurisdiction over the defendant(s) [] the Defendant(s) is a resident of _____ County; [] Other (please specify)

2. Plaintiff(s) claims the Defendant(s) is indebted to the Plaintiff(s) as follows (You must include a brief statement giving reasonable notice of the basis for each claim contained in the Statement of Claim):

3. That said claim is in the amount of \$ _____, principal \$ _____ interest, plus _____ costs to date, and all future costs of this suit. State of Georgia, _____ County:

_____ being duly sworn on oath says the foregoing is a just and true statement the amount owing by defendant(s) to plaintiff(s), exclusive of all set-offs and just grounds of defense.

Sworn and subscribed before me this

_____ day of _____ 20_____

Plaintiff(s) or Agent
(If Agent, Title or Capacity) _____

Notary Public/Attesting Official

Day Time Phone Number

NOTICE AND SUMMONS

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified that Plaintiff(s) herein, has/have made and filed a claim and is asking for judgment in the sum of \$ _____ plus costs, as shown by the above statement of claim.

The court will hold a hearing on this claim at a time to be set after your answer is filed.

YOU ARE SUMMONED AND REQUIRED, WITHIN 30 DAYS AFTER SERVICE OF THIS CLAIM UPON YOU, TO FILE OR PRESENT AN ANSWER TO THE COURT AT 89 COHEN WALKER DRIVE, WARNER ROBINS, GA 31088. YOUR ANSWER MAY BE FILED IN WRITING OR GIVEN ORALLY TO THE MAGISTRATE. IF YOU FAIL TO ANSWER, JUDGEMENT BY DEFAULT WILL BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED BY THE PLAINTIFF.

The court will hold a hearing upon this claim at a time to be set after your answer is filed. If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing. If you wish to have witnesses summoned, see the court at once for assistance. If you have any claim against the plaintiff you should notify the court at once. If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court, unless you and the plaintiff present the court with a consent judgment. You may come with or without an attorney.

WITNESS THE HONORABLE JUDGES, MAGISTRATE COURT OF HOUSTON COUNTY, GEORGIA.

This _____ day of _____,

(DEPUTY) Clerk of Court, Magistrate Court of Houston County

**APPLICATION FOR CIVIL SUIT
MAGISTRATE COURT OF HOUSTON COUNTY**

This form is required on all civil suits. When you have completed this form return the form, the required copies of supporting documents and the applicable court cost to the Clerk. **THE COURT COST ARE NON-REFUNDABLE REGARDLESS OF THE OUTCOME OF YOUR SUIT.** Once paid into the registry of the Court the court fees are non-refundable even if you decide minutes later not to proceed with the suit. Therefore do not tender court fees if you are not ready to proceed with this action. Also, we are not permitted under the law to accept papers conditionally, this is, we will not hold the papers for you to call us and tell us to proceed. Therefore papers will only be accepted with the filing fee and proper supporting documents ready for filing. Finally, original documents cannot be returned to you after filing, pursuant to Georgia law.

_____ Have you filed a suit previously in Houston County?
Plaintiff's Full Name and/or Company (if any)
Yes _____ No _____

_____ Address
_____ Do you have any civil suits pending with
City State Zip The Defendant?
Yes _____ No _____

_____ Your daytime phone number

I wish to file a civil suit against the following defendant. The person you sue is called the defendant. In order for the court to pass judgment in your case you have to sue the correct entity (i.e. person or corporation) and must use the correct name. If the defendant owns a business which is not incorporated and your claim is against the business, you may sue the person and the trade name under which he or she does business (e.g. John Doe d/b/a John's Body Shop) If you are suing a corporation, you should obtain the correct corporate name and the name and the address of the registered agent.

FIRST DEFENDANT

_____ Full Name _____ Phone Number
_____ Street Address _____ Employment
_____ City State Zip _____ Employment Address

SECOND DEFENDANT

_____ Full Name _____ Phone Number
_____ Street Address _____ Employment
_____ City State Zip _____ Employment Address

IN THE MAGISTRATE COURT OF HOUSTON COUNTY
STATE OF GEORGIA

Plaintiff,

v.

CIVIL ACTION FILE NO. _____

Defendant,

MILITARY AFFIDAVIT

The undersigned, after first being duly sworn, states the following:

1.

I am of age, of sound mind, and legally authorized to sign this affidavit on behalf of the Plaintiff.

2.

This affidavit is executed pursuant to the Service Members Civil Relief Act, 50 U.S.C. App. 521. Affiant further acknowledges any false statement made in this affidavit may subject the affiant to imprisonment not to exceed one year and a fine.

3.

Affiant states the Defendant, _____ () is, () is not, or () unable to determine, a member of the military forces of the United States.

4.

Affiant is personally knowledgeable of the facts contained in this affidavit and affirms the information contained herein is true and correct.

This _____ day of _____, 201 .

Signature

Printed name: _____

Title: _____

Sworn to and subscribed before me

this _____ day of _____, 201

NOTARY PUBLIC

www.dmdc.osd.mil/appj/scra

THE MAGISTRATE COURT OF HOUSTON COUNTY

89 Cohen Walker Dr.
Warner Robins, Georgia 31088
Phone (478) 987-4695
Fax (478) 987-5255 & (478) 987-5249

Robert E. Turner
Chief Magistrate

Angela W. Sammons
Magistrate

INSTRUCTIONS FOR FILING A CIVIL SUIT IN THE MAGISTRATE COURT OF HOUSTON COUNTY

Welcome to the Magistrate Court of Houston County. The information contained herein is intended to provide you with general knowledge of the process for filing a civil lawsuit and conducting a trial in the Magistrate Court. It is not a complete disclosure of all legal action available to you. Therefore, you should carefully research your options and understand the consequences of any action you undertake. **The clerks are available to assist you. However, they cannot advise you how to handle your case, nor are they authorized to offer legal advice. If you are unsure how to proceed with your case, please seek counsel from an attorney.**

1. The jurisdictional limit of the Magistrate Court is \$15,000.00. This includes principal, interest, attorney's fees, late charges, and any other amounts sought in your claim.

2. The Court will provide you with complaint and application forms. You are not required to use the Court's complaint form. However, the complaint form may be helpful in preparing your lawsuit. It is the Plaintiff's responsibility to properly complete the complaint form. If the Plaintiff uses the Court's complaint form, the application must also be completed.

3. The Plaintiff is the party who initiates a lawsuit. The Defendant is the party who is being sued. Please be advised, the Defendant may also file a counterclaim along with an answer to the complaint, if the Defendant believes he is entitled to recover from the Plaintiff. If the Defendant prevails in his counterclaim, the Plaintiff could have a judgment entered against him.

4. The Defendant must be a resident of Houston County, Georgia, or subject to the jurisdiction of this Court. It is important to correctly name the parties when you file your lawsuit. If the party filing the lawsuit or being sued is an individual, the correct legal name of the party must be used. When the party filing the suit or being sued is a business, several things must be considered. First, are any of the parties operating as a corporation or a limited liability company? If so, the Georgia Secretary of State's website provides information including the legal status of the

entity, the actual name of the business, and the name and address of the registered agent. If the business is not incorporated, you must determine who owns the business and how the business is operating. For example, if "John Doe" owns an unincorporated business with a trade name of "John's Repair Shop," the lawsuit should be filed in the name of "John Doe, dba John's Repair Shop." However, an unincorporated business without an owner listed is not a proper party. If you are unsure about the proper name of the parties, you should seek legal advice. Filing a lawsuit against the wrong party could potentially subject the Plaintiff to civil liability.

5. If a note, account, lease or other written contract is the subject of the lawsuit, a copy of that document and a payment ledger, should be attached to the complaint. The Plaintiff is responsible for providing the Clerks with copies of all supporting documents. There should be copies of supporting documents for the original complaint and each Defendant.

6. When a lawsuit is filed, the Plaintiff should provide the Court with an address for service of the complaint. All court costs must be paid when the case is filed. The court costs include the costs for serving the Defendant with the summons and complaint. The Houston County Sheriff's Office serves the lawsuits filed in the Magistrate Court. A post office box is not a valid address for service of a civil suit. If the Sheriff is unable to perfect service of the summons and complaint on the Defendant, there will be an additional service fee for any other attempted service. Therefore, it is very important to provide a correct address to the Clerk. After the Sheriff's Office attempts service, the Plaintiff is mailed a copy of the Sheriff's entry of service. The entry of service will show the method of service, the date of service, and a docket number for the case. Each case is assigned its own docket number.

7. If the Defendant files an answer or a counterclaim, the parties will notified of the trial date by mail. Failure of the Plaintiff to appear for trial will likely result in dismissal of the case. If the Defendant fails to appear, the case will be tried and a judgment could be entered against him.

8. Failure to file an answer to the complaint within the time allowed by law, may result in entry of a default judgment against the Defendant. If the Plaintiff is seeking liquidated damages and has provided all of the necessary supporting documents, a default judgment will likely be issued. Liquidated damages are a particular amount, such as past due rent or the balance owed on a promissory note. If the Plaintiff is seeking unliquidated damages, the case will be placed on a trial calendar. Unliquidated damages are not a particular sum, such as pain and suffering in a personal injury case.

9. Please be advised if the Defendant does not file an answer to the Plaintiff's complaint, a default judgment will not be issued unless a Military Affidavit has been filed by the Plaintiff. Furthermore, if the Military Affidavit indicates the Plaintiff

is unable to determine the military status of the Defendant or if the Defendant is in the military, the case will be scheduled for trial.

10. If the parties reach a settlement of all issues raised in the Plaintiff's complaint and the Defendant's counterclaim, if applicable, then a consent judgment can be issued. To enter into a consent agreement, the parties must agree on the total amount owed and the way the debt will be repaid. The court has consent judgment forms available to be used by the parties.

11. In some cases mediation is available to the parties as a means to settle their dispute. If the court orders the parties to participate in mediation, it must be completed within 60 days of the court's order. Failure by either party to participate in mediation could result in dismissal of the Plaintiff's lawsuit or the Defendant's answer. Mediation is generally not available to parties in a dispossessory action.

12. Please be aware if you prevail in you case, you may not automatically be paid by the other party. Collection of your judgment may require additional legal action on your part. There is also an information sheet for procedures available for collecting judgments in Magistrate Court. Be advised, no legal action is taken by the Magistrate Court independently to collect your judgment. Additionally, the Clerks do not accept payments for judgments except through garnishments filed in the Court.

COURT PROCEDURE

1. The Plaintiff presents his case first. His case is made by testifying, calling witnesses and presenting any relevant, admissible evidence. The Plaintiff should also bring any exhibits he believes will prove he is entitled to recover in his case. Exhibits can include items such as contracts, leases, canceled checks, promissory notes, photographs, and payment ledgers. The Defendant has the right to question or cross examine anyone who testifies for the Plaintiff.

2. After the Plaintiff presents his case, the Defendant has the right to present his defense and/or counterclaim. This Defendant presents his defense and/or counterclaim in the same manner as the Plaintiff. He can offer his testimony, witness testimony, and any other relevant, admissible evidence. Like the Plaintiff, the Defendant can also present exhibits. After each witness testifies, the Plaintiff also has the right to question each of the Defendant's witnesses.

3. Please be advised witnesses have to be present to testify. **Affidavits signed in the presence of a notary are not a substitute for witness testimony.** Additionally, estimates of repair bills without the person who created the estimate are considered

hearsay and may not be admissible. All parties are allowed to request subpoenas from the Clerks to compel witnesses to attend the trial. There is a small fee for issuance of subpoenas.

4. It is important to be organized and prepared when presenting evidence at your trial. Each party is responsible for proving all of the claims and contentions he or she makes at trial. The Judge cannot base a decision on an assumption. If you claim damages were caused by particular actions of the other party, there must be evidence or a witness to prove your claim. Be aware the rules of evidence as established by the *Official Code of Georgia Annotated* apply in Magistrate Court.

5. After all of the evidence is presented, each party will have the opportunity to make a closing argument to the Court. The purpose of the closing argument is to explain why he or she should prevail. The closing argument is based on the applicable law and the evidence presented at trial.

6. After all of the evidence is presented, the Judge will make a decision in your case. Sometimes the case will be decided in Court and sometimes the Judge will choose to review the evidence after court. The Court understands each case is important. Therefore, the Judge wants to make the correct decision based on the law and evidence. If your case is not decided in Court, it is because the Judge wants to give additional attention to the evidence. When a decision is reached in the case, a judgment is prepared showing the results from the trial.

7. If you are not satisfied with the results of trial, you may appeal to the State Court or the Superior Court. There is no charge assessed by the Magistrate Court to appeal your case. However, the State Court and the Superior Court charge additional court costs for appeals. The Magistrate Court Clerks cannot tell you the amount of court costs assessed by other courts for appeals. The cost of an appeal to the State Court or Superior Court can be determined by contacting a Clerk from each of those courts. Please be advised an appeal must be filed in a timely manner.

8. The Magistrate Court Clerks cannot calculate interest or payoff amounts for the parties after a judgment has been issued. Additionally, the Court does not accept payments or payoffs directly from the parties. The Magistrate Court also does not independently take any action to collect your judgment. If you do not know how to collect a judgment, there is an information sheet with a list of collection procedures available in the Magistrate Court.

We hope this information is helpful. Again, if you are unsure how to proceed, please seek the advice of an attorney.

FILING CLAIMS - LISTING THE CORRECT PARTY OR BUSINESS ENTITY IN YOUR LAWSUIT, APPLIES TO BOTH PLAINTIFFS & DEFENDANTS.

The party filing the action is the "plaintiff". The party being sued is the "defendant". Each must be correctly listed.

Individual	Sole Proprietor	Corporation	Partnership	Minors
<p>Suit listed in the person's own name as plaintiff or against an individual as the defendant.</p>	<p>When one person owns a business.</p>	<p>A legal organization listed with the Georgia Secretary of State's office.</p>	<p>Similar to a sole proprietor, however 2 or more persons own the business. It is NOT incorporated.</p>	<p>Minors under 18 cannot sue in their own name, but must sue through a parent or guardian. However, minors under 18 can be sued in their own name.</p>
<p>Examples: "Sally Doe"</p>	<p>"Sally Doe, dba Sally's Apparel Sales."</p>	<p>"Sally's Apparel Sales, Inc. or (Co.) (Company) (Ltd.) (Incorporated)" **A corporation <u>must</u> have a similar ending.</p>	<p>"Sally Doe & Sara Jones, dba Sally's Apparel, a partnership."</p>	<p>"Jane Doe, a minor, by her next best friend, Sally Doe." (The parent/guardian is called "next best friend." Plaintiff only.</p>
<p>Where do I file the case? Civil lawsuits are generally filed where the defendant resides. VENUE County where individual defendant resides.</p>	<p>File in county where the defendant sole proprietor resides. Example, business in Fulton, but sole proprietor lives in Gwinnett; file suit in Gwinnett.</p>	<p>File in county where the defendant corporation has its principal place of business or the registered agent is located. Call 404.656.2817 or www.sos.state.ga.us</p>	<p>File in county where <u>any</u> partner resides, or the general partner for a limited partnership. Ex., business partnership is in Fulton, but a partner lives in Gwinnett; file suit in Gwinnett.</p>	<p>File in county where the defendant "minor" resides. Same rule as an individual defendant.</p>
<p>Civil court costs = \$48.00 filing costs + \$25.00 sheriff's service fee/ def. served = \$73.00 cost for 1 defendant, \$98.00 for 2 defendants, etc..</p>				

See Reverse Side For More Info. - Also, web site help available at <http://www.gwinnettcourts.com>

E-Mail: mag@gwinnettcourts.com

<p>Most Common Errors</p> <p>Suits against small corporations</p>	<p>Plaintiff sues the president of a small corporation, rather than suing the corporation, arguing, "well, he's the owner of the corporation." Absent very rare exceptions, i.e., signing as a personal guaranty, certain negligence actions, etc., owners & corporate officers of a corporation are <u>not</u> personally liable for the debts of a corporation. Corporations are legally formed to limit personal liability. If you dealt with a corporation, then you should sue the corporation. You should consult an attorney if you believe an exception exists which creates personal liability. These instances exist, but are rare.</p>
<p>You can't sue the defendant's insurance co. on most car wrecks.</p>	<p>Car accident cases: Generally, the Plaintiff cannot directly sue the insurance company of the alleged negligent driver to collect on a liability claim. The Plaintiff must sue and serve the negligent driver, and/or appropriate business entity. The defendant's insurance company is not a proper party to a negligence lawsuit. (Rare exception involves collisions with motor carriers (tractor trailer trucks) having indemnity insurance. See O.C.G.A. 46-7-12.)</p>
<p>A corporation's registered agent is not personally liable.</p>	<p>Simply being the resident agent of a corporation does not of itself create personal liability for the debts of that corporation. The registered agent is simply a person authorized by law to be served with the lawsuits against a corporation. Registered agent's name: _____ Address: _____; County _____</p>
<p>I don't know if the business I am trying to sue is a corporation, sole proprietorship or partnership.</p>	<p>Call the Secretary of State: 404.656.2817; Internet: http://www.sos.state.ga.us; Check the business license posted within the business. Alternately, if the business is inside "unincorporated" Gwinnett, go to Gwinnett Business License & Revenue Dept., 750 South Perry St., Lawrenceville, GA 30045, 678.377.4100; If inside the city limits, go to that municipality: Buford, 770.945.6761; Dacula, 770.963.7451; Duluth, 770.476.3434; Lawrenceville, 770.963.2414; Lilburn, 770.921.2210; Norcross, 770.448.2122; Snellville, 770.985.3514; Suwanee, 770.932.2917. Or, check the court dockets to determine if the business or person has been a defendant under circumstances similar to yours.</p>
<p>What's a trade name?</p>	<p>A trade name is the registered name under which a corporation transacts business, i.e., "Sally's Country Kitchen." You should check the trade name registration docket in Superior Court, 770.822.8100, to determine if a corp. is utilizing a trade name. Your correct defendant would still be the corporation. The style of the case would be, the exact corporate entity, dba "(list the trade name)".</p>
<p>I filed suit against the wrong entity..or listed my own business entity incorrectly..what can I do now?</p>	<p>The defendant can insist on having the "real" plaintiff listed. Furthermore, the defendant can insist that the correct defendant "business entity" be listed. In some instances the parties are able to reach a consent agreement to substitute the correct party, waive venue, etc., simply so that they can get the case resolved. Always try to reach that compromise. Absent that agreement, the plaintiff should voluntarily dismiss the suit, "without prejudice", or the court will dismiss the action as listing the correct parties is critical to the rights of all involved.</p>