

Rules

of the

Court of Appeals

of the

State of Georgia

January 1, 1992

RULES
COURT OF APPEALS OF GEORGIA

*(These rules are not intended to reiterate all applicable laws. Where the word
"counsel" has been utilized, this will include on most occasions pro se parties.)*

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I. GENERAL

Rule 1. (a) All filings, motions, requests, and communications relating to appeals pending in this Court must be transmitted through the Clerk's office during office hours, and not to the Judges directly, nor to any member of a Judge's staff, and shall show that copies thereof have been furnished to opposing counsel or pro se party.

(b) All documents filed with the Court, excluding letters, but including briefs, reply briefs, supplemental briefs, motions and other such documents, and all copies thereof shall be backed with a manuscript cover, signed by counsel or pro se party and shall bear the State Bar of Georgia membership number of the submitting attorney. See also Rule 11. (All covers required by this rule shall be of white, non-glossy, recyclable paper that is heavier than regular stationery-type paper. Upon their certification, attorneys may exhaust supplies on hand on the effective date of these rules before compliance.)

Rule 2. The Clerk's office shall be open Monday through Friday from 8:30 a.m. to 4:30 p.m. E.S.T./E.D.T. The address is: Clerk, Court of Appeals of Georgia, 433 State Judicial Building, Atlanta, Georgia 30334.

Rule 3. When an expiration date falls on a Saturday, Sunday, or official holiday, the time is extended to the next business day.

Rule 4. With the exception of motions for reconsideration, and filings pursuant to Rule 51, the contents of properly addressed registered or certified mail shall be deemed filed on the United States Postal Service postmark date which shall appear on the transmittal envelope or container. Motions for reconsideration are deemed filed on the date received in the Clerk's office of this Court.

Rule 5. An original and two clearly legible copies of briefs, motions, petitions and applications shall be filed. Service on the opposing attorney or pro se party, stating the name and address, shall be certified and must show that they were served before they were offered for filing. One separate copy of the enumeration of errors shall be filed at the time of the filing of the brief. See also Rule 11.

Rule 6. The volume of cases necessarily suggests that all matters be presented succinctly. Inclusion of extraneous facts and frivolous issues tends to obscure critical issues. Recitations showing compliance with rules authorizing appeals are unnecessary. If compliance is contested, answers may be filed.

Rule 7. Breach of any of the rules of the Court of Appeals or failure to comply with the orders of this Court subjects the offender to contempt. The Court may, upon a finding of conduct constituting contempt, impose a fine not to exceed \$500.00 against the contemnor or revocation of license to practice in the Court of Appeals, or both a fine and revocation may be imposed.

II. ARGUMENT

**Rule 8. Argument, Oral.
(a) Request and Time.**

- (1) Unless expressly ordered by the Court, oral argument is never mandatory and argument may be submitted by briefs only. A case will be placed on the calendar for oral argument only upon the request of either party within 20 days from the date the case is docketed in this Court, or upon the order of the Court.

A request for oral argument shall be filed as a separate document, shall be directed to the Clerk, and shall certify that the opposite party or attorney has been notified of the intention to argue the case orally and that inquiry has been made whether the opponent intends also to argue orally. The request shall certify further that the opposing party does or does not desire to argue orally. The request shall show service thereof on the opposing party. The request shall identify the attorney or the party who is scheduled to make the oral argument. Any change as to the attorney or party who will make oral argument shall be communicated in writing to the Clerk of the Court as soon as practicable. Argument will not be allowed on behalf of any party whose brief has not been timely filed, unless permission is granted by the Court.

- (2) Argument is limited to forty minutes in each case, twenty minutes on each side, unless by special leave an extension

of time is granted; and none will be granted except on application made in writing at least five days before the date set for the call of the case. On the granting of a request, the appeal will be placed at the end of the calendar. A companion case or cross-appeal may, in the discretion of the Court, be treated as a separate case for oral argument if counsel so request prior to commencing argument. Where there are third parties, or additional parties with divergent interests, time may be requested and granted on the terms as above set out.

Number of Arguments.

When both sides of an appeal are argued, only two counsel on each side will be heard. When only one side of an appeal is argued, or when arguments are to be made on behalf of more than two parties, no more than one counsel per party shall be heard.

Opening and Concluding; Rebuttal.

The appellant has the right to open and conclude the arguments, and appellant's conclusion shall be confined to matters covered in argument of opposing counsel.

Courtroom Decorum.

- (1) Counsel appearing for oral argument, after Court has convened, shall notify the Court as to the length of argument pursuant to Rules 8 (a) (2) or 8 (f) by completing a form provided by the Clerk. Conversation with the Clerk during oral argument is strictly prohibited. Counsel appearing for oral argument shall be properly attired.
- (2) Talking, reading newspapers or other material, and audibly studying briefs and arranging papers are prohibited in the courtroom as this may be done in the lawyers' lounge which has been provided for the convenience of counsel.

Presence of Counsel.

Oral argument is waived if counsel is not actually inside the courtroom when the case is formally called in its order for argument.

Limited Argument.

As an accommodation to the bar and pro se parties, the Court will call cases out of the order listed on the calendar in which

all counsel or pro se parties in a particular case present in the courtroom inform the Clerk that time of argument will be limited to five minutes for each side or ten minutes for each side. Those cases in which five minutes are selected will be called first and before those cases in which ten minutes are selected.

III. ATTORNEYS

Rule 9. Attorneys, How Admitted.

(a) Application and oath.

Any member of the State Bar of Georgia may be admitted to practice in this Court upon such member's written application, and the certificate of at least two attorneys of this Court, that such member is of good private and professional character. The oath which is required to be taken, in open Court or before a Judge in Chambers, and which shall be subscribed in a book to be kept by the Clerk and known as the "Roll Book," is as follows:

"I do solemnly swear (or affirm) that I will demean myself as an attorney or counsellor of this Court truly and honestly, justly and uprightly, and according to law; and that I will support the Constitution of the State of Georgia and the Constitution of the United States. So help me God."

(b) Fee.

On such member's admission, the applicant must pay the Clerk a fee of \$15.00, and the Clerk will issue to applicant a license in proper form, under the seal of this Court, as evidence of applicant's authority to practice.

(c) Appearance by Courtesy.

As a matter of professional courtesy, a visiting attorney from another state, or from a district or territory, may, if admitted to practice in the highest court of the state, district, or territory of such attorney's residence, by leave of the Court, be heard as associate, or even as leading counsel, in a single case, without being admitted as a regular practitioner. This indulgence, however, will not be extended to any attorney who is a resident of this State, or who is admitted to practice in the superior courts of this State.

(d) **Court Personnel Prohibited to Practice.**
Attorneys employed by the Court shall not engage in the private practice of law.

(e) **Agreements or Consents to be in Writing.**
No agreement or consent will be recognized unless in writing signed by the parties or their attorney, and filed with the Clerk.

Rule 10. Personal Remarks.

(a) **Opposing Counsel or Judge.**
Personal remarks, whether oral or written, discourteous or disparaging to opposing counsel or to any judge are strictly forbidden.

(b) **Government and Officials of Government.**
In the argument of appeals, whether oral or written, counsel or parties appearing pro se are entitled to all the latitude necessary to a full and fair discussion of the questions involved in the appeal or other matter before the Court, but they must not indulge in vituperative denunciation of any branch of the government, State or Federal, or call in question the integrity or impugn the motives of any official, unless such official is on trial or otherwise a party to the record, and such official's official conduct is properly the subject of scrutiny and adjudication.

IV. BRIEFS

Rule 11. Preparation.

(a) **Paper, Spacing.**

All briefs shall be typed or printed on letter size (8½" x 11") white paper, not so thin as to be transparent, with cover and stapled or bound in booklet form, and all matter contained therein, including quotations, shall have not less than double spacing between the lines. Petitions, applications, motions, and the separate copy of the enumeration of errors shall be on letter size (8½" x 11") white paper with cover and fastened at the top. (All covers required by this rule shall be of white, non-glossy, recyclable paper that is heavier than regular stationery-type paper. Upon their certification, attorneys may exhaust supplies on hand on the effective date of these rules before compliance.)

- (b) **Margins.**
Writing with pen or typewriter must be on only one side of each sheet, and a margin of at least 2 inches shall be left at the top. A margin of at least one and one-half inches is required on the left side of each page.
- (c) **Citations.**
All citations of cases, whenever and wherever they shall appear, shall be by name of the case as well as by volume and page of the Official Report (Harrison or Darby).
- (d) **Pages to be Numbered.**
The pages of each brief and each copy thereof shall be numbered utilizing Arabic numerals only to indicate the sequence of pages. Alphabetical, Roman numeral and any other method of sequential pagination is prohibited.
- (e) **Limitation as to Length.**
The briefs of all parties shall be limited to 30 pages in civil cases and 50 pages in criminal cases except upon written application directed to the Clerk and authorized by the Court.

Rule 12. Supplemental Briefs.

Briefs shall be limited to an appellant's brief, an appellee's brief, and a reply brief as set forth in Rule 14. Supplemental briefs shall be filed only by leave of the Court. However, when pertinent and significant authorities come to the attention of a party subsequent to filing such party's brief, or after oral argument, but before decision, a party may, without leave of court, properly inform the Clerk of Court by letter, with copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain. The letter shall, without argument, state the reasons for the supplemental citations. Any response thereto shall be made promptly and similarly limited. Supplemental briefs addressing matters raised during oral argument may be filed with leave of the Court, either upon oral motion at argument or upon subsequent written motion.

Rule 13. Amicus Curiae Briefs.

Amicus curiae briefs may be filed without leave of the Court, disclosing the identity and interest of the person on whose behalf the brief is filed.

Rule 14. Time of Filing; Contempt; Dismissal; Service.

- (a) Appellant's and cross-appellant's briefs and enumerations of error shall be filed within 20 days after the appeal or cross-appeal is docketed. Failure to file within that time, unless extended upon motion for good cause shown, subjects the offender to contempt. If enumerations of error and briefs have not been timely filed, the Court may order the pro se party or counsel to file such enumerations of error and briefs and upon failure to comply with such order shall in civil cases, and may in criminal cases, cause the appeal to be dismissed absent good and sufficient cause timely communicated to this Court in writing and may also subject the offender to contempt. See Rule 23.
- (b) Appellee's and cross-appellee's briefs shall be filed within 40 days after the appeal is docketed or 20 days after the filing of the brief being responded to, whichever is later. Failure to timely file may result in non-consideration, and failure of the State to file an appellee's brief in an appeal in a criminal case may subject its representative to contempt. Appeal and cross-appeal may be argued in one brief but this shall not extend the time for filing. See also Rule 23.
- (c) Appellant or cross-appellant may file a reply brief within ten days from the date of filing of appellee's or cross-appellee's brief.
- (d) Briefs shall be served personally or by mail. Service shall be shown by written acknowledgement, certificate of counsel, or affidavit of the server. Unless it is stated that service is impossible because the addresses of the parties and counsel are unknown, all briefs must show service before they are offered for filing.

Rule 15. Structure and Content.

(a) Appellant; Cross-Appellant.

The brief of appellant or cross-appellant shall consist of three parts:

- (1) Part One; Contents.
Part One shall contain a succinct and accurate statement of such pleadings, facts, and issues of law as are made in the appeal and a citation of such other parts of the record

or transcript as are essential to a consideration of the errors complained of. A statement setting forth the method by which each enumeration of error was preserved for consideration by this Court shall be contained in this part of said brief.

- (2) **Part Two; Contents.**
Part Two shall consist of a copy of the enumeration of errors. It may be copied into the brief, or a clearly legible copy of the enumeration may be inserted following Part One as Part Two.
- (3) **Part Three; Contents.**
Part Three shall contain the argument and citation of authorities and shall include a concise statement of the applicable standard of review for each issue presented in the brief.

(b) **Appellee; Cross-Appellee.**
The brief of appellee or cross-appellee shall be subdivided in the following manner:

- (1) **Part One, Contents; Implied Consent to Facts.**
Part One shall point out any material inaccuracy or incompleteness of statement in the brief of counsel for the appellant, and shall contain such additional statement as may be deemed necessary, and shall cite such additional parts of the record or transcript as are deemed material thereto. If the appellee should fail to do so, appellee will be held to have consented to a decision of the case on the statement made by the appellant. Except as controverted, the statement of facts by the appellant may be accepted by this Court as being prima facie true.
- (2) **Part Two, Contents.**
Part Two shall contain the argument and the citation of authorities and if in disagreement with the appellant about the standard of review of the issues shall set forth the standard of review as contended by the appellee.

(c) **General Provisions.**

- (1) **Sequence of Argument.**
The sequence of argument or arguments in the briefs shall follow generally the order of the enumeration of errors, and shall be numbered correspondingly.

- (2) **Unsupported Claim of Error Treated as Abandoned.**
Any enumerated error which is not supported in the brief by citation of authority or argument shall be deemed to have been abandoned.
- (3) **References to Record or Transcript.**
 - (i) **Specific Reference to Support Enumerated Errors.**
Each enumerated error shall be supported in the brief by specific reference to the record or transcript or both.
 - (ii) **Evidence, Page Reference.**
Any argument or assertion, which is founded on a particular portion of the evidence, must be supported by a reference to the page or pages in the transcript where the evidence may be found.
 - (iii) **Colloquy, etc.**
If colloquy or other matter appearing in the transcript of evidence, which is not strictly evidence, is relied upon, the page or pages therein where such matters may be found shall be indicated, and in the absence of such reference, this Court will not read or consider colloquy or other matter which appears in the transcript.
 - (iv) **Claim of No Evidence.**
In defending against a contention that certain findings, rulings, or other matters are not supported by any evidence, counsel shall, by references to particular pages of the transcript, point out where supporting evidence may be found.

V. CERTIORARI

Rule 16. Applications, How Made.

- (a) Application to the Georgia Supreme Court for the writ of certiorari shall be made under rules prescribed by that Court. Notice of intention to apply will be filed with this Court. Simultaneously with the filing of the application for certiorari, counsel or pro se party shall certify to this Court that such application has been filed with the Georgia Supreme Court.

- (b) Petition to the United States Supreme Court shall be made under rules prescribed by that Court. Notice of intention to petition for certiorari shall be made to this Court not later than 20 days following denial of certiorari by the Georgia Supreme Court. Simultaneously with the filing of the petition for certiorari, counsel or pro se party shall certify to this Court that such petition has been filed with the United States Supreme Court.

VI. COSTS

Rule 17. Amount; Payment; Responsibility.

Costs in all cases (which include applications for Interlocutory and Discretionary Appeals) are \$80.00. The costs shall be paid by counsel for the applicant or appellant at the time of filing of the application or, in the case of direct appeals, at the time of the filing of the original brief of the appellant. In those cases in which an application for appeal is granted, there shall be no additional costs. Costs shall not be required in those instances when at the time the same are due, counsel for the applicant or appellant shall file a statement that an affidavit of indigence has been duly filed or file an affidavit that he or she was appointed to represent the defendant by the trial court because of the defendant's indigency. The Clerk is prohibited from receiving the application for appeal or the brief of the appellant unless the costs have been paid or a sufficient affidavit of indigence is filed or contained in the record.

VII. DIVISIONS; DISQUALIFICATIONS; QUORUM

Rule 18. Division Changes; Full Divisions.

(a) Assignment to Divisions.

The membership of the three divisions of this Court, as designated by the Chief Judge, except the Presiding Judges thereof, shall change with each calendar year, under a systematic method of rotation, and at such other time and manner as may be ordered by the Court, pursuant to OCGA § 15-3-1.

(b) Methods of Obtaining Full Division.

Whenever two or more of the Judges of a division are disqualified or recuse themselves from hearing any case coming before that division, it shall be transferred to a panel composed of

Judges who are qualified. Where one of the Judges in a division is disqualified or becomes recused, a full division shall be made up by the Chief Judge's temporarily assigning another Judge to that division.

- (c) **Appointment of Superior Court Judges.**
If in any case seven or more Judges are disqualified or become recused, so that there will not be a full division to decide the case, a full division shall be made up by designating one or more judges of the superior courts to serve.
- (d) **Counsel to Advise of Disqualifications.**
Whenever it shall become necessary to proceed under this rule, the matter should be brought to the attention of the Court promptly. Counsel are expected to exercise due diligence in complying with this requirement.

Rule 19. Chief Judge or Presiding Judge Absent or Disqualified.

- (a) **Chief Judge.**
Whenever the Chief Judge is absent or disqualified in any matter coming before the Court as a whole, any duty devolving specially upon the Chief Judge shall be performed by the Judge present next in line of succession to the office of Chief Judge.
- (b) **Presiding Judge.**
Whenever a Presiding Judge is absent or disqualified in any matter coming before such Presiding Judge's division of the Court, any duty devolving specially upon such Presiding Judge shall be performed by the Judge present in that division who has been longest in commission.

Rule 20. Hearing by Quorum.

Whenever a division of the Court is on the bench for the purpose of hearing oral argument, and a quorum of the division is present, the division shall proceed with the call of the docket, and counsel in no case shall have the right to demand that the oral argument be heard by a full division merely because of the absence of the other member of the division, such member not being disqualified from participating in the decision of the case.

VIII. DOCKETS; CALENDARS; HEARINGS

Rule 21. Appeals, How Entered.

(a) Docketing.

All appeals brought to this Court shall be consecutively numbered and entered upon the docket in the order of their filing in the Clerk's office. No appeal shall be docketed until the notice of appeal or notice of cross-appeal and a record, and transcript, if any, conforming to Rules 41 - 44 are filed in the Clerk's office. Notice of docketing shall be given as provided in Rule 23.

(b) Transfer of Cases.

Whenever it shall appear that an appeal has been transmitted to this Court which is within the jurisdiction of the Supreme Court, this Court by order shall direct that it be transferred to that Court.

(c) Transferred Cases.

Appeals transferred to this Court from the Supreme Court shall be docketed as of the date of their reception here.

(d) Numbering of Appeals.

The consecutive numbering of appeals shall be continuous from term to term. The filing and the docket number shall be the same.

(e) Docketing of Cross-Appeal.

A cross-appeal shall be entered upon the docket of the term to which the appeal is returnable, and no cross-appeal shall be docketed until the main appeal has been entered.

Rule 22. Closing of the Dockets.

The docket of this Court for the January, April, and September terms shall close on the 15th day of January, May, and September, respectively, at noon. However, by order of the Court, a docket closed by this rule may be opened for the docketing of a case or cases so that a judgment may be rendered by the Court at the earliest practicable date if the Court deems it expedient to do so.

Rule 23. Notice of Docketing.

Upon the docketing of every appeal and application for appeal, the Clerk shall mail notice of the docketing date and schedule for briefing to all attorneys and all pro se parties. The notice shall include a statement that failure to file the enumeration of errors and appellant's or cross-appellant's brief within the time required, except as extended upon motion for good cause shown, may subject the offender to contempt. The notice shall also state that: Failure to timely file responsive briefs may result in their non-consideration; a brief shall be filed by the appellee in all criminal appeals when the State is the appellee, and upon failure to file such brief, the State's representative may be subject to contempt. See Rule 14.

Rule 24. Calendar; Call of Appeals; Conflicts.

(a) The Calendar.

The calls for the hearing of appeals to be orally argued pursuant to Rule 8 (a) will be on such days as shall be fixed by the Court. A calendar of the appeals set for hearing at each call shall be prepared by the Clerk, under the direction of the Court.

(b) Notice of Call.

The Clerk shall mail to the pro se parties or attorneys in each appeal to be orally argued at the addresses shown on the notice of appeal, at least 14 days prior to the day the call is to begin, a written or printed notice of the fact the appeal has been assigned to that call.

(c) Conflicts - State and Federal Courts.

(1) An attorney shall not be deemed to have a conflict unless:

- (i) Such attorney is lead counsel in two or more of the actions affected; and
- (ii) Certifies that the matters cannot be adequately handled by other counsel.

(2) Attorneys, applying the following guidelines, may determine if a conflict actually exists:

- (i) Criminal (felony) actions shall prevail over civil actions.
- (ii) Jury trials shall prevail over non-jury matters including trials and administrative proceedings.

- (iii) Appellate arguments prevail over trials, hearings and conferences.
- (iv) The action first filed takes precedence.
- (v) For purpose of resolving conflicts, the courts are assigned the following priorities:
 - (aa) United States Supreme Court.
 - (bb) Supreme Court of the State of Georgia.
 - (cc) Federal Court of Appeals and State Court of Appeals.
 - (dd) United States District Courts and Superior Courts.
 - (ee) Federal Magistrate Courts and State Courts.
 - (ff) Probate, Juvenile, and State Magistrate Courts.
- (3) Using the above criteria, the only time a conflict exists is when the courts concerned are of equal priority, with the same type of action or proceeding and filed on the same day. When such conflict exists, the attorney shall give prompt written notice of the conflict to opposing counsel, to the clerk of each court, and to the judges before whom each action is set. The judges concerned or clerks of the respective courts shall confer and resolve the conflict.
- (4) When it is evident that the attorney's presence is required in more than one court on the same day and no conflict actually exists under the above criteria, such attorney shall nevertheless inform all courts concerned giving style of case and date of filing so that judges of the respective courts will be properly informed.

25. Order of Hearing.

Ordinarily, appeals in which oral argument has been requested pursuant to Rule 8 (a) will be assigned to the calendar in the order in which they appear upon the docket, unless otherwise ordered. When a case has been reached in its order on the calendar, it will not be postponed except for providential cause or other good reasons shown.

Rule 26. No Prosecution and Penalties.

(a) Cases Not Prosecuted.

On the call of the case for argument, if the appellant shall not appear, or if appellant be unrepresented by counsel or by brief, the Court shall dismiss the appeal for want of prosecution and it will not be reinstated except for providential cause. If the appellee or appellee's counsel shall appear, such appellee or counsel may move to reopen the record and insist upon an affirmance of the case.

(b) Appeals Deemed Frivolous.

The Court, with or without a motion, may impose a penalty not to exceed \$500 against an appellant in any civil case in which there is a direct appeal, application for discretionary appeal, application for interlocutory appeal, or motion which the Court determines to be frivolous. This rule applies only to those cases in which there is no money judgment.

IX. ENUMERATION OF ERRORS

Rule 27. Filing; Preparation; Service.

(a) Time of Filing.

The enumeration of errors shall be filed with the Clerk of this Court within 20 days after the case is docketed in this office. Concerning appeals transferred from the Supreme Court, see Rule 21 (c).

(b) Physical Preparation.

The enumeration of errors shall follow generally the rules for the physical preparation of briefs in regard to paper size and quality, double spacing, margins, etc. It shall be bound with a manuscript cover. (All covers required by this rule shall be of white, non-glossy, recyclable paper that is heavier than regular stationery-type paper. Upon their certification, attorneys may exhaust supplies on hand on the effective date of these rules before compliance.)

(c) Statement of Jurisdiction.

At the conclusion of the enumeration of errors and immediately preceding the signature of counsel for appellant or cross-appel-

lant, there must be a statement of the reasons why the Court of Appeals and not the Supreme Court has jurisdiction of the appeal, with citation of the part or parts of the record or transcript, and if possible, the particular paragraphs thereof, showing jurisdiction.

(d) Service.

Service of the enumeration of errors shall be perfected and certified in the same manner as required for service of briefs pursuant to Rule 14.

(e) Review.

The enumeration of errors shall be deemed to include and present for review all judgments necessary for a determination of the errors specified.

X. EXTENSION OF TIME FOR NOTICE OF APPEAL, ETC.

Rule 28. Extensions of Time for Filing.

(a) Pursuant to the provisions of OCGA § 5-6-39, application to this Court for extensions of time may be made upon showing that a bona fide effort has been made to obtain the extension from the trial court and of the reason why it could not be obtained. This shall not, however, effect any enlargement of the provisions for obtaining extensions, or of the time within which the application must be made.

(b) No extensions of time shall be granted for interlocutory or discretionary applications.

XI. INTERLOCUTORY ORDERS, APPLICATION TO APPEAL

Rule 29. Applications.

An application for leave to appeal an interlocutory order will be granted only when:

- (1) The issue to be decided appears to be dispositive of the case; or
- (2) The order appears erroneous and will probably cause a substantial error at trial; or
- (3) The establishment of a precedent is desirable.

Rule 30. Time of Filing.

- (a) An application for interlocutory appeal shall be filed in this Court within ten days of the granting of the trial court's certificate for immediate review. This Court has determined that "granting" the certificate is not effective until the certificate has been filed in the trial court clerk's office. Therefore, the filing date controls.
- (b) Applications to appeal interlocutory orders of which the Supreme Court has jurisdiction may be transferred to that Court no fewer than ten days before the last day to act thereon, or may be dismissed for improper filing.
- (c) Applications for interlocutory appeal shall contain a jurisdictional statement and have attached a copy of the trial court's order to be appealed and its certification for immediate review. All attachments shall be tabbed and an index included. Compliance with the terms of Division XI does not relieve the applicant of the duty to file a notice of appeal as required by OCGA § 5-6-34 (b) if the application is granted.

XII. MANDAMUS

Rule 31. Filing; Costs.

Applications for mandamus shall be docketed as other cases. The Clerk shall not file the application unless accompanied by the costs of \$80.00 or a sufficient affidavit of indigence.

XIII. MOTIONS

Rule 32. Preparation and Filing.

- (a) **Filing in Triplicate.**
Motions of all kinds shall be filed in triplicate as set out in Rule 5.
- (b) **Service.**
All motions must show that a copy has been served on opposing counsel in the manner provided for the service of briefs in Rule 14.

Physical Preparation.

The physical preparation of motions must follow the provisions as to the preparation of briefs as set out in Rule 11.

Motion to Dismiss.

Notice of a motion to dismiss and of the grounds thereof shall be given in writing to counsel for the appellant as soon as practicable, service thereof to be made and shown as required for service of briefs. If, because of absence of counsel for appellant, such notice cannot be given, the motion will be entertained and the Court in its discretion will give such direction as may seem proper; provided, however, whenever it appears to the Court that it has no jurisdiction of a pending appeal, it will be dismissed or will be transferred to the Supreme Court, as the facts may require, whenever and however its lack of jurisdiction may appear.

Reconsideration.

See Rule 48.

XIV. NOTICE OF APPEAL; CROSS-APPEAL

**33. General Provisions; mailing Address; Service.
Form.**

The notice of appeal and notice of cross-appeal shall follow the statutory provisions as to general form.

Mailing Address.

When signing a notice of appeal or notice of cross-appeal, or when acknowledging service thereof, counsel shall add their mailing addresses; and upon failure to do this, they shall not be entitled to the benefit of any notices required by these rules to be given by the Clerk. It shall be the duty of the appellant or cross-appellant when preparing a certificate of service or a showing of service by certified mail, to add the mailing address of opposing counsel.

Physical Preparation.

Rule 42 shall apply.

- (d) **Service.**
Service shall be as prescribed by statute.

XV. OFFICE PAPERS

Rule 34. Not Taken Without Leave of Court.

No paper belonging to the Clerk's office shall be taken therefrom without leave of the Court and, when leave is granted, the party receiving the paper shall receipt the Clerk therefor. However, the Clerk may, for their respective official uses, deliver records to the Justices of the Supreme Court.

XVI. OPINIONS AND JUDGMENTS

Rule 35. Showing of Concurrence or Dissent.

Each judgment shall show on its face the votes, nonparticipation, or disqualification of each Judge.

(a) **Concurrence and Dissent.**

Judges concurring agree with the opinion and judgment. Judges concurring specially may or may not agree with all that is said in the opinion but do agree with the judgment. Judges concurring in the judgment only do not agree with all that is said in the opinion. Judges dissenting disagree with the opinion and judgment.

(b) **Judgment as Precedent.**

A judgment in an appeal pending before a division which is generally concurred in by all Judges of that division shall be a binding precedent; if there is a special concurrence without a statement of agreement with all that is said in the opinion or concurrence in the judgment only, it shall be a physical precedent only. If the appeal is pending before the whole Court, a general concurrence by a majority of the Judges shall be a binding precedent, but if the judgment is made only by special concurrences without a statement of agreement with all that is said in the opinion or by concurrence in the judgment, there being general concurrence by less than a majority of the Judges, it shall constitute a physical precedent only.

36. Affirmance Without Opinion, When Rendered.

Cases in which one or more of the following circumstances exist and are dispositive of the appeal, to wit:

- (1) the evidence supports the judgment;
- (2) no reversible error of law appears and an opinion would have no precedential value;
- (3) the judgment of the court below adequately explains the decision,

may be affirmed as follows: "AFFIRMED IN ACCORDANCE WITH COURT OF APPEALS RULE 36."

Those cases affirmed under this rule shall not be cited in any court for any purpose.

37. Reporting of Opinions.

Opinions to be Reported.

All opinions shall be reported except as otherwise designated by this Court.

Certain Opinions Not to Be Reported.

If any member of a division of the Court desires that an opinion not be placed in the published volume of the Georgia Appeals Reports, such Judge shall so indicate when voting on the merits of the case. If the decision not to report the opinion is unanimous within the division, it shall not be officially reported. If any member of a division dissents to the nonreporting of the opinion, this issue shall then be circulated to the entire Court if the dissenting Judge so requests in which event a majority vote shall control whether said opinion is officially reported.

At an appropriate place in each volume of the Appeals Reports, there will be a list of the cases in which opinions were written but not officially reported. The list of cases will indicate the authors of the opinions and those who concurred.

No unreported opinion shall be cited as a physical or binding precedent of the Court. However, such opinion shall establish the law of the case in which it is entered, as provided by OCGA § 9-11-60 (h).

Rule 38. Copies of Opinions.

As soon as practicable after judgment, the Clerk shall furnish, without charge, one copy of the opinion to counsel for each party to the appeal and to any pro se party, and a copy to the trial judge. If a party is represented by more than one counsel, it shall be designated on the brief who is to receive the one free copy for that party. The usual charge shall be made for copies other than as herein provided.

XVII. PARTIES

Rule 39. Parties, How Made.

(a) Suggestion of Death of Party.

The death of a party to an appeal pending in this Court may be suggested by counsel for either side or pro se party at any time and the Court shall thereupon cause to be issued and served upon the legal representative of the deceased party, if there be one, a rule nisi requiring such representative to show cause upon a day named, why such representative should not be made a party, and upon return of the rule the Court shall take appropriate action in the premises.

(b) Legal Representative May Volunteer.

The legal representative of the deceased party may voluntarily become a party to the appeal at any time. If such legal representative does so on or before the call of the appeal at the first term, it will be heard at that term, unless for good cause it is postponed or continued.

(c) Limiting Date for Making Party.

The representative of the deceased party must be appointed and made a party in this Court as soon as practicable.

(d) Temporary Administrator.

A temporary administrator will be regarded in this Court as a competent party.

XVIII. PETITION TO ALLOW AN APPEAL

40. Leave to Appeal, Types of Cases.

Appeals in the following cases shall be taken by petition for leave to appeal as provided in OCGA § 5-6-35 with all exhibits to the petition tabbed and listed:

- (1) Appeals from decisions of the superior courts reviewing decisions of the State Board of Workers' Compensation, the State Board of Education, auditors, state and local administrative agencies, and lower courts by certiorari or de novo proceedings; provided, however, that this provision shall not apply to decisions of the Public Service Commission and probate courts and to cases involving ad valorem taxes and condemnations;
- (2) Appeals from judgments or orders in domestic relations cases over which this Court has jurisdiction, including, but not limited to, awarding or refusing to change child custody, or holding or declining to hold persons in contempt of such judgment or orders;
- (3) Appeals from cases involving distress or dispossessory warrants in which the only issue to be resolved is the amount of rent due and such amount is \$2,500 or less;
- (4) Appeals from cases involving garnishment or attachment, except as provided in OCGA § 5-6-34 (a) (5);
- (5) Appeals from orders revoking probation;
- (6) Appeals in all actions for damages in which the judgment is \$10,000 or less;
- (7) Appeals, when separate from an original appeal, from the denial of an extraordinary motion for new trial;
- (8) Appeals from orders under OCGA § 9-11-60 (d) denying a motion to set aside a judgment;
- (9) Appeals from awards of attorney fees or expenses of litigation under OCGA § 9-15-14; and
- (10) Appeals from decisions of the state courts reviewing decisions of the magistrate courts by de novo proceedings so long as the subject matter is not otherwise subject to a right of direct appeal.

XIX. RECORDS AND TRANSCRIPTS

Rule 41. Duty of Clerks of Trial Courts.

The clerk of the trial court shall certify and transmit to the Clerk of this Court the original transcript and copies of all records as required within the time prescribed by statute. Transmittal shall be by the clerk or deputy personally or by mail or express, charges prepaid. Transmittal by a party or attorney is prohibited.

Rule 42. Preparation of Records and Transcripts.

Records and transcripts shall be written or printed on one side of white paper not less than letter size of good quality with ample spacing and margins so that they may be read easily (at least double spaced). The margin at the top shall be ample for tying. Metal fasteners which cover the top center are prohibited.

Rule 43. Arrangement of Record.

The record with pages numbered at the bottom and a manuscript cover shall be arranged as follows:

- (1) Index;
- (2) Notice of Appeal;
- (3) Other items in chronological order; and
- (4) Clerk's certificate.

Voluminous records may be bound in separate parts but each part shall be certified separately.

Rule 44. Transmission of Transcript.

The original transcript shall be a separate document and not attached to the record. It should show the style of the case and an index. Voluminous transcripts may be bound in separate parts. The reporter and clerk shall certify each part.

Rule 45. Physical Evidence.

Where there is reliance upon physical evidence, the party so relying may include as a part of the transcript a photograph thereof, together with an explanation or description thereof, if deemed necessary, in lieu of sending up the original evidence. If, however, the relying party deems the original evidence to be of such importance that a photograph or a description thereof cannot suffice to demonstrate such party's contention, such party may apply to the trial court for an order directing the

transmission thereof to this Court, or may apply to this Court for such an order if it is not obtainable from the trial court after a bona fide effort; provided, however, that in no event, unless directed by this Court, shall physical evidence be sent up which is bulky, cumbersome, or expensive to transport, or which, by reason of its nature, is dangerous to handle. Where the admissibility of photographs is attacked, the originals or exact duplicates, to be furnished by appellant, shall be included in the transcript.

46. Copying by Photographs or other Means.

Photographic or other methods of reproducing records or transcripts may be used provided the finished copy meets the test of complete legibility and permanence.

47. Objections to Records or Transcripts; Waiver.

Appellee shall be deemed to have waived any failure of the appellant to comply with the provisions of the Appellate Practice Act relating to the filing of the transcript of the evidence and proceedings or transmittal of the record to this Court, unless objection thereto was made and ruled upon in the trial court prior to transmittal and such order is appealed as provided by law.

XX. RECONSIDERATION

48. Motions for Reconsideration.

Physical Preparation.

The physical preparation of motions must follow the provisions as to preparation of briefs as set out in Rule 11. Service of motions must follow the provisions as set out in Rules 5, 14 and 32.

Time of Filing.

Motions for reconsideration must be filed during the term at which the judgment sought to be reviewed was rendered and before the remittitur has been forwarded to the clerk of the trial court, and, in any event, must be filed within ten days from the rendition of the judgment. No extension of time shall be granted except for providential cause on written application made before the expiration of ten days.

- (c) **Time May Be Limited.**
The Court may by special order in any case direct that the remittitur be transmitted to the clerk of the trial court immediately after the rendition of the decision and judgment, or at any other time, without awaiting expiration of the usual period of ten days, and may otherwise by special order limit the time within which a motion for reconsideration may be filed to any period less than ten days. Counsel and pro se parties shall be notified of any such limitation of time.
- (d) **Failure to Transmit Remittitur Does Not Extend Time.**
Unless an extension of time is requested and granted, a motion for reconsideration must in any event be filed within ten days from the rendition of the decision and judgment, regardless of whether the remittitur has been transmitted to the lower court.
- (e) **Second Motion.**
No motion for reconsideration by the same party after a first motion has been denied will be filed except by special order of the Court, although the Clerk may receive any later motion and deliver it to the Court for direction as to whether it shall be filed.
- (f) **Basis for Granting.**
A reconsideration will be granted on motion of the losing party, only when it appears that the Court has overlooked a material fact in the record, a statute, or a decision which is controlling as authority and which would require a different judgment from that rendered, or has erroneously construed or misapplied a provision of law or a controlling authority. No motion for a reconsideration will be entertained which does not expressly point out what material fact in the record, or controlling statute or decision, has been overlooked by the Court, or what provision of law or controlling authority has been erroneously construed or misapplied.
- (g) **Certificate of Counsel.**
There shall be attached to the motion a certificate of counsel that upon careful examination of the opinion of the Court such counsel believes that the fact, statute, or decision has been overlooked, or the provision of law or controlling authority has been erroneously construed or misapplied. The motion, when

filed, shall show that a copy thereof has been served on opposing counsel, who may thereupon file a brief on the questions raised.

) **Opinion May be Revised Without Grant of Motion.**

If, upon the consideration of a motion for reconsideration, this Court should be of the opinion that its judgment as rendered is correct, but that some revision of the opinion would be appropriate, it may, in its discretion, and according to its power as heretofore exercised, revise the opinion accordingly, without granting a reconsideration. In this event the Court shall so advise the Clerk, who shall then promptly notify counsel as to the alterations made.

) **Later Revision.**

After motions for reconsideration have been disposed of, or in the absence of any motion, the Court or its Judges may revise opinions prior to the printing thereof in the official reports.

) **Voting on Motions, Effect.**

A motion for reconsideration in an appeal pending before a division of the Court shall be granted or denied by a majority vote of the Judges on that division; if pending before the whole Court it shall be granted or denied by a majority vote of all of the Judges. A vote to grant the motion does not amount to a dissent; if a Judge voting to grant the motion desires to enter a dissent, such Judge may do so but must so indicate in connection with such Judge's vote on the motion.

XXI. REMITTITUR

49. Transmittal.

Remittiturs shall be transmitted to the clerk of the trial court as soon as practicable after the expiration of ten days from the date of the judgment unless otherwise ordered or unless a motion for reconsideration or notice of intention to apply to the Supreme Court for writ of certiorari has been filed.

XXII. SUPERSEDEAS

Rule 50. Supersedeas.

(a) Civil Cases.

In all civil cases supersedeas shall be effective when and in the manner provided by law.

(b) Criminal Cases.

In all criminal cases supersedeas shall be effective when and in the manner provided by law.

(c) Emergencies.

In the exercise of its inherent power this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This power will be exercised sparingly. As a general rule no order will be made or direction given in an appeal until it has been docketed in this Court.

XXIII. EXPEDITED APPEALS UNDER THE PARENTAL NOTIFICATION ACT

Rule 51.

(a) This rule is adopted under the authority of the Georgia Constitution, Article 6, § 1, ¶ 4 (1983); OCGA §§ 15-1-5 and 15-11-114 (e) to provide for the expedited consideration of appeals under the "Parental Notification Act." (OCGA § 15-11-110 et seq.)

(b) Any minor to whom a Juvenile Court has denied a waiver of notice under OCGA § 15-11-114 (d) may obtain an expedited appeal to this Court. For the purpose of this rule, in computing time, Saturdays, Sundays and holidays shall be included. Rule 3 shall govern in the event an expiration date falls on such a date.

(c) A minor seeking an expedited appeal shall file a Notice of Appeal and a certified copy of the order denying waiver of notice with the Clerk of this Court. A copy of the Notice of Appeal must also be filed with the Juvenile Court. The name, address and telephone number of the Guardian Ad Litem and any Counsel of Record must be included with the Notice of Appeal. Upon receipt of the Notice of Appeal, this Court will issue an

order to the Juvenile Court directing that the record and transcript of the hearing be transmitted to and received by this Court within five (5) days from the date of filing of the Notice of Appeal with this Court. An enumeration of errors shall be filed within the time period for the filing of the record. If a brief is desired, it shall also be filed within the time period for the filing of the record. No filing fee is required.

) The record of the Juvenile Court shall be certified by the Clerk of the Juvenile Court and transmitted to this Court under seal.

) The Clerk shall assign the appeal to a panel of this Court, who shall take the matter under consideration and shall issue its decision within five (5) days of receipt of the record.

In order to expedite further appellate review, a motion for reconsideration shall not be required. However, if the decision of this Court affirms the judgment of the Juvenile Court, the minor may file a motion for reconsideration and the same will be governed by Rule 48, except that such a motion shall be filed within five (5) days from the date of the decision of this Court and may be filed out of term. Any motion for reconsideration will be decided by the Court within five (5) days of filing thereof.

If the decision of this Court reverses the judgment of the Juvenile Court, the remittitur will be forwarded to the Clerk of the Juvenile Court immediately after the rendition of the decision. If the decision of this Court affirms the judgment of the Juvenile Court, the remittitur shall be transmitted to the Clerk of the Juvenile Court as soon as practicable after the expiration of five (5) days from the date of the judgment unless otherwise ordered or unless a motion for reconsideration or notice of intention to apply to the Supreme Court for writ of certiorari has been filed.

Upon good cause shown, the Court will enter such orders as will further expedite the processing of these cases.

In order to invoke the foregoing special procedures, the Notice of Appeal must be filed within five (5) days of receipt by the minor of the Juvenile Court's order.

- (j) All pleadings, briefs, orders, transcripts, exhibits and any other written or recorded material that are part of the record shall be considered and treated by the Court as confidential. Upon conclusion of the appellate proceedings the record will be sealed, and the contents of the record shall not be disclosed, except upon order of this Court or the Supreme Court of Georgia.

XXIV. APPELLATE SETTLEMENT CONFERENCE

Rule 52.

1. GENERAL PROVISIONS.

(a) **Authority and Purpose of Rule.**

This rule is adopted under the authority of the Georgia Constitution, Article 6, § 1, ¶ 4 (1983); OCGA §§ 15-1-5 and 15-3-13. The procedure is intended to afford a realistic consideration of the possibility of settlement of the case or, alternatively, the simplification of issues and record on appeal, prior to docketing of the appeal; to establish dates upon which the various actions are to be taken in the submission and pursuit of an appeal; to obtain appropriate stipulations of fact; and to take such other actions as may reduce cost and aid the speedy and just disposition of cases.

(b) **Appeals to Which Settlement Conference Procedure Applies.**

This procedure shall apply only to timely civil appeals in which appeal is permitted to the Georgia Court of Appeals. Criminal cases, applications for discretionary appeals and interlocutory appeals, and appeals which have been untimely filed shall not be subject to this procedure. If a notice of appeal is filed pursuant to the *granting* of a discretionary or interlocutory appeal, then the Settlement Conference Information Form must be filed and this rule applies.

2. SETTLEMENT CONFERENCE INFORMATION FORM.

Trial Court Clerk to Furnish Forms.

In all civil appeals subject to this procedure, upon the filing of a notice of appeal with the trial court, the clerk of the trial court shall furnish immediately to all appellants, by hand delivery if the notice of appeal is filed in person by a party or counsel therefor, or by regular mail, and to appellees by regular mail, a copy of the Settlement Conference Information Form.

Forms; Time for Completion; Return.

Within 12 days after the filing of the Notice of Appeal, the appellant and appellee shall each file with the clerk of the trial court an appropriately completed Settlement Conference Information Form and serve a copy of said form upon the opposite party and the Settlement Conference Clerk at the Court of Appeals.

Acceptance or Rejection of Settlement Conference; Costs.

Either party may specify on the appropriate Settlement Conference Information Form the acceptance or rejection of the utilization of a settlement conference, either at the time of filing or at any time during the process of the settlement conference hearings; provided, however, that if rejected after the time of filing, costs up to the time the Settlement Conference Judge determines the Conference process is ended, must be paid, the amount and the party or parties to be obligated to be determined by the Settlement Conference Judge.

Contents of Form.

- (1) **When Settlement Conference Procedure is Rejected.**
The Settlement Conference Information Form shall include a rejection provision which, when chosen by either party in accordance with Section 2 (c) at the time of filing, eliminates any necessity for executing a statement of disputed facts or issues of law. If settlement negotiation is rejected at the time of filing, only the style and number of the case and the election to reject must be completed on the Settlement Conference Information Form.
- (2) **When Settlement Conference Procedure is Elected.**
The following form shall be completed, signed, and filed:

If election to participate in the Settlement Conference Procedure is made, the following information must be provided and returned to the Clerk of the Trial Court with copies to the opposing party and the Settlement Conference Clerk within 12 days after the filing of the Notice of Appeal. Pursuant to OCGA § 15-3-13 (a) and Rule 52 of the Court of Appeals, the statutory time for preparation and transmittal of the transcript and record will be tolled temporarily and will resume by order of the Settlement Conference Judge at the conclusion of the Settlement Conference Procedure.

CASE DESCRIPTION

NATURE OF ACTION

- | | |
|----------------|-----------------------------|
| 1 () CONTRACT | 7 () GRANT/DENIAL MOTION |
| 2 () TORT | FOR SUMMARY JUDGMENT |
| 3 () PROPERTY | 8 () GRANT/DENIAL MOTION |
| 4 () OTHER | OTHER THAN SUMMARY JUDGMENT |
| 5 () JURY | 9 () DATE OF FINAL |
| 6 () NON-JURY | DISPOSITION ___/___/___ |

1. **ABBREVIATED STATEMENT OF CASE (NATURE)** — Brief Description of the Controversy — Include any Findings of Fact (or Statements of Undisputed Facts in summary judgment cases) and Conclusions of Law made by the Trial Court (copy may be attached).

2. **ABBREVIATED STATEMENT OF TRIAL COURT JUDGMENT, DECISION AND ORDER FROM WHICH APPEAL IS SOUGHT.**

3. **MANNER OF DISPOSITION (Jury Verdict — Non-Jury — Grant/Denial of Motion).**

4. BRIEF STATEMENT OF POST-JUDGMENT MOTION.

Nature _____

Date Filed _____

Date and Summary of Contents of Order _____

5. IT IS EXPECTED THAT THE FOLLOWING ENUMERATIONS WILL BE PRESENTED ON APPEAL.

6. APPELLANT SEEKS THE FOLLOWING RELIEF ON APPEAL.

7. ATTACH COPY OF JUDGMENT TO THIS FORM AS WELL AS TO COPY OF THIS FORM SUBMITTED TO SETTLEMENT CONFERENCE CLERK.

8. I certify that this (appeal) (cross-appeal) is taken in good faith and not for the purpose of delay. The (appellant) (cross-appellant) (is) (is not) prepared immediately to take all steps to complete the appeal.

(Appellant is not ready to complete this appeal because _____

_____.)

Date _____

Attorney for (Appellant) (Appellee) _____

Discretionary Statement of Counsel.

In addition to the information provided in the Settlement Conference Information Form, each counsel may, in his or her discretion, file with the Settlement Conference Judge a separate statement indicating the position he or she will take in the settlement conference hearing regarding all demands and/or concessions that may be made. This statement shall not be revealed to opposing counsel without express authorization by the filing counsel.

Settlement Conference Information Form Not a Part of Record on Appeal.

The Settlement Conference Information Form shall not become a part of the record. The Settlement Conference Information Form shall not be referred to in the briefs or oral arguments presented to the Court of Appeals by any party to the appeal and shall have no evidentiary value in any administrative or judicial proceeding. The parties to the appeal shall not be limited in their appeals before this Court to the positions adopted or facts stated in the Settlement Conference Information Form, except as ordered by the Settlement Conference Judge following a completed settlement conference hearing. The purpose of the Settlement Conference Information Form is to familiarize the Settlement Conference Judge and parties with the underlying cause of action by clarifying the parties' comprehension of the disputed issues or facts, thus insuring a more meaningful discussion of possible settlement or limitation of issues.

3. DUTIES OF SETTLEMENT CONFERENCE CLERK.**Notification of Counsel.**

It shall be the duty of the Settlement Conference Clerk to notify counsel for each party if a settlement conference has been accepted by both parties and a settlement conference is to be held.

Assignment of Settlement Conference Number; Notification of Settlement Conference Judge.

As soon as notice is received by the Settlement Conference Clerk that a settlement conference is to be conducted, he or she shall affix a "Settlement Conference Number" to the case, and shall assign and notify a Settlement Conference Judge and give notice to counsel of the name and location of the Settlement Conference Judge.

(c) **Additional Duties.**

The Settlement Conference Clerk under the supervision of the Settlement Conference Chief Judge will monitor the program, the timeliness of the procedures, coordination with the clerks of the trial courts, and work with and obtain status reports from the Settlement Conference Judges.

4. DUTIES OF CLERK OF TRIAL COURT.

(a) **When Settlement Conference Procedure is Rejected at Filing of Settlement Conference Information Form.**

If a settlement conference is rejected, the clerk of the trial court will proceed with the preparation of the record as required by law. Failure to timely file by either party shall be a rejection. The time for the preparation and transmittal of the record and transcript shall commence to run from the time of the filing of the first Settlement Conference Information Form which shows rejection of the conference or the failure to timely file, as aforesaid. The appeal shall then proceed as prescribed by and in accordance with appellate statutes and the rules of the Court of Appeals.

(b) **When Settlement Conference Procedure is Elected.**

(1) **Tolling of Time for Filing Record and Transcript.**

The election of the settlement conference procedure by both parties shall toll the running of the time period prescribed by statute for the preparation and transmittal of the record and transcript to the Court of Appeals until such time as the Settlement Conference Judge's order causes its resumption, as provided by Section 6 (a) (7) (ii).

(c) **When Settlement Conference Procedure is Begun, But Later Abandoned, Terminated or Issues Narrowed.**

If a settlement conference is elected but later abandoned or terminated prior to settlement of all disputed issues, an order so stating shall be filed with the clerk of the trial court (but this order is *not* made a part of the record on appeal), and the times for the preparation of the record and the processing of the appeal will start running as of the date of the filing of the order with the said clerk of the trial court. The clerk shall thereupon proceed with the regular processing of the appeal in accordance with applicable statutes and the rules of the Court of Appeals. If the settlement conference procedure is accepted and the issues

tlement Conference Judge, but complete settlement of all issues is not accomplished, a copy of an order so stating shall likewise be filed with the clerk of the trial court (and this order *shall* be made a part of the record on appeal), and the appellate times, procedure and process shall begin running as of the date of the filing of such order.

(d) **When Settlement Conference Procedure Brings About Settlement.**

The clerk of the trial court will do whatever is necessary to close the file and the case will *not* proceed to the Court of Appeals.

5. SETTLEMENT CONFERENCE CHIEF JUDGE.

The Court of Appeals shall appoint a Settlement Conference Chief Judge from among the State's Senior Superior Court and Senior Appellate Judges, whose duties will be to oversee the conduct of the program, the timeliness of the procedures, the work of the Settlement Conference Clerk and the Settlement Conference Judges. The Settlement Conference Chief Judge shall be compensated as provided by OCGA § 15-3-13 (c).

6. SETTLEMENT CONFERENCE JUDGES.

(a) **Powers and Duties.**

(1) **Determination Of Suitability for Procedure.**

The Settlement Conference Judge, upon assignment of a case to him or her by the Settlement Conference Clerk, shall immediately review the Settlement Conference Information Form to determine if the case is one in which appeal is permitted to the Court of Appeals, if notice of appeal has been properly and timely filed in accordance with OCGA §§ 5-6-34 and 5-6-35 (g), and if the appeal is one subject to these procedures as provided by Section 1 (b) of this rule.

(2) **Arranging Settlement Conference.**

If the Settlement Conference Judge concludes that the case is jurisdictionally appropriate, the Settlement Conference Judge shall promptly contact counsel for the parties and shall arrange a place for the conference, taking into consideration the convenience of the parties and the availability of the record documents at the conference site. The Settlement Conference Judge shall then designate the date, time and place of the conference and furnish this information to

counsel and the Settlement Conference Clerk.

- (3) **Additional Powers of Settlement Conference Judge.**
Cases scheduled for settlement conference are fully subject to the authority of the Settlement Conference Judge and the Settlement Conference Judge has the authority to:
- (i) Order that the transcript preparation by the reporter at the trial court be stayed prior to the settlement conference hearing;
 - (ii) Order portions of the record and transcript forwarded to the office of the Settlement Conference Judge at a cost to be shared equally by the parties;
 - (iii) Recommend dismissal of the settlement conference procedure if the Settlement Conference Judge determines that the court lacks jurisdiction;
 - (iv) Dismiss the settlement conference for good cause;
 - (v) Issue, and file in the office of the clerk of the trial court, all orders effectuating agreements between the parties as to the modification of appellate deadlines in the trial court. Copies of all such interim agreements and orders issued by the Settlement Conference Judge shall be furnished to the Settlement Conference Clerk for information and clarification of the progress of cases in settlement procedure pending appeal;
 - (vi) Issue, and file in the office of the clerk of the trial court, all orders effectuating agreements between the parties as to the settlement of any and all matters between the parties that may aid in the disposition of the appeal, including limitation of issues or facts; copies of such agreements and orders shall be filed with the Settlement Conference Clerk;
 - (vii) Exercise all authority pertinent to the settlement conference which is permitted to the judges of the superior courts and the appellate courts of this State;
 - (viii) Reschedule or recess conferences, keeping in mind the intent of these rules to facilitate settlements and simplify and expedite appeals;
 - (ix) Schedule multi-party conference calls in addition to meeting at the designated conference location.

- (4) **Status Reports.**
Monthly, the Settlement Conference Clerk shall ascertain from each Settlement Conference Judge the status of all pending settlement conference cases assigned to him or her.
- (5) **Conference to be Conducted in Most Effective Manner.**
The Settlement Conference Judge shall direct the conference in the manner that will most effectively lead to a full settlement by the parties, which may include separate ex parte, in camera conferences with counsel for the parties prior to a full hearing.
- (6) **Resolution Within 60 Days of Assignment; Exceptions.**
The Settlement Conference Judge shall at all times seek to expedite and resolve the matters and issues as promptly as practicable. Should final resolution not be made within 60 days from the assignment of a Settlement Conference Judge, at the discretion of the Settlement Conference Chief Judge, the settlement conference procedure may be terminated, or an order may be issued extending the procedure for good cause for additional successive 30-day periods, a new order being required for each such 30-day extension.
- (7) **Disposition After Settlement Conference.**
- (i) **Where Settlement Conference Fully Disposes of Appeal.**
If the settlement conference fully disposes of the appeal, the Settlement Conference Judge will promptly issue an appropriate order to the trial court upon the authority of which the trial court shall enter judgment as indicated in the order and the appeal shall be dismissed. The Settlement Conference Judge shall dispatch a copy of the disposition order to the Settlement Conference Clerk, so that said Clerk's file may be closed and the appellate process terminated.
- (ii) **Where Settlement Conference Does Not Fully Dispose of Appeal.**
If the settlement conference does not fully dispose of the appeal, the Settlement Conference Judge shall in the final disposition order eliminate, reduce, simplify or clarify the issues as to which settlement agreement can be reached. That order shall contain a statement

of any partial settlements, stipulations or other agreements reached by the parties and shall be attached to the record. The order shall be binding on the parties during the completion of the appeal, unless the Court of Appeals otherwise directs on its own initiative, or on motion of a party for good cause shown, on terms the Court of Appeals, in its discretion, deems appropriate.

The time provided by statute for the transmittal of the record and transcript from the clerk of the trial court to the Court of Appeals shall commence running from the date of receipt by the clerk of the trial court of the Settlement Conference Judge's order indicating the procedure has been completed or abandoned.

(iii) **Costs.**

Whenever the services of a Settlement Conference Judge are utilized, the Settlement Conference Judge, in his or her final order effecting disposition of the settlement hearing will provide that an amount not to exceed \$200 per party be assessed as court costs to be remitted to the Settlement Conference Clerk within 30 days of the date of the order and be applied to the cost of the procedure.

(b) **Compensation.**

The Settlement Conference Judge shall be compensated as provided by OCGA § 15-3-13 (c).

7. DUTIES OF ATTORNEYS PARTICIPATING.

(a) **Familiarity with Case.**

Counsel for the parties shall familiarize themselves completely with all aspects of the facts and issues on appeal, including their authority to settle or compromise, prior to the conference, and shall be prepared to accomplish the intent of conference.

(b) **Authority from Clients.**

Attorneys are directed to endeavor to appear at the conference with authority from their clients to settle or compromise. Any client may be present at the conference by consent of attorneys for all parties. In matters where insurers and/or corporations are

the ultimate parties, attorneys are directed to endeavor to have authority from such ultimate parties to effect a settlement or compromise.

Notwithstanding the above, it is understood that the final decision to settle or compromise may be held in abeyance pending final approval by the respective parties. Said matter, however, may only be held in abeyance for a reasonable period of time as established by the Settlement Conference Judge.

Final Decision Regarding Settlement.

The final decision to settle, compromise or reject a settlement conference procedure shall be obtained from and left to counsel who shall be presumed to act on the authority of the client. The Settlement Conference Judge may not override this decision. Settlements or compromises reached by the parties shall be signed by the attorneys. The Settlement Conference Judge will then issue an order giving effect to the agreements reached.

8. DOCKETING IN THE COURT OF APPEALS.

An appeal filed with the Court of Appeals and subject to this procedure provided by Section 1 (b) shall be assigned a docket number unless the order shows that the procedure hereunder has been declined or abandoned or completed.

9. CONFIDENTIALITY.

Statements, representations, or offers of settlement made in a settlement conference or in preparation thereof, and not embodied in a settlement conference order, shall be privileged and shall remain confidential. This provision applies to all Settlement Conference Judges and staff participants in the settlement conference process. Judges of the Court of Appeals shall not have access to such settlement information disclosed in the settlement conference process except insofar as the final order of a Settlement Conference Judge eliminates or limits issues or otherwise simplifies the record in accordance with Section 6 (a) (7) (ii).

10. LIBERAL CONSTRUCTION OF RULE.

This rule is designed to promote the use of the settlement conference procedure and shall be liberally construed.

Adopted en banc as revised through December 31, 1991.

John W. Sognier, Chief Judge

William LeRoy McMurray, Jr., Presiding Judge

A. W. Birdsong, Jr., Presiding Judge

George H. Carley, Presiding Judge

Marion T. Pope, Jr., Judge

Dorothy Toth Beasley, Judge

Clarence Cooper, Judge

Gary B. Andrews, Judge

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