

General Civil Case Filing Information Form (Non-Domestic)

Court
☒ Superior
☐ State

County WALKERDate Filed _____
MM-DD-YYYYDocket # 12SUCV1105

307.50pd
 FILED IN OFFICE
 OCT 25 2012

Plaintiff(s)
 ROBERTS BRUCE E.

Last	First	Middle I	Suffix	Prefix	Maiden

Last	First	Middle I	Suffix	Prefix	Maiden

Last	First	Middle I	Suffix	Prefix	Maiden

Last	First	Middle I	Suffix	Prefix	Maiden

No. of Plaintiffs 1Plaintiff/Petitioner's Attorney ☐ Pro Se

Last	First	Middle I	Suffix
FARRAR	ARCHIBALD	A.	JR.

Bar # 255550

Defendant(s)
 HEISKELL BEBE, SOLE COMMISSIONER OF

Last	First	Middle I	Suffix	Prefix	Maiden

WALKER COUNTY AND WALKER COUNTY

Last	First	Middle I	Suffix	Prefix	Maiden

GEORGIA

Last	First	Middle I	Suffix	Prefix	Maiden

Last	First	Middle I	Suffix	Prefix	Maiden

No. of Defendants 2

Check Primary Type (Check only ONE)

- ☐ Contract/Account
☐ Wills/Estate
☐ Real Property
☐ Dispossessory/Distress
☐ Personal Property
☐ Equity
☐ Habeas Corpus
☐ Appeals, Reviews
☐ Post Judgment Garnishment, Attachment, or Other Relief
☐ Non-Domestic Contempt
☐ Tort (If tort, fill in right column)
☒ Other General Civil Specify MANDAMUS

AND DECLARATORY JUDGMENT

If Tort is Case Type:
 (Check no more than TWO)

- ☐ Auto Accident
☐ Premises Liability
☐ Medical Malpractice
☐ Other Professional Negligence
☐ Product Liability
☐ Other Specify _____

Are Punitive Damages Pleaded? ☐ Yes ☐ No

IN THE SUPERIOR COURT OF WALKER COUNTY GEORGIA

BRUCE E. ROBERTS,
Petitioner

v.

BEBE HEISKELL, SOLE
COMMISSIONER OF WALKER
COUNTY AND WALKER COUNTY,
GEORGIA
Respondents

CIVIL ACTION FILE

NO.: 12SUCV1105

FILED IN OFFICE

OCT 25 2012

Ante Brown
 CLERK

PETITION FOR MANDAMUS, DECLARATORY JUDGMENT,
ATTORNEYS FEES, AND OTHER RELIEF

COMES NOW Bruce E. Roberts and files this his Complaint for Mandamus, Declaratory Judgment, Attorneys Fees and Other Relief against the Respondent, Bebe Heiskell in her capacity as Sole Commissioner of Walker County, Georgia and Walker County, Georgia and respectfully shows to the Court as follows:

COUNT ONE

MANDAMUS

1.

Respondent Bebe Heiskell is the duly elected Sole Commissioner of Walker County, Georgia and is responsible for the payment of all expenses for Walker County, Georgia. Respondent Heiskell is further a resident of Walker County, Georgia and is subject to the jurisdiction of this Court.

2.

Bruce E. Roberts is the duly appointed State Court Judge for the State Court of Walker

County, having been appointed to fill the unexpired term of Judge C. Donald Peppers, Sr. who retired. Petitioner Roberts was appointed to fill the unexpired term which began January 1, 2010 and ends December 31, 2013.

3.

Petitioner shows that Judge C. Donald Peppers, Sr. was receiving a salary in excess of \$172,102.80 at the time he retired on or about August 31, 2011. Petitioner was appointed to fill his unexpired term and as such was classified as an incumbent by operation of law. An incumbent judge's salary cannot be reduced during the term of their appointment. Defendant Heiskell arbitrarily set Petitioner's salary as \$100,000.00 payable in monthly increments after his appointment. Said salary was less than that previously paid Judge Peppers and Petitioner hereby makes demand upon Respondent for payment of the difference between Judge Pepper's salary at the time of his retirement and the amount paid Petitioner from his appointment.

Petitioner was appointed by Governor Nathan Deal on October 3, 2011 and began receiving said salary on that date.

4.

Petitioner has a clear legal right to the relief sought by him and has no adequate remedy at law to obtain such relief other than Mandamus.

5.

If relief is not granted to Petitioner, he will suffer pecuniary loss for which he cannot be compensated in damages, to wit, immediate loss of salary and related benefits. The actions of Respondents are unreasonable, capricious and arbitrary and is an illegal attempt to exercise a discretion which is clearly forbidden by Georgia Law.

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The denial to Petitioner of his rights herein is shown as an infringement upon Petitioner's right of person and property which results from the unconstitutional feature thereof as herein shown upon which this Mandamus is based, and same injures Petitioner and so operates to deprive Petitioner of his rights protected under the provisions of the Constitution of the State of Georgia.

The Constitution of the State of Georgia provides in Article 6 Section 7 Paragraph 5 that "an incumbent's salary, allowance, or supplement shall not be decreased during the incumbents term of office."

6.

Petitioner demands that this Court issue a Writ of Mandamus compelling the payment of his proper salary by Respondent.

COUNT TWO

DECLARATORY JUDGMENT

7.

Respondent Bebe Heiskell is the Sole Commissioner of Walker County and Respondent Walker County, Georgia is a body politic and both Respondents are subject to the jurisdiction of this Court.

8

Bruce E. Roberts is the duly appointed State Court Judge for the State Court of Walker County, having been appointed to fill the unexpired term of Judge C. Donald Peppers, Sr. who retired. Petitioner Roberts was appointed to fill the unexpired term which began January 1, 2010 and

-3-

ends December 31, 2013.

9.

Petitioner shows that Judge C. Donald Peppers, Sr. was receiving a salary in excess of \$172,102.80 at the time he retired on or about August 31, 2011. Petitioner was appointed to fill his unexpired term and as such was classified as an incumbent by operation of law. An incumbent judge's salary cannot be reduced during the term of their appointment. Defendant Heiskell arbitrarily set Petitioner's salary as \$100,000.00 payable in monthly increments after his appointment. Said salary was less than that previously paid Judge Peppers and Petitioner hereby makes demand upon Respondent for payment of the difference between Judge Pepper's salary at the time of his retirement and the amount paid Petitioner from his appointment.

Petitioner was appointed by Governor Nathan Deal on October 3, 2011 and began receiving said salary on that date.

10.

An actual controversy exists between the Respondents and the Petitioner as to the proper salary due and payable to Petitioner. Petitioner requests this Court to declare the rights of the parties pursuant to the provisions of O.C.G.A. § 9-4-1 et seq.

COUNT THREE

ATTORNEYS FEES

11.

Respondent Bebe Heiskell is the Sole Commissioner of Walker County and Respondent

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Walker County, Georgia is a body politic and both Respondents are subject to the jurisdiction of this Court.

12.

Bruce E. Roberts is the duly appointed State Court Judge for the State Court of Walker County, having been appointed to fill the unexpired term of Judge C. Donald Peppers, Sr. who retired. Petitioner Roberts was appointed to fill the unexpired term which began January 1, 2010 and ends December 31, 2013.

13.

Petitioner shows that Respondents have been stubborn and litigious and caused Petitioner unnecessary cost and expense and thereby Petitioner requests reasonable attorneys fees from this Court, together with costs of litigation and related expenses as authorized by O.C.G.A. § 13-6-11 and § 9-15-14.

WHEREFORE, Petitioner respectfully requests that:

- a. This Court grant a Writ of Mandamus compelling Respondent Heiskell to pay his correct salary; and
- b. This Court declare the rights of the parties concerning the issue of salary;
- c. This Court grant attorneys fees and expenses in accordance with Petitioner's request; and

d. For such other and further relief as the Court may seem just and proper.

FARRAR & COBBIN, P.C.

By: 

ARCHIBALD A. FARRAR, JR.

Attorney for Petitioner

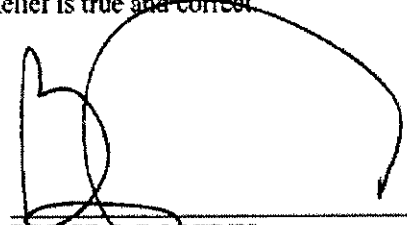
GA. Bar No.: 255550

P.O. Box 736
Summerville, Georgia 30747
(706) 857-3497

GEORGIA, CHATTOOGA COUNTY

Personally appeared before the undersigned officer came Bruce E. Roberts, who, after being duly sworn states under oath that the information contained in the foregoing Petition For Mandamus, Declaratory Judgment, Attorneys Fees, and Other Relief is true and correct.

This 25th day of October, 2012.



BRUCE E. ROBERTS

Sworn to and subscribed
before me this 25
day of October, 2012.



NOTARY PUBLIC

SUMMONS

SC-05-1

Clyde Corbin Co., Covington, GA 30015

IN THE SUPERIOR/~~STATE~~ COURT OF WALKER COUNTY
STATE OF GEORGIA

BRUCE E. ROBERTSCIVIL ACTION
NUMBER12SUCV1105

PLAINTIFF

VS.

BEBE HEISKELL, SOLE COMMISSIONER OFWALKER COUNTY AND WALKER COUNTY GEORGIA

DEFENDANT

FILED IN OFFICE

OCT 25 2012

Clerk
CLERK

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

Archibald A. Farrar, Jr.
Farrar & Corbin, P.C.
Post Office Box 736
Summerville, Georgia 30747

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 25 day of Oct, 2012.

Clerk of Superior/State Court

BY

Annette Wines

Deputy Clerk

INSTRUCTIONS: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used.