

AMENDMENTS TO UNIFORM MAGISTRATE COURT RULES.

RULE 17
APPENDIX A

***Guidelines & Instructions
for Clerks Who Assist Pro
Se Litigants in
Georgia's Magistrate
Courts***

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THE COUNCIL OF MAGISTRATE COURT JUDGES,
RULES COMMITTEE

SUPREME COURT.

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INTRODUCTION

Throughout the United States an increasing number of litigants are bringing their legal problems before the courts without the assistance of lawyers (*pro se*). Court users who are not attorneys often ask court clerks for information or advice that requires some legal expertise. Court staff knows the maxim that they may not give legal advice, but in many situations it is difficult to discern what constitutes “legal advice”. Some clerks, due to fear of stepping over the line and providing legal advice, might be overly cautious in providing assistance and information. In these situations, some court users might leave the courts unnecessarily frustrated and may lose confidence in the court system. This training and reference manual is intended to help clerks determine the appropriate way to respond to most questions from *pro se* litigants, thereby providing the best service possible within the limits of their responsibilities.

This manual contains two general sections: 1) *Guidelines for Clerks Who Assist Pro Se Litigants*, and 2) *Suggested Responses to FAQs from Pro Se Litigants*.

The *Guidelines* section provides both general policy principles and specific directions for staff for determining when and how to respond to requests for assistance or information. Subsection C.2 of the *Guidelines* may be of particular interest to clerk’s office staff. It provides 15 specific examples of “legal advice” that court staff should avoid. The comments following some of the guidelines clarify their meaning or discuss exceptions. Together, the *Guidelines* and comments should provide a substantial degree of clarity for court and clerks’ office staff regarding the appropriate level of assistance to provide *pro se* litigants.

Section 2 of the manual, *Suggested Responses to FAQs from Pro Se Litigants* (hereafter, *FAQs*), provides a long list of frequently asked questions from *pro se* litigants and appropriate responses for clerks. Clerks’ staff should become very familiar with the *Guidelines* and *FAQs* as soon as possible. Clerks may refer *pro se* litigants to the reference manual, which could be placed at the counter where *pro se* litigants are likely to appear to ask questions.

Naturally, this manual cannot anticipate all the possible questions that *pro se* litigants might ask clerks. When new questions raise concerns about giving legal advice, clerk’s staff should refer to the general principles set forth in the *Guidelines*. If they refer to the *Guidelines* but still are not clear about how to respond to the question, they should consult with their supervisor. If a supervisor is not available, or if the question clearly calls for legal advice, the clerk should explain to the *pro se* litigant that clerks are not allowed to provide legal advice. Remember, litigation can be a mine field for those who do not know what they are doing. Most litigants may benefit from consulting with legal counsel. So **when in doubt** suggest that the *pro se* litigant consult an attorney, but **do not recommend specific attorneys**. You may refer parties to the **Georgia Lawyer Referral Program; see Exhibit A, attached for a full listing of potential referral sources (or a local referral service approved by the Chief Magistrate)**.

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There are other sources of information that might be helpful to *pro se* litigants. The State Bar of Georgia provides several pamphlets in a variety of areas of the law. They may be obtained through the State Bar of Georgia. They are written in easy to understand language and would be very helpful to *pro se* litigants. You can find the pamphlets on the State Bar of Georgia website or you may call the State Bar of Georgia. (See Exhibit A)

The **Georgia Landlord and Tenant Hotline (Exhibit A)** also provides a helpful guide on landlord/tenant cases.

Finally, some of the responses to the FAQs include references to chapters of the Georgia Code or rules of procedure. These may be offered to the litigant. You should also consider having the most recent version of the Georgia Code available for public use, to make it easier for people to follow up on these references. If the most recent version is not available, clerks should caution *pro se* litigants that the Georgia Code section may have been amended by subsequent legislation. ***Clerks should caution each pro se litigant that in addition to the Georgia Code sections cited in this manual, there may be other code sections or case law (Supreme Court or Court of Appeals decisions) that apply in a particular case. Parties should not rely solely on the information provided by the clerk's office. In most cases, litigants should consult an attorney.***

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Guidelines for Clerks Who Assist *Pro Se* Litigants

A. The primary goal of court and clerk’s staff is to provide high quality service to court users.

Court staff strives to provide accurate information and assistance in a prompt and courteous manner. However, in many or most situations involving *pro se* litigants (or represented litigants who come to the clerk’s office without their attorneys), the best customer service might be to advise the litigant to seek the assistance of an attorney.

B. Absolute duty of impartiality.

Court staff must treat all litigants fairly and equally. Court staff must not provide assistance for the purpose of giving one party an advantage over another, nor give assistance to one party that they would not give to an opponent. It is important to avoid even an appearance of partiality or favoritism in all circumstances.

C. Prohibition against giving legal advice.

Court staff shall not provide legal advice. (See *Guideline C.2* for examples of legal advice.)

1. If a court user asks for legal advice, court staff should advise the person to seek the assistance of an attorney.
2. Court staff should not apply the law to the facts of a given case, nor give directions regarding how a litigant *should* respond or behave in any aspect of the legal process. For example, court or clerks’ staff **shall not**:¹
 - a. Recommend whether to file a petition or other pleading.
 - b. Recommend phrasing or specific content for pleadings.²
 - c. Fill in a form for the *pro se* litigant.
(**Exception:** If a litigant has a physical disability or is illiterate and therefore unable to complete a form, and the litigant explains the disability to a clerk’s staff member and requests appropriate assistance, then the staff member may complete the form. However, the clerk’s staff member must write own

¹COMMENT on C. 2: This list provides examples of prohibited types of assistance. It is not comprehensive. In general, clerks must avoid advising litigants that they *should* include specific content in what they write or say or that they *should* take a particular course of action.

²COMMENT on C. 2. b: Clerks may inform litigants that some *general content* may be required in a pleading (*i.e.*, identification of the other parties involved in the incident; a description of the facts surrounding the incident). But clerks may not tell a litigant whom to identify or which particular facts might be relevant in the pleading. If there is a form generally used by the Court, the clerk may offer such form to the litigant but cannot require a specific form be utilized.

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the *exact words* provided by the litigant, and another staff member must witness the action.)

- d. Recommend specific people against whom to file petitions or other pleadings.
- e. Recommend specific types of claims or arguments to assert in pleadings or at trial.
- f. Recommend what types or amount of damages to seek or the specific litigants from whom to seek damages.
- g. Recommend specific questions to ask witnesses or other litigants.
- h. Recommend specific techniques for presenting evidence in pleadings or at trial.³
- i. Recommend which objections to raise to an opponent's pleadings or motions at trial or when and specifically how to raise them.
- j. Recommend when or whether a litigant should request or oppose a continuance.
- k. Recommend when or whether a litigant should settle a dispute.
- l. Recommend whether a litigant should appeal a judge's decision.
- m. Interpret the meaning or implications of statutes or appellate court decisions as they might apply to an individual case.
- n. Perform legal research.⁴
- o. Predict the outcome of a particular case, strategy, or action.

3. If you are uncertain whether the advice or information constitutes "legal advice", seek the assistance of a supervisor. If a supervisor is not available, inform the litigant that you are not able to provide the information and that the litigant should seek help from an attorney.

³ COMMENT on C.2.h.: Clerks should provide, or identify the place where someone can obtain, pamphlets or other documents that address the issue and that have been prepared for general distribution to the public, (i.e., pamphlets, prepared by the State Bar of Georgia)

⁴ COMMENT on C.2.n.: Clerks may refer litigants to Georgia court rules or Georgia Code for rules or statutes that govern matters of routine administration, practice, or procedure; and they may give definitions of common, well-defined legal terms used in those Code sections. However, clerks may not *interpret* the meaning of statutes or rules.

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D. Authorized information and assistance. When a *pro se* court user seeks help—excluding legal advice;— court or clerks' staff should respond to questions to the best of her or his ability. Court and clerks' staff are authorized to:

1. Provide public, non-privileged, information contained in:
 - a. dockets or calendars,
 - b. case files,
 - c. indexes, and
 - d. other reports.
2. Recite common, routinely employed:⁵
 - a. court rules,
 - b. court procedures, and
 - c. administrative practices.
3. Tell the *pro se* litigant that Georgia statutes can be found in the official Code of Georgia and rules of procedure can be found in the Uniform Magistrate Court Rules. The Clerk should not perform legal research or point the litigant to any specific Title or Rule.
4. Identify forms that might meet the needs of the *pro se* litigant, and provide forms that the Court has prepared for use.⁶
5. Answer questions about how to complete forms (*i.e.*, where to write in particular types of information), but **not** questions about how the litigant *should* phrase his or her responses on the forms.

⁵ COMMENT ON D.2: Reciting a common rule is permissible, but court staff should not attempt to apply the rule to the facts in the litigant's case. Sometimes, after a clerk recites a rule (*i.e.*, "After a judge enters a judgment in your small claims case, you have ___ days to file an appeal."), a *pro se litigant* will ask whether or how the rule would apply, or if the rule might be applied differently, given the facts in his or her case. This calls for an *interpretation* of the law or rule of procedure. *Court and clerk's office staff must avoid offering interpretations of laws or rules.*

⁶ COMMENT ON D.4.: when a clerk is reasonably certain about which form is most appropriate for use by a given litigant, the clerk should identify the appropriate form. However, clerks should avoid telling litigants that they *should* or *must* use a particular form. The appropriate approach in most situations is to tell the litigant: a) a particular form probably will meet the individual's needs; b) clerks *cannot guarantee* that this is the correct form; and c) the litigant should read the form very closely or consult an attorney to determine the appropriateness of the form for the litigant's purposes.

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6. Define terms commonly used in court processes.
7. Provide phone numbers for lawyer referral services. (See Exhibit A.)

E. Prohibition against revealing the outcome of a case before the information is officially released to the litigants or public.

Court or clerk's staff shall not disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record, or until the judge directs disclosure of the matter.

F. *Ex parte* communications. As a general rule, parties are prohibited from having *ex parte* communication with a judge. However, there may be limited occasions when *ex parte* communication may be allowed. (Conflicts, continuances, etc. No "substantive" communications allowed.)

1. If a litigant or attorney submits an *ex parte* **written** communication for a judge (*i.e.*, to grant a continuance; to stop or limit a garnishment), court staff **must** deliver it to a judge who should decide what action, if any, is appropriate.
2. If a party makes a **verbal** request that a judge take some type of **action** in a case, the clerk should tell the litigant to **put the request in writing** and:
 - a. address the request to the court;
 - b. include the case number (if any) on the document;
 - c. write the date on the document;
 - d. sign the written document;
 - e. print the person's name under the signature;
 - f. write the person's address and telephone number on the document;
 - g. deliver the written request to the clerk's office; and
 - h. ensure that a copy of the document is served on the opposing litigant or litigant's attorney as required by Georgia law.
3. If a party or attorney contacts a clerk by telephone with a verbal request for judicial action and there is **insufficient time to deliver a written request** to the clerk's office (*i.e.*, an **emergency situation**), the clerk **shall** communicate the request to a judge in accordance with rules established by the Chief Magistrate for handling such communications. The clerk, however, should tell the caller that the clerk cannot guarantee that the judge will grant or even consider the request.

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require the request to be submitted in writing. (This might vary by county or judge.) But the clerk should refer the question to the judge, if available.

If the person wants to talk to a judge about issues under litigation, the judge usually cannot allow such communication unless all parties involved in the case are present (i.e., at a hearing). If the person wants to give the judge information pertinent to a case or wants the judge to take some *action* related to a case, the person must: 1) put the request *in writing*; 2) file it in the clerk's office; and 3) provide copies to the other parties in the case. (See *Guideline F.2*).

Georgia has a specific Warrant Application procedure when non-law enforcement litigants seek the arrest of other persons. The procedure for such warrant applicants shall be set by the Chief Magistrate and may involve direct contact between a litigant and a judge in an *ex parte* fashion.

d. Judicial Decisions

What will the judge say?

Clerks may not speculate on what a judge might say or do. Clerks should avoid telling anyone what a judge usually does or otherwise guessing what may happen in any individual matter as the facts may dictate an unusual or extraordinary result.

e. Legal Research

Georgia's statutes (laws passed by the state legislature) are in the official Code of Georgia (also known as the Georgia Code). The Georgia Magistrate Court Rules contain the procedures that litigants must follow in Georgia's Magistrate courts. Your county law library should have copies of these volumes. Every Georgia county has a law library.

****Many legal materials are available on the internet. However, the clerk cannot verify the authenticity or accuracy of any website. It is always ultimately the litigant's responsibility to determine that they have researched the most recent law or case.**

Further, in some circumstances a litigant might have to examine decisions by the Georgia Supreme Court or Georgia Court of Appeals to see how these courts have interpreted the laws and rules. A person might have to go to a law library to find up-to-date research materials on appellate court decisions. Ask a librarian for assistance with these materials.

It can be difficult to know and understand all the laws and procedures that might apply in a particular case. If a person is uncertain about the laws or procedures involved in the case, the person should consult an attorney.

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Suggested Responses to FAQs from *Pro Se* Litigants

A. General Questions

1. Issues That Are Common to All Types of Cases

a. Assistance from Clerks

I have asked you several questions and you won't answer them. Why aren't you more helpful?

The clerk should **politely** advise that, first, many questions require the clerk to explain or interpret the law or how the law would apply in the litigant's case. This constitutes legal advice, and **the law prohibits clerks from providing legal advice to litigants**. Second, if a litigant misunderstands a clerk's statement, or a clerk gives an incorrect answer to a question and the litigant loses his or her case as a consequence the litigant might blame the clerk. For these reasons, clerks must refrain from answering many questions that people ask and refer people to competent legal counsel.

b. Attorneys (Recommending One)

What attorney should I call to handle my case? Who would be good?

Clerks are not allowed to recommend specific attorneys or law firms. Parties should contact the **Georgia Lawyer Referral Program (see Exhibit A)**. Parties may also check the yellow pages in the phone book or ask their friends for a recommendation. The local bar association may also have an attorney referral service.

c. Communication with Judges

Can I talk to a judge?

Clerks must be cautious about allowing people to talk to a judge because judges must avoid **ex parte** contacts with litigants. For guidance on this issue, *see Guideline F*. The clerk should ask for the person's name and why she or he needs to talk to the judge.

If the issue is unrelated to any case before the court, the clerk should refer the question to the judge, if available.

If the issue involves an **emergency scheduling matter** (i.e., request for a continuance due to car problems on the morning of a hearing), the clerk should write down the request and contact the judge in a manner that has been set by the Chief Magistrate. The Clerk cannot tell the litigant whether the request will be granted.

If the issue involves a **non-emergency request for a continuance**, most judges

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f. Scheduling & Court Appearances

1. Do I have to be in court today?

The clerk may review whatever notice the party has to determine whether the party must appear in court and where the hearing (if any) will be held.

2. Can I reschedule (continue) my hearing to a later date?

Only the judge can continue a hearing. If the party files a written request with the clerk and provides a copy of the request to the other parties (or the prosecuting attorney in a criminal case), the judge will consider the request. (See Guidelines F & 1.c. above for guidance on emergency scheduling requests.)

3. My car won't start, so I can't get to the hearing today. Can you tell the judge?

The answer to this question depends on local custom. Some clerk's offices will convey a message regarding case scheduling to a judge, but others prefer that the party speak directly to the judge.

g. Sealed Records

Can I see my sealed file? (e.g., adopted person seeking information)

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matter. All information concerning adoptions can be found in the Superior Court, not the Magistrate Court. Matters involving juvenile matters may be found in the Juvenile Court. Any records sealed by the Magistrate Court are addressed within Uniform Magistrate Court Rule 6.

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B. Civil Cases

1. General Civil Matters

a. Filing a Petition

1. How long do I have to file my petition?

The party should consult an attorney concerning the relevant statute of limitations.

2. How do I serve my petition on the opposing party?

The clerk may point out the various means of service that are set out in Georgia law. The inquirer should consult an attorney to determine the proper means of service for the party's particular case.

3. \$ _____ (county specific) seems like a high filing fee? Why is it so steep?

Filing fees are set by the legislature, not by the court or clerk's office. There are several agencies that are partially or fully funded by court fees.

4. In what county or state do I file my case? (How do I know where venue lies?)

The answer to this question depends on the type of case that is being filed, where litigants live, whether a corporation is a party and where events took place. Sorting out the impact of these factors would constitute legal advice. The clerk should advise the party to consult an attorney.

b. Answering a Petition

1. How do I file an answer?

A litigant's answer must be in writing and filed with the clerk within a certain number of days after the petition was served on the party. Understand that certain types of civil actions have different limitations, i.e. dispossessory actions vs. tort cases, and the litigant **must** provide a copy to the opposing party. The clerk may point out the various means of service. The answer includes a response to each specific allegation or paragraph in the petition or pleading to which the defendant is responding. Since the answer should also incorporate any affirmative defenses, the clerk should suggest that the party consult with an attorney. Georgia law allows the clerk to write the answer for a litigant who is incapable of writing his/her own answer.

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2. A petition was filed on me ____ days ago, now here I am to make my appearance.

A **written answer** must be filed in the clerk's office within ____ days after the petition was served on the party. (See response in b.1 above.) The answer also must be served on the other parties in the case. A defendant may file an answer after the ____ day period, but the clerk cannot guarantee what effect the answer will have in the case. This is an administrative question, which may be answered by the clerk. Once a petition is filed it must be served upon the opposing party who is then given a specific time to respond, usually 30 days from date of service, however dispossessory actions and personal property foreclosures must be answered within 7 days. If an answer is filed denying the claim, the magistrate clerk will set the case for hearing according to the magistrate's schedule and notice will be mailed to all parties. In some counties, unless waived by court order, *mediation* is required prior to setting the case for hearing. In those counties the clerk should inform the party about that requirement and that notice for the mediation will be sent to all parties the same as the notice for the hearing.

3. A petition was filed on me more than ____ days ago. Can I still file an answer?

The clerk can accept an answer at any time, even if it is late. But the clerk cannot speculate about the legal consequences of filing the answer late. If the plaintiff has already filed an application for default judgment or has obtained a default judgment, the defendant should definitely consult an attorney for options. Georgia law requires the payment of certain costs to open a default and the Chief Magistrate will direct the procedure for such instances.

In dispossessory/distress actions, the rules are different and the litigant seeking to file an answer more than 7 days after service, should be advised to seek legal counsel.

c. Bankruptcy

If I file bankruptcy will my debts go away?

The clerk should not speculate about how bankruptcy laws would apply in a particular case, which would be a clear example of providing legal advice. In addition, bankruptcy is a complicated area of the law. Strongly recommend that the party consult an attorney. The defendant should advise the court if he or she is under Bankruptcy protection. (With stays, encourage party to provide a case number.)

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d. Collection/Enforcement of Judgments (Liens, etc.)

1. Are there any liens on my property?

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Property liens are generally recorded in Superior Court.

2. How do I collect my judgment?

Litigants seeking to collect a judgment issued by the Court should be advised to seek the advice of an attorney concerning the collection of the judgment. The Chief Magistrate may establish procedures for collection of its judgments, issuance of FIFa's or similar matters. A party may file statutory post-judgment interrogatories as allowed by Georgia law.

e. Eviction: Dispossessory Actions

How do I evict someone who has failed to pay rent, violated the terms of the lease or is holding the premises over past the end of the term of the lease?

The clerk may provide to the litigant the appropriate form necessary to initiate a dispossessory action. There are several complicated issues that are connected with the dispossessory actions which should not be addressed by the clerk (i.e., when a security deposit has to be returned; should the landlord request damages in addition to the back due rent; was notice required prior to filing the dispossessory action, etc.). Therefore, it is important that the clerk not get involved with telling the litigant whether the form is correct because every fact pattern is different.

f. Name Change

How do I change my name? (Not part of divorce case.)

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Name changes are generally handled by Superior Court.

g. Real Estate Issues

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Real estate records are generally maintained by Superior Court.

h. Dismissals

If the plaintiff no longer wants to continue with the case for whatever reason (i.e., the case is settled, the plaintiff has changed position, the plaintiff simply does not want to pursue the matter any further), the plaintiff can seek a dismissal form from the clerk's office. Understand that the filing and dismissal of a civil case is an important event. If the dismissal is done "with prejudice", the plaintiff could not later

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re-file that same action. If the petition is dismissed “without prejudice” then the case could be reinitiated within certain time limitations by the plaintiff.

It is also important to understand that the dismissal of the case by the plaintiff will not dismiss the counterclaim of the defendant, if any. The defendant is also authorized to dismiss the counterclaim on many of the same principles addressed above.

2. Domestic Abuse

a. Process

How do I get a restraining order against someone?

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Restraining Orders are generally handled by Superior Court.

Many people incorrectly believe that the Magistrate Court has the authority to issue a restraining order, domestic violence protective order, temporary protective order, or similar “restraining orders”. The Magistrate Court does not have the authority to do so unless it has been specifically appointed to do so by a Superior Court Judge. Therefore, it is important that the party seeking a protective order or domestic violence order seek assistance through Superior Court which has the authority to consider a “restraining order.”

Other restraining orders: For other types of restraining orders the clerk should suggest the party consult with an attorney. The party might also seek assistance from a local domestic abuse assistance center. However, in some Magistrate Courts, Good Behavior Bonds are used in the same manner but they are only authorized for the particular county in which the Good Behavior Bond is issued.

b. Appointment of Attorney

1. Will the County Attorney represent me?

The County Attorney or District Attorney usually represents the state in **criminal** cases.

2. Can you appoint an attorney for me?

Only a judge can appoint an attorney, and a judge may appoint an attorney only in certain criminal cases. In most civil cases there is no provision for the appointment of counsel, but the clerk may refer the party to Legal Aid, which may assist civil litigants who cannot afford to hire an attorney.

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3. What other legal assistance can be provided for me?

Georgia Legal Aid Services around the state of Georgia, through Volunteer Lawyers Foundations or other legal services per direction of chief judge.

3. Domestic: Divorce, Modifications and Support

a. Filing and Modification Issues

1. How do I file a divorce?

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Domestic relations matters (divorces, modifications, legal separations, contempt's) are handled by Superior Court.

b. Child Support

1. How do I get my ex-spouse to pay child support?

The establishment and modification of child support is generally a matter for Superior Court determination in a civil case. If you desire to request an arrest warrant for abandonment of child or similar crime, please see the process set forth under the criminal section of this pamphlet.

2. Can I get my ex-spouse's wages garnished for not paying child support?

It depends upon the circumstances of the case. Does the ex-spouse have a court-ordered child support obligation that is in arrears? If the answer to this question is "Yes", then the person might be able to obtain garnishment of the ex-spouse's wages. However, the clerk should explain that garnishing wages can be a complicated process, and that further assistance from the clerk could be interpreted as providing legal advice (aside from providing forms), which the clerk may not do. The party should seek assistance from a private attorney, from Legal Aid or Legal Services offices (if he or she cannot afford an attorney), or from the Child Support Recovery Unit.

c. Custody & Visitation

Where do I go for custody battles?

Superior Court handles all domestic relations matters.

4. Probate

1. Can I file my own guardianship and conservatorship?

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types

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of legal matters. Probate Court has jurisdiction over such matters.

2. Do you have my will?

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Probate Court would be the appropriate referral for all probate matters.

5. Small Claims

a. Filing a Small Claim Case

1. How do I file a small claim?

See B.1.a.

2. Whom do I file against?

This question requires the clerk to offer legal advice, which a clerk may not provide. Advise the plaintiff to consult with competent legal counsel.

3. Do I have a case against this guy?

This question requires a clerk to interpret how the law will apply in a particular litigant's case, which would constitute legal advice. Clerks cannot provide legal advice. The party should ask an attorney this question.

4. I live in Georgia and the defendant lives in ANOTHER STATE. Where do I file?

The answer to this question depends on the particular circumstances of the case. The clerk should advise the plaintiff to consult with competent legal counsel.

5. I live in this county and the person I want to sue lives in ANOTHER COUNTY in Georgia. Where do I file?

The answer to this question depends on the particular circumstances of the case. The clerk should advise the plaintiff to consult with competent legal counsel.

6. Once I file my claim, how long before I go to court?

This is an administrative question, which may be answered by the clerk. Once a petition is filed it must be served upon the opposing party who is then given a specific time to respond, usually 30 days from date of service, however distress/dispossessory actions and personal property foreclosures must be answered within 7 days. If an answer is filed denying the claim, the magistrate clerk will set the case for hearing according to the magistrate's schedule and notice

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will be mailed to all parties. In some counties, unless waived by court order, *mediation* is required prior to setting the case for hearing. In those counties the clerk should inform the party about that requirement and that notice for the mediation will be sent to all parties the same as the notice for the hearing.

7. My case was dismissed a year ago. Can I re-file?

The answer depends upon how the case was dismissed (i.e., with or without prejudice) and whether the statute of limitations has expired, which can be a complicated issue. The party should seek advice from competent legal counsel.

8. Will you mail me thirty small claims forms?

Most clerks' offices will not do this. Clerks will mail one copy free of charge. The recipient is allowed to make copies from the original. Some courts also have forms available via the internet.

b. Answering a Small Claim Petition

1. I received a small claim notice in the mail. What do I do now?

The defendant should follow the instructions on the notice and perhaps seek advice from an attorney. The clerk cannot tell the defendant whether to admit or deny the claim or how to respond to the notice; this would be legal advice, which clerks cannot provide. (Clerks may provide an answer form.)

2. How do I file a counterclaim?

The clerk may provide the appropriate forms and indicate where the information should be placed on the form, but cannot suggest phraseology or whether a counterclaim should be filed.

c. Bankruptcy and Its Impact

I filed a debt collection case against a person. After that, the person filed for bankruptcy. How will the bankruptcy case affect my case against that person?

The answer to this question can be complicated. It requires legal advice, which clerks cannot provide. From a procedural standpoint the clerk may advise that the filing of bankruptcy generally suspends ("stays") the state court proceedings. The party should seek advice from competent legal counsel as to how the bankruptcy might affect the plaintiff's claim. However, litigants should advise the Magistrate Court if they believe bankruptcy has a bearing on the case and provide case number if known.

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d. Collecting on a Judgment

1. Once a judgment is obtained, how long before I get my money? Can I have the defendant arrested until he/she pays?

This question requires *caution* by the clerk. A judgment coupled with a Fi Fa gives the judgment creditor a **lien** against the defendant, but the judgment and lien do not guarantee voluntary payment. The judgment creditor may pursue collection through various legal forms of **execution**, but these can be complicated. The party should seek advice from an attorney.

United States law does not allow for a party to be arrested for non-payment of a debt, including a judgment.

2. How do I obtain garnishment?

The clerk may provide appropriate forms that are available for this process and point out where information should be placed on the forms, but the clerk should not give any advice as to how the garnishment should be pursued.

3. How do I find out where the defendant works?

Georgia law allows for post-judgment interrogatories and some courts have forms for such a process. The litigants should be encouraged to seek legal counsel in this circumstance. Clerks may provide the standard interrogatory form.

4. I tried an execution, but it didn't work. What do I do now?

The clerk cannot tell the person what he or she should do in this circumstance.

5. How do I stop a garnishment?

The clerk may provide the defendant with appropriate forms for requesting a hearing, if such forms are available. Otherwise, the clerk should advise the defendant that a traverse needs to be filed with the clerk's office with notice to the garnishing party. A hearing will then be scheduled before a judge.

6. Why can't the judge just put the defendant in jail?

The clerk may advise that jail is not a legal remedy available in civil proceedings. The plaintiff may wish to consult competent legal counsel to explore other available options.

7. Can the defendant make installment payments on the judgment?

The judgment order **may** provide for installment payments, or the defendant may

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petition the court for installment payments. The judgment creditor may also accept partial payments even if they are not explicitly authorized in the judgment, but the defendant should seek advice from an attorney as to whether the judgment creditor who has accepted partial payments will be prevented from seeking accelerated collection of the judgment through other legal means. The parties are free to contact one another.

8. The other party paid me just the judgment and not court costs. How do I collect the court costs?

If the judgment required the defendant to pay court costs, the judgment lien does not have to be released until those costs are paid. The plaintiff may pursue payment through **execution** and the clerk should provide forms for doing so, if available.

e. Landlord and Tenant Cases

1. Does a three-day “notice to quit” include weekends and holidays?

Yes.

2. Other questions about dispossessory cases.

This can be a very complicated area of the law, so the party should consult an attorney on almost all other questions. Legal Aid may provide free or low cost legal services for low-income residents who cannot afford an attorney.

f. Satisfying and Releasing the Judgment

1. I paid my judgment in full and the plaintiff has not released it. How do I get the judgment released?

There is a procedure for this contingency found in the Georgia Code, but the party should seek advice from competent legal counsel on this issue.

2. I paid my judgment so why don't you satisfy it?

The judgment creditor (the person who was owed the money) is responsible for satisfying the judgment, not the clerk.

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C. Criminal and Traffic Cases

1. General Criminal Matters

a. Appeals

How do I file a notice of appeal?

An appeal of a criminal matter is complicated and time-limited. The Clerk may provide a form, if available, but the clerk cannot tell a litigant what information the appeal should include.

b. Attorneys

1. How do I get an appointed attorney?

Parties have the right to hire their own attorney. If financially unable to do so, a party may apply for a court-appointed attorney, and the clerk should provide the appropriate forms, if available in a criminal case. The judge will then consider the request and, based on criteria established by the state legislature, determine whether the party is eligible for court-appointed counsel. Some counties have an Indigent Defense Office that addresses appointment of counsel. As rules and guidelines may change, the clerk should not attempt to advise the person whether they qualify as indigent.

2. Why do I have to reimburse the state for court-appointed attorney fees?

The legislature passed a law that may require courts to order such reimbursement.

3. Why can't I have a court-appointed attorney?

Clerks do not play a role in determining who gets a court-appointed attorney.

c. Bond

1. How do I get a friend out of jail (out on bond)?

If bond has been set, advise the party to contact the appropriate law enforcement agency concerning bond.

2. When will I get my bond money back?

Bonds are only released upon order by a judge or final resolution of the charges. Furthermore, the bond is returned only to the party posting it, and the bond is subject to the clerk's procedures for returning cash bonds. Any monies paid to a professional bail bondsman would have to be addressed between the surety and the bail bondsman.

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d. Charges and Charging Issues

1. What have I been charged with?

The clerk may show the defendant the file assuming it is not confidential or sealed consistent with Uniform Magistrate Court Rule 6. Ensure the information to be released is approved by the Judge pursuant to Uniform Magistrate Court Rule 6. If the defendant has further questions, the clerk should suggest that the party consult with an attorney or with the prosecutor's office.

2. It wasn't my car so why did I get a ticket for _____?

Clerks are not authorized to speak for law enforcement officers or to speculate as to why an officer did or did not issue a ticket. Encourage the party to seek advice from competent legal counsel or ask the prosecuting attorney.

e. Complaints (Regarding Police Officers)

How do I file a complaint about a police officer?

The clerk may refer the party to the relevant law enforcement agency.

f. Court Costs

1. Why are my court costs so high?

Court costs are established by the legislature; the clerk's duty is merely to assess and collect those costs.

2. Why do I have to pay court costs when I didn't go to court?

Court costs are established by the legislature and they are fees for the filing and processing of the case rather than a fee for personal appearances.

3. Why are there so many surcharges on my fine?

The Georgia legislature has established several different surcharges that apply to all criminal fines in Georgia. Those surcharges are used to fund a variety of different operations and agencies throughout the state, specifically including but not limited to indigent defense. The fines set by the court have automatic surcharges that are applied to them and are not within the discretion of the court whether to assess them or not.

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g. Fines

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. The Probate Court, State Court, Juvenile Court or Superior Court may have jurisdiction over certain fines.

On any fine assessed by the Magistrate Court, the clerk may refer the party to the appropriate probation office or clerk who accepts the payment of fines. Consult with supervisors as to whether your court allows for the payment of the fine without a formal hearing being conducted. In most cases, the payment of a fine constitutes a waiver of certain constitutional rights and may, in some circumstances, constitute an admission of guilt. Therefore, simply “paying the fine” is likely to be a matter that needs to be addressed between the party and their attorney to ensure that the party understands all of the consequences of a payment of a fine.

1. When do I have to pay my fine?

Fines are usually due at sentencing unless additional time to pay is granted by the court.

2. Why won't you take my check?

Procedures for accepting fine payments are set by the Chief Magistrate.

3. Will you give me an extension to pay my fine?

Only a judge may grant an extension. The defendant should file a request in writing with the clerk who will then give the request to the judge for consideration.

4. What do the police do with all the money I pay?

Fine payments do not go to officers or law enforcement agencies directly, but are paid to the general fund of the cities or counties of the jurisdiction.

h. Guilty Pleas

How do I plead guilty?

Generally, guilty pleas are only accepted in open court after proper waiver of certain Constitutional rights. The Chief Magistrate shall set all criminal procedures for the Court and the clerks then draft a court calendar

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i. License Suspension

Why is my license suspended when I paid my ticket?

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. The Legislature sets rules for license suspensions and clerks are not given discretion over such matters.

j. Notices - Missed Court Dates

1. I missed my court date. What happens now?

A defendant is responsible for being in court on the date that is appointed for court. If the defendant believes he or she has an appropriate excuse for not being present, he or she should present that excuse in writing to the clerk for consideration by the judge. A missed court date may result in either an order for arrest (bench warrant for failure to appear) or some sort of Rule Nisi or other order requiring the defendant to come to court on another court date to show because why he or she should not be held in contempt for failure to appear. Again, recommending that the defendant hire a lawyer to look into this matter for them may be advisable.

2. I've moved since the matter began. What do I do now?

It is always the responsibility of the party to an action, whether it be civil or criminal, to keep the court notified of any changes of address. It is not the court's responsibility to "find" any party to either a civil or criminal action. It is the responsibility of the clerk to notify a litigant of his or her relevant court dates or other matters at the last known address. If that address has changed and the litigant failed to notify the court, a failure to timely respond or be present for a hearing may have repercussions to the litigant and his or her case which cannot all be summarized in this response.

k. Records and Warrants

1. Why won't you do a record check for me?

The clerk's office is required to keep the records open and accurate. Due to staffing and liability considerations, however, the clerk does not conduct record searches. Notify the person requesting the document of the times and dates when records may be received (see Uniform Magistrate Court Rule 6).

2. This isn't supposed to be on my record. Why is it showing up?

The clerk should first determine if the matter was recorded properly and, if so, advise the party to seek advice and assistance from competent legal counsel.

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3. Is there a warrant out for my arrest?

The party should check with local law enforcement; clerks are not authorized to provide this information.

I. Sentences: Outcomes and Options

1. What will my sentence be?

The judge imposes the sentences and it would be inappropriate for the clerk to speculate.

2. Am I going to jail?

Sentencing depends on a variety of factors and it would be inappropriate for the clerk to speculate on what the judge might do.

3. How do I get probation?

Because this is such an important issue, the clerk should emphasize that the best option would be to consult with competent legal counsel. However, if the defendant is not going to contact an attorney, the clerk may suggest that the defendant could make the request to the judge at sentencing. But the clerk may not tell the defendant the likelihood of probation following a hearing.

*If the court provides informational pamphlets or websites for pro se litigants, the clerk may provide the relevant pamphlet or point out a portion of the website or pamphlet that addresses their question.

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EXHIBIT A

Helpful Resources for People Who Need Legal Assistance or Information

State Bar of Georgia - 1-800-334-6865, www.gabar.org
Council of Magistrate Court Judges (Georgia) - www.georgiacourts.org/councils/magistrate
Administrative Office of the Courts of Georgia - 404-656-5171
Georgia Supreme Court - 404-656-3470
Child Support Recovery - ocss.dhr.georgia.gov/
Safe Homes of Augusta (National Crisis Hotline) - 1-800-334-2836
Legal Aid - legalaids-ga.org
GBI - 404-244-2600
Georgia Lawyer Referral Program - 1-800-215-1644
Georgia Landlord and Tenant Hotline - 1-800-369-4706, www.georgialawyerreferral.com

***Information is subject to change.**