

COURT OF APPEALS OF GEORGIA
BANC MEETING

Third Floor Conference Room
Tuesday, September 18, 2001
10:00 a.m.

C O R R E C T E D A G E N D A

- | | | |
|---------|---|-------------------------------|
| ✓ I. | Call Meeting to Order | Chief Judge G. Alan Blackburn |
| ✓ II. | Approval of the Minutes | Chief Judge G. Alan Blackburn |
| ✓ III. | Court Crisis | Chief Judge G. Alan Blackburn |
| ✓ IV. | Court Limits on Judges' Portraits | Chief Judge G. Alan Blackburn |
| ✓ V. | Court Orientation Committee | Chief Judge G. Alan Blackburn |
| ✓ VI. | Judges of Georgia - Turner Publishing Company | Chief Judge G. Alan Blackburn |
| ✓ VII. | Judicial Council Resolution | Chief Judge G. Alan Blackburn |
| ✓ VIII. | Old Business | |
| ✓ IX. | New Business | |
| ✓ X. | Adjournment | |

MSP - adjourn -

11:30



Court of Appeals

Memorandum

To: All Judges
From: Chief Judge Blackburn *AB*
Subject: Report of court votes
Date: September 13, 2001

1. This court approved the salary increases for Bill Martin, Jan Kelley and certain other staff personnel as outlined in my September 4, 2001 memo by a vote of 11 to 1.

2. This court approved the policy requirement that judges granting discretionary and interlocutory applications, amend the central staff memo under certain limited circumstances, as outlined in my September 4, 2001 memo, by a vote of 9 to 2. Judge Barnes was out of town on court business and did not participate.

3. This court approved the revisions to the judges' vote format as outlined in my memo of September 10, 2001, by a vote of 11 to 0. Judge Barnes was out of town on court business and did not participate.

By copy of this memo, I am asking Bill Martin to prepare IOM entries for adoption on these matters, as needed. Thank you for your interest and participation.

cc: Bill Martin ✓
Jan Kelley



FVI
Bill Martin

Court of Appeals

Memorandum

To: All Judges

From: Chief Judge Blackburn *MB*

Subject: Judges' Vote Format

Date: September 10, 2001

After some miscommunication within the court, we are now ready to review and approve a revised format for recording judges' votes on circulating opinions.

We have incorporated suggestions from Judges Johnson, Mikell and Smith into the new format. I have entered examples of the various votes that are likely to be entered on the attached example. I would suggest that each office retain a copy of this for future reference and use the type of entries shown in the example.

I would also suggest that we adopt the following practice for handling cases that must be recirculated because of a dissent or for other reasons. The dissenter should initial the dissent column, draw an "X" across the total vote and return the case with the dissent to the office of the author of the majority. The majority judge's office should print a clean first page, enter the dissenter's initials and date thereof, and substitute the new first page for the

old. The old first page should be kept with the record and circulated in the event any judge wishes to review the voting history of the case.

This will eliminate the need to cut and paste new voting records. Individual judge's offices should not modify the format, as this can interfere with the functioning of the macros. Any suggestions for changes should be handled with the chief judge's office and not by or through staff. This way, we can insure an orderly process in which everyone has an opportunity to have input.

Please indicate your approval of this new format, which will be implemented as soon as possible upon approval.

APPROVED THIS 9/10/01:

JUDGE

Date	Concur	Note	Dissent
8/1			JDS
8/2	MTP	FULLY & SPECIALLY	
8/3	G-BA	W/POPE	
8/4	GAB	IN PART	GAB
8/5		W/SMITH	FME
8/6	HEP	W/BLACKBURN	HEP
8/7		W/SMITH	AEB
8/8	MYM	SPECIALLY	
8/9	TJE	W/MILLER	
8/10			CBM
8/11	JHR	JUDGMENT ONLY	

«SEPTEMBER, 2001»

«AFFIRMED»

C:\wp60\Op\A00A1601.96

September 7, 2001

In the Court of Appeals of Georgia

A00A1601. UPSON COUNTY HOSPITAL, INC. v. HEAD.

JOHNSON, Chief Judge.

This is an appeal from the trial court's order denying Upson County Hospital's motion to dismiss Carolyn Head's amended complaint. The question presented is two-fold: first, whether Head was required to file an expert affidavit with her original complaint, and second, whether Head's failure to file an expert affidavit with her original complaint bars the claims in her amended complaint. Our decision involves consideration of the interaction between a version of OCGA § 9-11-9.1 as it existed at the time Head filed her original complaint and OCGA § 9-3-71, the applicable statute of limitation.



FYI
Bill Martin

Court of Appeals

Memorandum

To: All Judges

From: Chief Judge Blackburn *MAB*

Subject: Discretionary and Interlocutory Appeals

Date: September 10, 2001

While we have not received all of the judges' votes as yet on the above memo, we presently have 7 votes in favor of adoption and 1 vote against adoption.

The purpose of this memo is to clarify the proposed policy and to advise everyone how to access the memo file to add their comments thereto.

It would be helpful to the judges who are assigned the appeal to have some indication of the basis for granting the application where the staff memo does not reflect the judge's thinking. It was not intended that the amendment to the staff memo be a researched and thorough analysis, but rather, a simple note, which will give some guidance to those to whom the case is assigned. I have prepared an example of such an amendment and have amended a randomly selected staff recommendation. See attached example.

To access the staff memos for the purpose of adding the judge's memo is a simple process.

1. Click on "Court" on the tool bar.
2. Move curser to "Open from."
3. Click on "Court-wide folder (s:/)."
4. Double click on "Central.stf."
5. Then double click on application you wish to edit.

It would be appreciated if those who have not returned their vote as yet would do as soon as possible.

*EXAMPLE SEE MEMO AT
BOTTOM OF PAGE 3.



Court of Appeals

Memorandum on Application for Discretionary Appeal

To: Presiding Judge Pope and Judge Mikell

From: Chief Judge Blackburn (Derrico)

Style: *A01D0258. Calfee Company of Dalton d/b/a Favorite Markets et al. v. Trana C. Bright Mitchell*

Date: April 12, 2001

Judgment type:	OCGA § 5-6-35 (a) (1) (workers' compensation appeal)
Lower court:	Murray Superior Court, Judge Jack Partain
Short number:	98022
Docketed:	March 30, 2001
Response:	Received April 10, 2001 (Due April 9, 2001)
Order Due:	APRIL 30, 2001
Recommendation:	DENY

Calfee Company and its workers' compensation insurer ("Calfee") seek to appeal a superior court order upholding a decision of the state board of workers' compensation. Calfee challenges the board's evidentiary findings, yet it has failed to include with its application any of the evidence. Indeed, Calfee has not even included with its application the awards of the ALJ or the board.

From the application and the response, it appears that Mitchell began her employment with Calfee in 1984. In 1997 and 1998, she suffered on-the-job injuries but continued to work. On July 26, 1999, Calfee terminated Mitchell's employment. Her physician found that Mitchell could not perform her regular duties from the time she was terminated on July 26, 1999, onward. The ALJ awarded Mitchell indemnity benefits from October 15, 1999, onward. The board affirmed the award except to find that Mitchell was entitled to temporary total disability benefits from July 26, 1999 onward. The superior court affirmed the board, expressly and correctly holding that it lacked authority to substitute itself as the fact-finding body in lieu of the board. The superior court also found that evidence supported the board's decision and Calfee's arguments would require it to reexamine the evidence.

Calfee contends that there is no medical evidence that Mitchell suffered a disability in the first place. It further contends that the evidence shows that Mitchell returned to work no later than September 1999, when she started generating income from her photography business, and that the board erred by failing to consider this return to work.

Calfee's claims challenge findings of fact. However, in spite of citing to it in the application, Calfee has not filed a transcript of the ALJ hearing (or any other evidence). Therefore, it has not met its burden under *Harper v. Harper*, 259 Ga. 246 (378 SE2d 673) (1989), of showing that its application should be granted. Moreover, as the superior court correctly noted, determinations of credibility and the weight of testimony are for the ALJ and the board, not for either the superior court or this Court. *Metro Interiors v. Cox*, 218

Ga. App. 396, 398 (461 SE2d 570) (1995). This Court has no authority to substitute itself as a fact-finding body in lieu of the board. *General Motors Corp. v. Summerous*, 170 Ga. App. 338, 341-42 (317 SE2d 318) (1984).

Because Calfee failed to support its application, I recommend that the Court deny the application.

EXAMPLE

Judge's Memo: While I agree with the above analysis, I note that there is no published precedent addressing this issue. Therefore, I am granting this application in contemplation of establishing such a precedent if, upon review of the record, such ruling is appropriate.

Chief Judge G. Alan Blackburn

Date: September 7, 2001



Court of Appeals

Memorandum

To: All Judges

From: Chief Judge Blackburn *HAB*

Subject: Discretionary and Interlocutory Appeals

Date: September 4, 2001

It is helpful for the judge to whom an appeal has been assigned, following the grant of an application, to understand the reasoning behind the original grant. To this end, we have available the central staff memo, which is ordinarily sufficient.

Sometimes, however, the assigned judge elects to grant an application where central staff has recommended it be denied, or the judge has a different reason or theory for following the staff's recommendation, than that contained in the original memo. For this reason, it is requested that where an application is granted under such circumstances, the granting judge supplement the computerized central staff memo with the reason for the ruling, for the benefit of the judge to whom the case will be assigned.

I feel that we should include this change in the IOM, and will do so on receipt of approval by the majority of this court. Please vote on next page.

APPROVED

JUDGE

DATE



Court of Appeals

Memorandum

To: All Judges

From: Chief Judge Blackburn *JAB*

Subject: Format of Circulating Stamp

Date: September 4, 2001

Attached hereto for your approval is the new format for the judges' votes on circulating cases. We have combined suggestions from Judge Johnson and Judge Mikell. We will implement this format as soon as possible following approval by the court.

APPROVED:

JUDGE

DATE



Court of Appeals

Memorandum

To: Chuck Williams

From: Chief Judge Blackburn *AAB*

Subject: Due Date of Interlocutory Appeals - 30 days

Date: September 4, 2001

The time within which an order granting or denying the application for discretionary and interlocutory appeals must be issued has traditionally been 30 days.

While this court did not request the change, the legislature has extended the time for the granting or denial of an interlocutory application under OCGA § 5-76-34 (b) to 45 days. Discretionary applications under OCGA § 5-6-35 were unchanged and have a 30-day limit for action.

In order to avoid confusion, this court will internally continue to operate on a 30-day time limit on interlocutory and discretionary applications. It has come to my attention that the "Order Due" date on some interlocutory applications are being calculated by some Central Staff attorneys based upon a 45-day period. Please direct all staff attorneys to use a 30-day calculation on all future applications.

cc: All Judges
Bill Martin ✓
Bud Tirey



Court of Appeals

Memorandum

To: All Judges

From: Chief Judge Blackburn *MAB*

Subject: Discretionary and Interlocutory Appeals

Date: September 4, 2001

It is helpful for the judge to whom an appeal has been assigned, following the grant of an application, to understand the reasoning behind the original grant. To this end, we have available the central staff memo, which is ordinarily sufficient.

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APPROVED

JUDGE

DATE



Court of Appeals

Memorandum

To: All Judges
From: Chief Judge Blackburn *AAB*
Subject: Distress List
Date: August 3, 2001

Attached is a copy of Judge Phipps' memo, in which he suggests that on the distress list we list whole court cases as WC-7 or WC-12, depending on the number of judges who will vote on the case. I think it is an excellent suggestion and request that all offices begin implementing it. Thanks.



Court of Appeals

Memorandum

To: Chief Judge Blackburn

From: Judge Phipps *HEP*

Subject: Distress Lists

Date: July 16, 2001

During each distress period, particularly during the last few weeks and days of distress, many cases are circulating whole court. Our court distress list identifies whole court cases but does not tell us whether those cases are circulating to a seven-judge panel or to all twelve judges. I have instructed my administrative assistant to mark our list "WC-7" or "WC-12" so that others who view the list can easily determine whether they will be voting on our cases. I would like for you to consider whether identifying all whole court cases in this way could be helpful to everyone, and if so whether that change could be made in our rules for updating the distress lists.

Thank you for considering this suggestion.



Court of Appeals

Memorandum

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Date: September 4, 2001

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APPROVED:

JUDGE

DATE



Court of Appeals

Memorandum

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From: Chief Judge Blackburn *YAB*
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Court of Appeals

Memorandum on Application for Discretionary Appeal

To: Presiding Judge Pope and Judge Mikell

From: Chief Judge Blackburn (Derrico)

Style: *A01D0258. Calfee Company of Dalton d/b/a Favorite Markets et al. v. Trana C. Bright Mitchell*

Date: April 12, 2001

Judgment type:	OCGA § 5-6-35 (a) (1) (workers' compensation appeal)
Lower court:	Murray Superior Court, Judge Jack Partain
Short number:	98022
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Date: September 7, 2001



Court of Appeals

Memorandum

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From: Chief Judge Blackburn *AAB*

Subject: Discretionary and Interlocutory Appeals

Date: September 4, 2001

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APPROVED

JUDGE

DATE



Bill

Court of Appeals

Memorandum

To: All Judges
From: Chief Judge Blackburn *AAB*
Subject: Legislation
Date: September 7, 2001

Enclosed is a jury bill which the Administrative Office of the Courts indicates had passed the legislature and is in the Governor's office.

cc: Mr. Bill Martin ✓