CIVIL CASE PREPARATION

Glossary of useful terms in civil cases (MAG 10)

Action - A court proceeding when one party prosecutes another for the protection or enforcement of a right, the prevention or correction of a wrong, or the punishment of an offense.

Allegation - A statement by a party in a pleading describing what that party's position is and what that party intends to prove.

Answer - The formal declaration under penalties of perjury in response to a question. Also, it may mean to formally file with the clerk of court a written response to a lawsuit, dispossessory action, etc..

Appeal - A written request to a higher court to modify or reverse the judgment of a trial court or intermediate level appellate court. An appeal begins when the loser at trial files a notice of appeal, which must be done within strict time limits (often 30 days from the date of judgment or seven (7) days from the date of a landlord tenant action.

Case - A lawsuit or judicial proceeding intended to solve a controversy between parties.

Cause of Action - The facts that make up the theory for a case or lawsuit.

Civil Case - An action brought by a person or party to recover damages or property, to force someone to honor a contract or to protect one's civil rights.

Counterclaim - An independent cause of action, usually by the defendant, that opposes or offsets a previous claim made by the plaintiff.

Cross Examination - At trial, the opportunity to question any witness, including your opponent, who testifies against you. The opportunity to cross-examine usually occurs as soon as a witness completes his/ her direct testimonyCoften the opposing lawyer or party, or sometimes the judge, signals that it is time to begin cross-examination by saying, Your witness.

Damages - An award of money paid by the losing party to the winning party to compensate for losses or injury incurred.

Defendant - The accused in a criminal case or in a civil case, the person or organization against whom the plaintiff brings an action.

Dismissal with Prejudice - The claim may never be asserted against the other party again.

Dismissal without Prejudice - The claim may be reasserted against the other party in the future.

Evidence - Any type of proof that is legally presented at trial through witnesses, records and/or exhibits.

File - To deposit in the official custody of the Clerk of the Court to enter into the files or records of a case.

Filing Fee - Money paid to the court to start a civil action.

Foreclosure - The forced sale of personal property to pay off a loan or other legal obligation connected with the property on which the owner of the property has failed to pay.

Hearing - In the trial court context, a legal proceeding (other than a full-scale trial) held before a judge. During a hearing, evidence and arguments are presented in an effort to resolve a disputed factual or legal issue. Hearings typically, but by no means always, occur prior to trial when a party asks the judge to decide a specific issue--often on an interim basis--such as whether a temporary restraining order.

Impeach - To discredit. To impeach a witness' credibility, for example, is to show that the witness is not believable. A witness may be impeached by showing that he has made statements that are inconsistent with his present testimony, or that he has a reputation for not being a truthful person.

Judgment - A final court ruling resolving the key questions in a lawsuit and determining the rights and obligations of the opposing parties.

Jurisdiction:

- The legal authority of a court to hear and decide a case.
- The geographic area over which the court has authority to decide cases.
- The territory, subject matter or persons over which lawful authority may be exercised by a court, as determined by constitution or statute, e.g., the Magistrate Court cannot try cases involving divorce.

Jury - A group of people selected to apply the law, as stated by the judge, to the facts of a case and render a decision, called the verdict. Traditionally, an American jury was made up of 12 people who had to arrive at a unanimous decision. There are no jury trials in Magistrate Court.

Lawsuit

- A legal action started by a plaintiff against a defendant based on a statement or claim that the defendant failed to perform a legal duty, which resulted in harm to the plaintiff;
- a legal dispute brought to a court for resolution.

Liable - Legally responsible. For example, a person may be liable for a debt, liable for an accident due to careless behavior, liable for failing do something required by a contract or liable for the commission of a crime.

Motion - During a lawsuit, a request to the judge for a decision--called an order or ruling--to resolve procedural or other issues that come up during litigation. Some motions are required to be in writing, such a motion for summary judgment. Other motions, such as a motion for a directed verdict, made at the end of one party's side of the case, can be made orally.

Notary Public - A licensed public officer who administers oaths, certifies documents and performs other specified functions. A notary public's signature and seal is required to authenticate the signatures on many legal documents.

Oath - An attestation that one will tell the truth, or a promise to fulfill a pledge. Party B One of the litigants. At the trial level, the parties are typically referred to as the plaintiff or complainant and the defendant or respondent. On appeal, they are known as the appellant and appellee.
Petition - A formal written request made to a court, asking for an order or ruling on a particular matter.
Plaintiff - The party bringing a civil action.
Rebuttal - Evidence given to explain, repel, counteract, or disprove facts given in evidence by the adverse party.
Pro Se - This term denotes a person who represents themself in court.
Settlement - An agreement reached among the parties that resolve the case at any time before court findings.
Statement of Claim - A written statement filed by the plaintiff that initiates a civil case, stating the wrongs allegedly committed by the defendant and requesting relief from the court.
Statutory overnight delivery O.C.G.A. 9-10-12(b)(1)(2)(3).

- (b) Whenever any law, statute, Code section, ordinance, rule, or regulation of this state or any officer, department, agency, municipality, or governmental subdivision thereof provides that a notice may be given by statutory overnight delivery, it shall be sufficient compliance if:
    1. Such notice is delivered through the United States Postal Service or through a commercial firm, which is regularly engaged in the business of document delivery or document and package delivery;
    2. The terms of the sender's engagement of the services of the United States Postal Service or commercial firm call for the document to be delivered not later than the next business day following the day on which it is received for delivery by the United States Postal Service or the commercial firm; and
    3. The sender receives from the United States Postal Service or the commercial firm a receipt acknowledging receipt of the document which receipt is signed by the addressee or an agent of the addressee.

Subpoena - An official order to attend court at a stated time. The most common use of the subpoena is to require witnesses to court for the purpose of testifying in a trial.
Summons - A notice to the defendant that an action against him or her has been commenced in the court issuing the summons and that a judgment will be taken against him or her if the statement of claim is not answered within a certain time.
Testify - To give evidence under oath as a witness in a judicial proceeding.
Testimony - Evidence presented orally by witnesses during trial.
Witness - A person who testifies under oath at a deposition or trial, providing firsthand or expert evidence. In addition, the term also refers to someone who watches another person sign a document and then adds his name to confirm (called "attesting") that the signature is genuine.

What do I bring to court? (MAG 25)

You should bring with you all persons who have direct knowledge of the facts related to your case and any documents, photographs, repair bills, receipts, samples, or other physical evidence which you feel would help the Court better How are cases presented in court? (MAG 25)

Because the Plaintiff has filed the case and carries the burden of proof, he or she gets to present evidence first. The Plaintiff will call all of his or her witnesses first. After a witness testifies, the other party has an opportunity to cross examine that witness. When all of the Plaintiff's witnesses have testified and been cross examined, the Defendant calls his or her witnesses, who may also be cross examined by the Plaintiff.

May I object to evidence? (MAG 25)

You can object to the introduction of evidence if it is legally inadmissible under the rules of evidence. You may not object to evidence because you disagree with it or believe it is untrue. If you make an objection, you should stand up, state your objection and its basis as briefly as possible, and allow the Court to rule on the objection. For example, "Objection, the testimony is hearsay." The Court will allow the other side to respond to the objection and then make a ruling as to whether the evidence will be admitted. Please note that the fact that the Court has allowed the evidence to be presented does not mean that the evidence will be credited or believed by the Court or that it is considered to be conclusive as to the issues covered by that evidence.

Can I present evidence other than the testimony of witnesses? (MAG 25)

Yes, you can present physical evidence, or exhibits. These are physical items, such as photographs, contracts, leases, samples, receipts, etc. that you want the Court to look at before making a decision in your case. The exhibit must be relevant to the issues in your case. You must also allow the other party to review the exhibit before you present it to the Court. An exhibit is not simply handed to the Court. You, or another witness, must identify the exhibit, which means to explain what the exhibit is and how it is related to the case.

What if I forget to tell the court something, or the opposing party brings up evidence that I did not cover myself? (MAG 10)

Provided that the court has not issued it final judgment, the procedure for presenting testimony is generally:

- The Plaintiff presents evidence.
- The Defendant presents evidence.
- After the Defendant presents evidence, the Plaintiff will generally be allowed to present what is called rebuttal evidence. That is new evidence dealing with issues that Plaintiff did not cover in Plaintiff's initial presentation. It is called "rebuttal evidence." It is the Plaintiff's opportunity to rebut evidence presented by the Defendant.
- If the Plaintiff presents rebuttal evidence, the Defendant will then be allowed to present what is called sur-rebuttal evidence to answer the new evidence presented in the Plaintiff's rebuttal.

Can I tell the court what an absent witness told me? (MAG 10)

No, the person actually making the statement must be present to testify.

Can I bring letters or affidavits from witnesses to the court? (MAG 25)

No, all testimony must be presented by live witnesses who have direct knowledge of the facts to which they testify. If the witness is not physically present in court, under oath, and subject to cross examination, their statements may not be presented to the Court. To do otherwise would violate the Georgia law against "hearsay" evidence.

How do I cross-examine a witness? (MAG 25)

To cross-examine a witness is to ask that witness questions about the testimony they have already given or about other facts and circumstances that are relevant to the case being tried. Please note that cross-examination involves asking questions and allowing the witness to respond. Cross-examination does not allow one to make a speech, argue with a witness, call the witness names, or to tell the witness what you wanted them to say. Your questions may be leading, that is they may suggest the answer you want them to give, but you must ask questions. You may also ask the witness questions aimed at proving the motive of the witness, the witness' interest in the outcome of the case, any prejudice the witness may have toward one of the parties in the case, prior inconsistent statements made by the witness, and other factors which reflect on the credibility of the witness.

Do I have to prove all of my case by the same standard of evidence? (MAG 25)

Yes, the burden of proof applies to each and every element of your case. Failure to carry that burden as to only one element means that you have not proven your case. If you will use the analogy of a track and field event, trying a case is like running the hurdles. If you fail to successfully jump every hurdle, you cannot win the race. In court, each element of your claim may be considered a hurdle. Once you knock a hurdle down, you have lost your case.

How much evidence will I need in order to win my case? (MAG 25)

There is no specific amount of evidence required from either party. The Plaintiff has the burden of proving his or her case. The Defendant has the burden of proof on any counterclaim. The party with the burden of proof must establish his or her case by what is known as a preponderance of the evidence. That basically means that the evidence produced by that party must be more persuasive than the evidence produced by the other party. If, after hearing all of the evidence, the Court is not persuaded that one party or the other should prevail, the case will be decided against the party which had the burden of proof.

How do I serve a subpoena? (MAG 10)

There are four common ways.

1. Any person over the age of 18 years old may personally "hand" deliver (or "serve") a Subpoena to a witness or party to the lawsuit.

2. The party can deliver the completed subpoena plus a Sheriff's Entry of Service form, MAG 10-10, to the Sheriff's Department to have a deputy sheriff serve the subpoena. The cost of this service is **$6.50**. This payment should be in cash, cashier's check or money order and delivered to the civil division of the sheriff's department. Their office is located at 1425 South Madison Avenue, Monroe, Georgia. If you choose this option, please deliver the subpoena, sheriff's entry of

3. service form, and payment to the sheriff's department well in advance of the appearance date of the witness. It may take substantial time to locate and serve the witness.
4. Subpoenas may also be served by registered or certified mail or statutory overnight delivery, and the return receipt shall constitute prima-facie proof of service. Please bear in mind that this type of service requires the party being served with the subpoena to be served a minimum of twenty four (24) hours prior to the court date, sign for the document, the return of the receipt, the filing of the receipt in court at least six hours prior to the hearing. The court recommends that you do not use this type of service unless you are reasonably assured that the subpoena will be "signed for" by the party being served and that you will have the return documents received by you in ample time to file with the court.
5. If you are attempting to serve a party to your lawsuit with a subpoena, and the party is represented by an attorney, then in that circumstance you may serve the subpoena upon the party's counsel of record by any of the ways set forth above.

Are there different types of subpoenas? (MAG 10)

There are two types of Subpoenas.

1. A Subpoena requiring a witness to attend court is called a Witness Subpoena. You may use a Witness Subpoena to also list documents that you want that witness to bring to court when they testify. See generally O.C.G.A. 10-24-21. Georgia General Assembly Website.
2. A Subpoena requiring someone to bring documents only to Court (no testimony from that person is needed, only the documents are needed) is called a Subpoena for the Production of Documents. Historically, this type of subpoena used to be called a Subpoena Duces Tecum. See generally O.C.G.A. 10-24-22. Georgia General Assembly Website.

Can I subpoena records and documents as well as persons? (MAG 25)

Yes, there is a different subpoena for documents or things known as a **"subpoena duces tecum."** It should be served on the custodian of the document being subpoenaed. Just let the Clerk of Court know the type of subpoena you want.

When do I have to pay the witness? (MAG 25)

For a witness from within the county, the appearance fee may be paid at the time the witness appears for court. For a witness from outside the county, the appearance fee and mileage reimbursement must be given to the witness at the time the subpoena is served on the witness. The payment must be made by cash, money order, certified check, or cashier's check.

How can I get a witness to attend court to testify on my behalf? (MAG 10)

You can Subpoena them, which means hand-delivering to them a subpoena which orders their attendance in Court. See generally **O.C.G.A. 24-10-21**. Georgia General Assembly Website.

You can obtain a Subpoena from the Magistrate Court Clerk's Office. There is no charge for a Subpoena. The Subpoena must be served to the witness with twenty-four (24) hours before the scheduled time for appearance.

The party subpoenaing a witness must pay a witness who resides out of county the round-trip mileage from their residence to the courthouse at the rate of **$0.22** per mile. Cash, money order, certified check, or cashier's check must accompany the Subpoena. See the section on subpoenas.

You have the responsibility and duty to use the subpoena process to protect your legal interests. The Georgia Supreme Court has said that when people decide to represent themselves in Court, it is their responsibility, not the trial court's, to ensure the presence of witnesses by the issuance of subpoenas. Please protect your legal interests by properly serving subpoenas upon all witnesses and filing proof of service of the subpoena with the clerk of court. You should also serve notice on the opposing party. See also Kegler vs. The State, 267 Ga. 147, (1996).

Should I still subpoena a witness who says that they will attend court voluntarily? (MAG 10)

This is a personal decision, which only you can decide. There is no right or wrong answer. Your witness may be offended if you subpoena him or her. Ill will or animosity should not affect testimony, but realistically it is human nature for it to do so. Alternatively, the witness may not show up when you need them in court if you do not subpoena them to testify. This is why you have to weigh the pros and cons in your unique case and make your own decision.

You should think of a subpoena as an insurance policy in case the witness does not come to court on the day of trial. If you have "subpoenaed" the witness and witness does not appear, the case can be continued. If you failed to "subpoena" the witness and the witness does not attend the judge is likely to deny your request for a continuance because you did not subpoena the witness to appear in the first place.

The Court often observes countless instances where persons promise to appear in court, and then never show up, or have an unexpected "emergency" come up which prevents their appearance at court.

While acquiring and serving subpoenas can be very time consuming, it is usually the safest route.

What must I do to make sure that the Court can enforce my subpoena to a witness? (MAG 10)

The Court can ONLY enforce a Subpoena, and compel the person to attend court WHEN the subpoena is properly served AND either the party files a timely return of service with the clerk of court. These two tests can be met in different ways, such as MAG 11-19, Affidavit of Service of Subpoena; OR the deputy sheriff files their Sheriff's Entry of Service in a timely manner with their clerk of court. (See MAG 10-10)

Timely filing the proof of service requires that it be filed with the clerk AT LEAST twenty-four (24) hours prior to the court date and time and notice has been given to the opposing party.

Parties subpoenaing witnesses have a duty to send a copy of the return of service of subpoena to the opposing party. (See MAG 10-04)

Self Help Guide for Presenting or Defending a Automobile Property Damage claim. (MAG 10)

Self-help Advice on Establishing/Defending Cases Involving an Automobile Accident

We recommend that all persons hire an attorney or seek legal counsel through one of the social agencies providing legal assistance. If you cannot hire an attorney, consider coming to court to review proceedings well in advance of your trial date.

This list is merely an overview of some legal issues you might consider in presenting/defending your case. It is not remotely close to a substitute for having competent legal counsel represent you.

The same legal issues apply to both plaintiff and defendant.

There are 4 things the plaintiff must prove to get damages from an automobile accident.

1. She/he owns the damaged vehicle
2. The defendant was either the driver or owner of the other vehicle involved in the accident
3. The defendant was negligent and
4. The amount of damage she/he has suffered as a result of the accident

Plaintiff has the burden to prove to the court by a preponderance of the evidence, that it should award damages. In other words, it is up to the plaintiff to convince the judge that the 4 things listed above are more likely true than not.
The defendant can challenge any of the 4 things above that plaintiff has to prove. The defendant can also prove that the plaintiff's negligence helped cause the accident, which is commonly referred to as comparative or contributory negligence.

1. **Plaintiff is the owner of the damaged vehicle:**
    - The registration certificate for the vehicle is evidence of who is the owner.
2. **The defendant was either the driver or owner of the other vehicle:**
    - Plaintiff can establish that the defendant was driving the other vehicle involved in the accident through her/his own testimony or the testimony of

an eyewitness. Defendant's ownership of the other vehicle can be established the same way as listed in part (1).

3. **The defendant was negligent:**
    - Negligence is behavior different than the behavior of a reasonable person under the circumstances. A few examples of negligent driving of an automobile include following too closely and driving to fast for the traffic, road, & weather conditions, failing to yield the right of way when required, and failing to give an appropriate turn signal.

4. **Measure of damages:**
    - Damages can include the reasonable value of repairs made necessary by the accident, the cost of renting another vehicle if the plaintiff's vehicle was incapable of use, and the value of any permanent lose in value, provided that total amount of these items does not exceed the fair market value of the automobile before the injury. In the alternative, plaintiff may prove the difference in fair market value of the automobile before the injury and afterwards.
        - **(a) Reasonable value of repairs:** Plaintiff must establish the reasonable value of labor and materials. Estimates are not sufficient to show the reasonable value of repairs. The reasonable value of repairs can be established through the testimony of a mechanic or by giving the judge evidence of the amount paid for the repairs such as the receipt.
        - **(b) Cost of renting another vehicle:** In order to get the cost of renting another vehicle, the plaintiff must show that his automobile was not functional as a result of the accident and the cost of actually renting another vehicle. The estimated or average cost of a rental car is not sufficient.
        - **(c) Value of permanent lose in value:** If the damaged vehicle cannot be returned to its former condition through repairs, then the difference between the fair market value before the accident, which is detailed below, and the fair market value after the repairs would equal the permanent lose in value. In order for the plaintiff to testify to the permanent lose in value, she/he must have sufficient basis for her/his opinion, which is discussed in more detail below.
        - **(d) Fair market value of the automobile before the injury:** The plaintiff, owner of the automobile, can testify as to her/his opinion of the fair market value only if she/he has some knowledge, experience, or familiarity with the value of the property or similar property and she/he must give reasons for the value assessed and also must have had an opportunity for forming a correct opinion. Mere ownership of the automobile does not qualify or give to the owner the necessary basis for his opinion of the value of his vehicle. The plaintiff needs to educate her/his self on the value of her/his vehicle. Plaintiff can become self-educated through investigating the blue book value or the price advertised in the classified ads of the local newspaper for automobiles similar to the one damaged. The make, model, time of purchase, purchase price, the way the vehicle was maintained, the mileage, the condition of the interior and exterior, accessories, and the general mechanical condition should support plaintiff's opinion of the fair market value.

- **(e) Fair market value of the automobile after the injury:** Similar to fair market value before the accident, plaintiff can testify to fair market value after the accident as long as she/he has sufficient basis for her/his opinion. During plaintiff's testimony, she/he should describe in detail the nature and extent of the damage to her/his vehicle. Salvage value can be based on the average of prices offered at various salvage yards.

Below is a **sample dialogue** of a plaintiff, who is representing her/him self, establishing the difference between fair market value of the automobile before and after the accident. Before the plaintiff testifies to the value of the automobile, he should testify to the ownership of the damaged vehicle, identity of the defendant, and the how the accident occurred.

Plaintiff: I took pictures immediately after the accident at the scene.
Ask the judge to mark the pictures as Plaintiff's Exhibit 1 for identification. Then hand a copy of the pictures to opposing counsel and the witness.

Plaintiff: The picture accurately represents the condition of my vehicle after the accident.
Ask the judge to offer the pictures into evidence as Plaintiff's Exhibit 1.

Plaintiff: The picture shows the condition of my vehicle after the accident. My rear bumper and trunk were crushed inward like an accordion. The axle to my back wheels was also bent. All of this damage was caused by the accident. I was unable to drive my vehicle away from the scene of the accident. Instead, I had to have my car towed to the repair shop.

Plaintiff: My car is a 2000 Ford Taurus. I bought my car brand new in August 2000. I got a great deal for $17,000. As far as maintenance in concerned, I took my car to the local dealership every 3 months for an oil change. I have also had my car tuned up twice since I bought it and replaced the tires once. The mileage on my car at the time of the accident was 60,240 miles. The overall mechanical condition of my car before the accident was good. The interior of my car was in good condition. I had leather seats that I treated often so they did not have any tears. My carpet had one light stain in the back seat. The exterior of my car before the accident was also in good condition. My paint job still looked new and did not have any scratches. Nor did my car have any dents in the frame. I had several accessories added to my car when I bought it including a 5-disc compact disc changer, tinted windows, and heated leather seats.

Plaintiff: I researched the value of other 2000 Ford Taurus cars in similar condition as mine. My research included looking in Kelly's Blue

Book and the classified ads of my local newspaper. Based on my research, I have formed an opinion as to the fair market value of my car before the accident. I think my car was worth $10,000 before the accident. I plan to sell my car to a salvage yard. I called 4 salvage yards and they quoted me prices ranging from $2,500 to $3,500 for an average price of $3,000. I am asking the court for today to award me $7,000 in damages, which represents the difference between the $10,000 fair market value of my car before the accident and the $3,000 fair market value of my car after the accident.

Below is **sample testimony** of a plaintiff establishing the difference between fair market value of the automobile before and after the accident. Before the plaintiff testifies to the value of the automobile, he should testify to the ownership of the damaged vehicle, identity of the defendant, and the how the accident occurred.

Q: Did you take picture of the damage to your vehicle?

A: Yes. I took pictures immediately after the accident at the scene. Ask the judge to mark the pictures as Plaintiff's Exhibit 1 for identification. Then hand a copy of the pictures to opposing counsel and the witness.

Q: Does this picture accurately represent the condition of your vehicle after the accident?

A: Yes. Ask the judge to offer the pictures into evidence as Plaintiff's Exhibit 1.

Q: Describe the condition of your vehicle in the picture?

A: My rear bumper and trunk were crushed inward like an accordion. The axle to my back wheels was also bent.

Q: Was all of the damage you just described caused by the accident?

A: Yes

Q: Were you able to drive your vehicle away from the scene of the accident?

A: No. I had to have my car towed to the repair shop.

Q: What is the make and model of your car?

A: My car is a 2000 Ford Taurus.

Q: When did you buy your car?

A: I bought my car brand new in August 2000.

Q: How much did you pay for your car?

A: I got a great deal for $17,000.

Q: What maintenance have you provided for your vehicle?

A: I took my car to the local dealership every 3 months for an oil change. I have also had my car tuned up twice since I bought it and replaced the tires once.

Q: What was the mileage on your vehicle at the time of the accident?

A: 60,240 miles

Q: What was the condition of the interior of your car before the accident?

A: I had leather seats that I treated often so they did not have any tears. My carpet had one light stain in the back seat.

Q: What was the condition of the exterior of your car before the accident?

A: My paint job still looked new and did not have any scratches. Nor did my car have any dents in the frame.

Q: Did your car have any accessories other than the standard options?

A: Yes

Q: What accessories did your car have?

A: I had a 5-disc compact disc changer, tinted windows, and heated leather seats.

Q: What was the overall mechanical condition of your vehicle before the accident?

A: My car was in good mechanical condition.

Q: Have you researched the value of other 2000 Ford Taurus cars in similar condition to yours?

A: Yes. I looked in Kelly's Blue Book and in the classified ads

of my local newspaper.

Q: Do you have an opinion as to the fair market value of your car before the accident based on your research?

A: Yes

Q: What is your opinion?

A: I think my car was worth $10,000 before the accident

Q: What do you plan to do with your car?

A: I plan to sell it to a salvage yard.

Q: Have you priced how much a salvage yard would give you for it?

A: Yes. I called 4 salvage yards and they quoted me prices ranging from $2,500 to $3,500 with an average price of $3,000.

Q: What are you asking the court for today in damages?

A: $7,000, which represents the difference between the $10,000 fair market value of my car before the accident and the $3,000 fair market value of my car after the accident.

Defendant: Potential areas to cross-examine the plaintiff:

- Ask questions that challenge plaintiff's opinion of the fair market value of his car before the accident.
- Ask questions that challenge plaintiff's opinion of the fair market value of his car after the accident.

Defendant's testimony:

- If the defendant chooses to testify, or present the testimony of a witness, the defendant can introduce evidence of a different fair market value of the plaintiff's vehicle before and after the accident than the value testified to by the plaintiff. Such testimony would also have to establish sufficient basis for any opinions similar to what is outlined in the above sample testimony & dialogue.

Tips - Police Officer Testimony:

- The accident report cannot be given to the judge. It is considered hearsay and inadmissible.
- If you want the officer to testify, then you have to give her/him a witness subpoena signed by the clerk at the courthouse. Make sure the officer receives the witness subpoena at least 24 hours before the date of trial. See the section on subpoenas.
- The officer can testify to what he observed at the scene of the accident and what he talked to the witnesses about.

- The officer CANNOT testify to his ultimate opinion concerning fault, whether a citation was issued, or whether there has been final disposition of the citation.

Tips - Questioning Witnesses on the Stand:

- Witnesses can only testify to matters of personal knowledge. For example, Witness X cannot testify that Jane Doe told witness X that Jane Doe saw the respondent push the petitioner. However, Jane Doe can testify to what she saw.
- You cannot ask your own witness leading questions. Leading questions are questions that strongly suggest an answer or likely to supply a false memory. For example, instead of asking the witness did you see John Doe hit Jane Doe on March 10, 2003, ask the witness what did you see on March 10, 2003.

Can I serve the attorney for a party with a subpoena for that party? (MAG 10)

If you are attempting to serve a party to your lawsuit with a subpoena, and the party is represented by an attorney, then in that circumstance you may serve the subpoena upon the party's counsel of record by any of the ways set forth above.

What if the witness lives outside the county in which the testimony is to be given? (MAG 10)

When a witness resides outside the county where the testimony is to be given, service of the subpoena, to be valid, must be accompanied by tender of the witness fee for one day's attendance **($25.00 per day)** plus mileage of **20£** per mile for traveling expenses for going from and returning to his or her place of residence by the nearest practical route. Tender of fees and mileage may be made by United States currency, postal money order, cashier's check, certified check, or the check of an attorney or law firm. See generally **O.C.G.A. 24-10-24**. Georgia General Assembly Website.