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## COURTS

### *Magistrate Courts: No Prejudgment Attachment; Appeal and Reopening of Default Judgments*

CODE SECTION:	O.C.G.A. §§ 15-10-2 (amended), 15-10-41 (amended), 15-10-43 (new), 15-10-47 (new), 15-10-49 (amended), 15-10-105 (amended), and 15-10-105.1 (new)
BILL NUMBER:	SB 340
ACT NUMBER:	1458
SUMMARY:	The Act contains several new provisions for magistrate courts: prejudgment attachments may not be granted by a magistrate court; appeals of default judgments are limited; default judgments may be opened in certain cases; relief from judgments may be granted; executions are to be recorded in the general execution dockets of the superior courts; clerks of the magistrate court must be at least eighteen years of age; and the powers and duties of the clerks are established.

#### *History*

In 1983, the newly adopted Constitution of Georgia abolished justice of the peace courts and other courts of limited jurisdiction and replaced them with magistrate courts.<sup>1</sup> Numerous opinions have been rendered by the Attorney General analyzing the general powers and duties,<sup>2</sup> criminal jurisdiction<sup>3</sup> and other matters of general consideration<sup>4</sup> for these courts. Recent opinions addressed these issues in the context of their new status as magistrate courts.<sup>5</sup> Subsequent amendments to the Georgia Code further defined the parameters and functions of the magistrate courts.<sup>6</sup> SB

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1. GA. CONST. art. VI, § 1 ¶¶ 1, 6 (1983).

2. *See, e.g.*, 1983 Op. Att'y Gen. No. 83-59 (discussing eligibility requirements for chief magistrate appointments).

3. *See, e.g.*, 1948-49 Op. Att'y Gen. No. 473 (discussing the issuance of warrants and process and delegating the duty of arrest).

4. *See, e.g.*, 1984 Op. Att'y Gen. No. U84-42 (discussing compensation for clerks serving as magistrate court clerks).

5. *Supra* notes 2 and 4.

6. *See* 1984 Ga. Laws 1096, § 5 (permitting appeals from magistrate court of the

340 is an attempt to clarify some aspects of the operations and procedure of magistrate courts.

### *SB 340*

In its initial form, the main provision of SB 340 required active membership in the State Bar of Georgia as a prerequisite to qualify for the position of chief magistrate of any county with a population of 75,000 or more. Chief magistrates who are not attorneys, but who were already in office in those counties on July 1, 1986, are exempt from the Georgia State Bar membership requirement. The legislative intent was to raise the level of legal knowledge, training, and expertise of the magistrates.<sup>7</sup>

In an opinion addressed to the Secretary of State, the Attorney General advised that the eligibility requirements for becoming a magistrate did not include being an attorney and could not be imposed as a condition of office as a matter of construction. They can, however, be imposed by local law.<sup>8</sup> The Attorney General did not render an opinion on the advisability of such a requirement. A Senate Committee Substitute deleted the magistrate bar admission qualification. The deletion reflected a public concern that adding such a requirement would eliminate the identification that the public shares with the magistrate office.<sup>9</sup>

Also deleted from the bill were portions directed at O.C.G.A. § 15-10-132, amending membership, appointment, and term provisions for the Georgia Magistrate Courts Training Council. This section was removed at the Senate Committee level in order to include it in another bill.<sup>10</sup>

The major focus of the Act as passed is twofold. The new O.C.G.A. §§ 15-10-2 and 15-10-49 limit the jurisdiction of magistrate courts by prohibiting prejudgment attachments. O.C.G.A. §§ 15-10-41 and 15-10-43 limit default judgment appeals and define procedures for opening default judgments. The remaining sections provide for the recording of executions in the general execution docket, establish a minimum age requirement for the clerks of the magistrate court, and describe the general powers and duties of the clerks.

The Act also clarifies restrictions on prejudgment attachments by the magistrate courts.<sup>11</sup> Though previously effective, this restriction was only discoverable by cross-referencing other sections of the Code and correctly

county in addition to the superior court) (codified as amended at O.C.G.A. § 15-10-41(b)); 1985 Ga. Laws 627, § 1 (qualifying methods of service of process for statement of claims) (codified as amended at O.C.G.A. § 15-10-43(b)).

7. Telephone interview with Senator Nathan Deal, Senate District No. 49 (May 5, 1986) [hereinafter cited as Deal Interview].

8. 1983 Op. Att'y Gen. No. 83-53.

9. See Deal Interview, *supra* note 7.

10. *Id.*

11. O.C.G.A. §§ 15-10-2(5) and 15-10-49(a) (Supp. 1986).

construing the meaning.<sup>12</sup> As the Attorney General pointed out, attachment and garnishment constitutionally require judicial supervision,<sup>13</sup> and the General Assembly mandated that such supervision take place in a "court of record."<sup>14</sup> Since magistrate courts are not "courts of record," they may not order prejudgment attachment or garnishment.<sup>15</sup>

The Act also revises the procedures for appeal of default judgments in magistrate courts.<sup>16</sup> The Act now grants a defaulting party fifteen days following the day of default to reopen a case in the magistrate court upon payment of costs.<sup>17</sup> If reopened, the case must be ready for immediate trial. The new O.C.G.A. § 15-10-41(b) further provides that in the event a default judgment is not opened within the fifteen day period, review by the state or superior courts of the county shall be by certiorari.

O.C.G.A. § 15-10-43(e) provides that before any final judgment in a civil claim is rendered, the court may, in its discretion, allow a default to be opened for "providential cause preventing filing of required pleadings," for "excusable neglect," or where a proper case is made to demonstrate that the default should be opened.<sup>18</sup> A proper showing requires 1) setting up a viable defense and 2) standing ready for immediate trial. Additionally, according to O.C.G.A. § 15-10-43(f), (g), the magistrate court may grant relief from a judgment under the same circumstances as a state court.<sup>19</sup> Requests for relief from magistrate court judgments are to be in the form of a new action, and costs may be assessed by the court. Finally, a complaint in equity to set aside a magistrate court judgment may be brought under the same circumstances as would be required to set aside a judgment in a court of record.<sup>20</sup> Once again, these measures are implemented in the interests of judicial economy. The intent is to resolve conflicts of a limited nature at the level at which they were instigated.

The new O.C.G.A. § 15-10-47 applies superior court rules regarding money judgments to magistrate courts. Money judgments issued by a magistrate court will be recorded with superior court judgments in the general execution docket to eliminate the necessity of any further action

12. See 1984 Op. Att'y Gen. No. U84-28 for discussion of O.C.G.A. §§ 15-10-49(a),(b), 18-3-9, 18-3-17(a), and 18-4-41.

13. See 1984 Op. Att'y Gen. No. U84-28. GA. CONST. art. I, § 1, ¶ 1 (1983).

14. Magistrate courts have the jurisdiction to try "civil claims including garnishment and attachment in which exclusive jurisdiction is not vested in the superior court and the amount . . . does not exceed \$2500." O.C.G.A. § 15-10-2(5) (1982). However, magistrate court procedures are "'subject to' chapters 3 and 4 of Title 18." O.C.G.A. § 15-10-49(a), (b) (1982). Title 18 restricts the power to handle prejudgment applications and seizures to judges of "courts of record." O.C.G.A. §§ 18-3-9, 18-3-17(a), 18-4-41 (1982).

15. 1984 Op. Att'y Gen. No. U84-28, at 245-47.

16. O.C.G.A. §§ 15-10-41(b) (Supp. 1986) and 15-10-43(e), (f), (g) (Supp. 1986).

17. O.C.G.A. § 15-10-41(b) (Supp. 1986).

18. O.C.G.A. § 15-10-43(e) (Supp. 1986).

19. *Id.* § 15-10-43(f), (g) (Supp. 1986).

20. *Id.* § 15-10-43(g) (Supp. 1986).

by plaintiffs.<sup>21</sup>

Finally, the Act specifies a minimum age requirement of eighteen years for clerks in the magistrate courts and defines their duties and the scope of their authority.<sup>22</sup> The chief magistrate assigns duties to the clerk. The clerk has the power to administer oaths, take affidavits (unless specifically confined by law to another officer), receive amounts due to the court or sums as ordered by a judge, and advertise under the rules and restrictions applicable to sheriffs. The intent behind clarifying the clerk's responsibilities and granting such authority is to facilitate the administration of magistrate courts.<sup>23</sup>

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21. O.C.G.A. § 15-10-47(b) (Supp. 1986).

22. O.C.G.A. § 15-10-105(f) (Supp. 1986).

23. See Deal Interview, *supra* note 7.