NOTICE TO PRO SE LITIGANTS

You are about to file a petition pro se, that is, representing yourself without the benefit of an attorney's training and experience. The procedures are not a simple matter. The law requires certain steps be followed, certain papers be filed, and certain evidence be presented for the Court to grant judgment. Although you have the right to represent yourself, we strongly urge you to consult with an attorney in this matter.

If you represent yourself, you alone are responsible for knowing and following the correct procedures. If you fail to follow the correct procedures, your case may be dismissed by the Court. In that event, the fees you paid to file the papers will be lost. The Office of the Clerk of Magistrate Court is an administrative office charged with the duties of receiving and filing papers required to be filed with the Clerk. No member of this office is qualified or licensed to practice law. State law forbids any person other that a duly licensed attorney at law to render or furnish legal services or advice. Therefore, no one in this office will be able to answer any questions you may have regarding the correct procedures to follow.

The Judges of the Magistrate Court must remain impartial and may not practice law. Therefore, neither the Judges nor any member of their staff, are permitted by law to answer any questions you may have seeking legal advice. You should not file your papers until you learn the correct procedures.

FAYETTE COUNTY MAGISTRATE COURT

GENERAL INFORMATION ON DAMAGE SUITS

WHAT IS THE JURISDICTION OF THE MAGISTRATE COURT?

The Magistrate Court handles damage claims of not more that $15,000.00 (You may not adjust the amount downward to be able to file in Magistrate Court). Any person may file a claim in Magistrate Court in his or her own name, without an attorney (You may have an attorney represent you at your own expense, but the Court does not appoint attorneys for civil cases).

HOW TO BRING A CASE IN MAGISTRATE COURT

DECIDING TO SUE:

The first step is deciding whether to sue. Remember, you must prove that the person or business you are suing owes you something. In deciding to sue, consider whether you have any evidence to prove your case. Witnesses usually must have personal knowledge of the "facts" they would testify to for their testimony to be admissible.

If you sue an individual they must be a resident of Fayette County. If you sue a corporation, the registered agent or an officer of the corporation must be located in Fayette County. If you sue a sole proprietor of a business, the sole proprietor must be a resident of Fayette County. The Court or the clerk cannot advise you on who to sue, or if you have a good suit. For legal advice an attorney should be consulted.

In order for the Court to pass judgment in your case, you have to sue the correct entity. The person you sue is called the "Defendant". 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 he or she does business under in the county where the owner resides, regardless of where the business is (Example: John Doe d/b/a John's Grocery). You can usually find out the exact trade name, as it is registered in the Fayette County Superior Court records. You can personally go to the record room and find this information.

If the Defendant is a corporation, you must sue the corporation itself, rather than someone who works for the corporation. Remember, you must sue a corporation in the county where the registered agent is located (Registered agent is the party that should be served for the corporation). If you need to verify if a business is incorporated, and to get the registered agent's name and address for the corporation, you need to call the Corporation's Listing office of the Secretary of State (404-656-2817). On the web at **www.georgiacorporations.org.**

HOW TO FILE:

The Magistrate Court will give you a claim form to fill out. On this form, you will put the name and address of the person or corporation you are suing, tell the exact amount of money you are suing for and explain why you are suing. You may represent yourself or sue on behalf of a minor should you be the guardian. However, you cannot represent someone else if you are not an attorney.

In addition, you must put your name and mailing address on the claim form. The clerk will use this address to send you notice of the date and time when your case will be heard by the Magistrate. Your case may be dismissed if the Court cannot locate you and you fail to appear in Court when your case is called for trial.

WHERE TO FILE:

You may personally file or mail the notarized claim form to the Magistrate Court of Fayette County, located at 1 Center Drive, Room 135, Fayette County Justice Center, Fayetteville, GA 30214. Claims against Defendants residing outside the State of Georgia are usually filed in the state where the Defendant is located, but you should consult an attorney regarding these cases to determine whether service can be obtained and suit begun in Georgia.

FILING FEE:
If you are suing someone, you must pay a filing fee and a service fee. The fee for filing your claim is $51.00; in addition, each Defendant must be served by the Constable at a service cost of $50.00 (Example: If you sue one Defendant - cost is $101.00) (An additional service fee of $50.00 is assessed for each defendant, whether they live at the same address as the first Defendant or not).

NOTIFYING THE DEFENDANT:
The Constable will serve the Defendant a copy of the complaint and summons. The papers will inform the Defendant of the nature of your suit. The Defendant has thirty (30) days from the date that he or she was served with the complaint in which to answer the complaint. If he fails to answer the complaint within thirty days, law does permit the Defendant an additional fifteen (15) days in which he can file an answer (totaling 45 days), upon payment of costs. If the Defendant answers the claim, the clerk will notify you in writing of the trial date, place and time of the hearing by regular mail, hence the need for a correct address.

CLAIMS BY THE DEFENDANT AGAINST THE PLAINTIFF:
The Defendant is allowed to make a counterclaim against you related to your claim against him. If the Defendant makes such a claim, he must state his claim in his answer. A copy of this answer/counterclaim will be mailed to you. You do not have to answer a counterclaim until your court hearing. If the Defendant's claim is for more than $15,000.00 actual damages, the case may be transferred to the State Court of Fayette County, as the Magistrate Court does not usually have jurisdiction of claims in excess of $15,000.00.

PREPARING FOR TRIAL:
The Plaintiff must prove the Defendant is indebted to him and the amount of damages owed. Although the Magistrate Court is a "People's" court, the judges are still required to apply the rules of evidence when considering your case. The Court will not accept affidavits or letters which are considered "hearsay". Usually, witnesses are required by law to testify upon the basis of their personal knowledge of the facts, and not upon the basis of what someone else told them. You may need to seek the advice of an attorney in order to learn how to prove your case. The judges or clerks of this court cannot tell you how to prove your case, or give other legal advice to either party.

While waiting for trial, you should gather all your documents (receipts, repair bills, etc.) and have them ready. If you have witnesses, you should notify them of your court date. Should a witness refuse to come to court, you may have the clerk issue a subpoena ($5.00) for their appearance and you must have it served upon them prior to your court date, as provided by law.

SETTLEMENTS:
Georgia Law requires the Court to have the parties attempt to negotiate a settlement before trial. If you reach an agreement to settle your case, you will need to put these terms in writing.

If you settle your case and the party is willing to pay you on a weekly, bi-weekly or monthly basis, and this arrangement is acceptable to you, you should ask the clerk for a Consent Judgment form. This form will enable you to put the terms of the agreement in writing, and with both parties signatures and the Judge's signature. Should the party fail to pay as per the Consent Judgment terms, you would not be required to appear in court to start collection proceeding, but would be required to fill out an affidavit of non-compliance form. Even though you receive a judgment in your favor, whether it is a consent judgment or one rendered in court by a judge, if the party does not work, have money or assets, you may not be able to collect on your judgment. The Court cannot force a party Defendant to pay you the money owed to you.

THE TRIAL:
Civil trials are usually held during the week on Thursdays at 9:00 a.m. It is very important for you to appear on time with all your evidence & witnesses. If you appear late, or fail to appear, your case may be dismissed.

When your case is called, your testimony is usually essential in proving your case. After the Court calls the calendar, you will be excused for a few minutes to attempt to negotiate a settlement before the Judge hears your case. You should make an earnest attempt in reaching a settlement. Remember, you are the one most familiar with your case; the judge is not. It would be more productive to reach a settlement of your own, than to have the judge make a decision that is not in your favor.

The Plaintiff has the burden to prove to the court the liability of the Defendant and the amount of damages claimed. The Plaintiff will have the first opportunity to tell the Court their side of the case and present evidence or witnesses on their behalf. After each of these witnesses has testified, the Defendant may ask the witness any questions pertaining to their testimony. After presenting the Plaintiff's case, the Defendant may then present evidence and testimony to support the case. The Plaintiff may ask the Defendant and his witnesses questions relative to their testimony. Remember, on cross-examination of the other party or their witnesses, you must ask questions and do not make statements or be argumentative, even if you do not agree with the testimony! After all the evidence has been presented, the court will consider all the relevant evidence and make a decision. Once the judge has made a decision it will be reduced to writing and you will be given a copy of the judgment. This is usually done before you leave the courtroom.

DEFAULT:
If the Defendant does not answer a complaint within 45 days from the date of service, Plaintiff may then receive a judgment. This is called a judgment by default. When you receive a judgment by default, it is usually for the full amount you are asking for, plus the amount of the court costs you paid to initiate the action. However, if your claim is for unliquidated damages, you will still have to prove the amount of damages in court to receive your default judgment (Example: auto-accident).

APPEAL:
Both parties have the right to appeal a case which is tried by the Court. If you think the judge has made the wrong decision, you may appeal to the State Court. Appeals must be made within thirty (30) days from the date of the judge's decision. The party filing the appeal will have to pay costs and copy expenses. The person who filed an appeal may be required to pay any legal expenses of the other party, if the court finds the appeal lacks substantial justification (is frivolous). However, there is no appeal from a default judgment.

COLLECTING THE JUDGMENT:
In many cases collecting a judgment is harder than proving your case in court. The Court does not collect your judgment for you. If you receive a judgment and you are not voluntarily paid, there are several methods of collection that the law provides (provided that the party is not indigent). You should consult an attorney if you have questions about the best method of collecting a judgment, but upon receiving a judgment from the court you may want to:

(a) Have the court issue a Fi Fa for you (proof of your judgment) which places a lien against the losing party and any property he may own. The cost for issuing a Fi Fa is $9.00 ($4.00 payable to Magistrate Court and $5.00 payable to Superior Court).

(b) File a garnishment against Defendant's paycheck at the Magistrate Court in the county where the employer is located.

(c) File a garnishment on Defendant's bank account, which is done in the Magistrate Court in the county where the bank is located.

(d) Levy against real and personal property. The Constable will require the Fi Fa to levy against any personal property. If you want to levy against real property, you should contact an attorney for the procedure.

(e) Turn your judgment over to an attorney or a collection agency for collection.

IMPORTANT THINGS TO REMEMBER

(1) If you should move after you filed your claim, notify the clerk in writing of your new address.

(2) Once a court date has been set by the clerk, continuances are granted by consent of both parties or for legal cause only.

(3) It is very important that you sue the correct party. If you have any doubts as to who you should sue, you should consult an attorney.

(4) The Court can help you with the preparation of your claim/answer in general, but cannot give a party legal advice in the matter.

(5) **The court cannot force the losing party to pay you**.

(6) Finally, it is important to remember that here you have only been given basic information for suing the Magistrate Court. If you have any questions that do not require legal advice, the clerk will be happy to assist you. The clerk can be reached at 770-716-4230, 8:00 a.m. to 4:30 p.m. Monday through Friday. For questions which require the giving of legal advice you will be referred to seek that advice from an attorney.