

**COURT OF APPEALS OF GEORGIA
BANC MEETING**

Third Floor Conference Room
Tuesday, November 18th, 2003
10:00 a.m.

A G E N D A

- ✓ I. Call Meeting to Order
- ✓ II. Approval of October 2003 Banc Meeting Minutes
- ✓ III. Report on Written Court History Presiding Judge John H. Ruffin, Jr.
- IV. Amendment to Rule 4 Chief Judge J.D. Smith
- V. Procedure for a Non-Panel Judge to Request
Consideration of Case by All Twelve Judges Bill Martin, Clerk Think about it
- VI. Protocol on Certified Questions to the Supreme
Court Bill Martin, Clerk
- VII. Treatment of Opinions on Equal Divisions
Cases Transferred to the Supreme Court Bill Martin, Clerk
- VIII. Old Business - *Comm. Reports*
- IX. New Business - *Christmas Party*
- X. Adjournment



Court of Appeals

Memorandum

To: Holly Sparrow
From: 
William L. Martin, III
Subject: Certified Questions
Date: October 16, 2003

We spoke about certified questions between the Court of Appeals and Supreme Court some time ago. In fact, you looked up some cases for me.

We do not have any procedure in the IOM for what it requires to certify questions to the Supreme Court.

Please be thinking about what may be the best way to accomplish that fact. Also, along those lines, please be thinking about how we can generate a case to go to all twelve judges when one of the three or the seven judges on the Court considering the case thinks it is appropriate.

Thank you.

/ld



Court of Appeals

Memorandum

To: William L. Martin, III
From: H. Sparrow *HS*
Subject: Internal Operating Manual
Date: October 20, 2003

Below you will find a draft of language for the IOM for certified questions. It would replace the language of Item XXI, page 49. As to the whole court decision, I am unfamiliar with the process and need for you to describe what you want. See the issue below and the questions I posed.

Certified Question

If the assigned judge believes that a case requires the Supreme Court to answer a question, then that judge shall draft the question and a proposed order. The question and order shall circulate to the other two judges of the division. If a majority vote of the panel approves the question, it shall be sent to the Clerk/Court Administrator who shall apply the certification to the question and send the order, question, and record to the Supreme Court. The question shall also be circulated for information only to the rest of the court, and transmitted to the parties and lower court judge. The question is circulated to the whole court as a courtesy for the purpose of informing the whole court that the question is being considered by the Supreme Court.

When the Clerk of Court receives the answer of the Supreme Court to the certified question, it will be docketed and the case reinstated on the docket. The Clerk shall send the record, briefs, question, and answer to the office of the originally assigned judge. The case will be considered by the panel originally assigned in the case.

Whole Court Case Consideration

When the majority of a panel or two divisions plus a judge decides by a majority vote to circulate a case to the whole court, the opinion shall be marked "Whole Court" before circulating.

Should there be a memo attached explaining the reason why it is being circulated to the whole court?

Does the whole court vote on the decision to consider the case whole court first or just vote on the circulated opinion?



Court of Appeals

Memorandum

To: All Judges

From: J.D. Smith 

Subject: Voting Tickets

Date: September 8, 2003

Attached is a copy of a memo I received recently from Bill Martin. He prepared this at my request after several discussions between us. As he mentions in his memo, several times recently the clerk's office has received an opinion or order apparently disposing of a case and then later learned that all the judges on the panel had not seen it or that it had been inadvertently circulated to the wrong panel. As he also notes, this problem occurs more frequently at this time of year because judges are actively engaged with both the current year's panel and the one for next year.

In my view, his proposed solution to this problem is a good one. It would require only that when our administrative assistants take a record to the clerk's office they attach to it a photocopy of the voting ticket or the first page of the circulating copy of the opinion.

This problems occurs infrequently but with some regularity. It creates a potential, however, for a case to go out that has not been voted on by all the judges on the panel or that has been voted on by the wrong panel.

If you are in favor of making this change in our procedures, please so indicate by your vote below. If you believe this merits discussion in a banc meeting, or if you have any questions about the proposed procedure please let me know.

Thank you for your attention to this.

	<u>Agree</u>	<u>Disagree</u>	<u>Banc meeting discussion</u>
P. J. Andrews	_____	_____	_____
P. J. Johnson	_____	_____	_____
P. J. Blackburn	_____	_____	_____
P. J. Ruffin	_____	_____	_____
Judge Eldridge	_____	_____	_____
Judge Barnes	_____	_____	_____
Judge Miller	_____	_____	_____
Judge Ellington	_____	_____	_____
Judge Phipps	_____	_____	_____
Judge Mikell	_____	_____	_____
Judge Adams	_____	_____	_____

cc: Bill Martin



Court of Appeals

Memorandum

To: Chief Judge J.D. Smith
W.L. Martin

From: William L. Martin, III

Subject: Voting Tickets

Date: August 21, 2003

Occasionally, the clerk's office will receive an opinion or an order disposing of a case which has not circulated to the proper panel. This can be a problem especially at this time of year when we have the judges that are on different panels for 2003 and 2004.

In order to make sure that every case has circulated to the judges that need to see it, I recommend when an administrative assistant brings down an opinion or an order disposing of a case, that the administrative assistant attach a photostatic copy of the voting ticket. Hopefully, by doing this, the administrative assistant will make sure to check the circulating path on the Summary Sheet, and also it will give the clerk's office an opportunity to double check the administrative assistant. Our office will maintain the copy of the voting ticket in the file folder for one year.

This will cause a little extra work for the administrative assistant and the clerk's office, but I believe it is worth it to avoid what could be an embarrassing mistake.

If you have any thoughts along these lines, or if I can answer any questions regarding this matter, please do not hesitate to contact me.

Thank you.

/ld

cc: Presiding Judge John H. Ruffin, Jr.



Court of Appeals

Memorandum

To: Presiding Judge John H. Ruffin, Jr.
From: *W. Martir*
William L. Martir, III
Subject: Certified Questions
Date: August 1, 2003

Attached please find a list of recent cases in which the Court of Appeals Certified Questions to the Supreme Court.

Thank you.

/ld

Attachment

cc: Chief Judge J.D. Smith

Cases indicating Court of Appeals Certified Questions to Supreme Court

Lombard Corp. v. Collins, 224 Ga. App. 282 (1997) Case No. A97A0150. This is certified question posed to Supreme Court.

DHR v. Phillips, 223 Ga. App. 520 (1996) Case No. A96A1449 This is list of certified questions posed to Supreme Court.

Thorp v. State, 264 Ga. 712 (1994) Prior History Certified Question from Court of Appeals NOA was 10-29-93 Lower Court # E15958

Hubert v. Southern General Ins. Co., 261 Ga. 227 (1991) Supreme Court does not answer questions but states that two cases mentioned in question are not in conflict.

Seagraves v. State, 259 Ga. 36 (1989) Answers questions certified in Sept. 1988

Chastain v. Baker, 178 Ga. App. 649 (1986) Supreme Court without answering certified question remands case to Court of Appeals to determine if case moot

Branan v. Equico Lessors, 179 Ga. App. 593 (1986) No. 71287 Opinion following certified question which Supreme Court answers in 255 Ga. 718 (1986)

July 29, 2003



COPY

Court of Appeals

Memorandum

To: Chief Judge J.D. Smith
From: William L. Martin, III
Subject: Certified Questions
Date: August 25, 2003

You may recall we previously discussed the IOM section dealing with Certified Questions. My concern was that there was not much direction given by the IOM as to how judges of this Court, or this Court, should proceed with certified questions. I previously gave you a list of cases in which this Court had certified questions to the Supreme Court. Most of the time, the Supreme Court failed to answer those questions or transferred them back to this Court.

I have discussed this matter with Presiding Judge Ruffin, Judge-In-Charge of the Clerk's Office, and I have attached a new Section XXI dealing with Certified Questions. This is a collaborative effort between Presiding Judge Ruffin and myself, with my attempts to put in prose what his thoughts and ideas were for certified questions.

Presiding Judge Ruffin has communicated to me that he is satisfied with the new language for Certified Questions for the IOM. Please let Presiding Judge Ruffin and me know your feelings regarding the proposed language.

If you have any questions, please do not hesitate to contact me.

/ld

Attachment

cc: Presiding Judge John H. Ruffin, Jr.

XXI. CERTIFIED QUESTIONS

- A. Whenever a judge of this Court wishes to certify a question to the Supreme Court of Georgia, that question shall be circulated to all twelve judges.
- B. If the Division agrees unanimously to certify the question to the Supreme Court of Georgia, the question shall be circulated to all judges with a statement that the Division wishes to certify a question to the Supreme Court. The question shall be certified to the Supreme Court unless seven of the twelve judges vote not to certify the question.
- C. If the Division is not unanimous on certifying a question to the Supreme Court, then that fact shall be made known to the other judges of the Court, and all twelve judges shall vote to certify or not certify the question. A majority vote shall prevail.
- D. If a majority of the seven judge Court determines the question should not be certified to the Supreme Court, then the judge or judges may request all twelve judges to vote on the issue of certifying the question to the Supreme Court, and a majority vote shall prevail.

CHAPTER 3
COURT OF APPEALS

<p>Sec. 15-3-1. Composition; divisions; how case is heard and decisions overruled; quorum; oral arguments; assistance of other judges.</p> <p>15-3-2. Terms of court.</p> <p>15-3-3. Jurisdiction over certain crimes.</p> <p>15-3-4. Election and term of office of Judges of Court of Appeals.</p> <p>15-3-5. Oath of Judges; compensation.</p> <p>15-3-6. Compensation of officers and employees.</p>	<p>Sec. 15-3-7. Disposition of fees.</p> <p>15-3-8. Compensation of sheriff of court [Repealed].</p> <p>15-3-9. Law assistants.</p> <p>15-3-10. Stenographers, clerical assistants, and employees.</p> <p>15-3-11. Appointment of deputy clerk and employees by clerk of court.</p> <p>15-3-12. Books, supplies, and services.</p> <p>15-3-13. Voluntary preappeal settlement conference procedure.</p>
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Cross references. — Generally, Ga. Const. 1983, Art. VI, Sec. V, Para. I et seq. Qualifications for Judges of Court of Appeals, Ga. Const. 1983, Art. VI, Sec. VII, Para. II. Compensation and allowances for Judges of Court of Appeals, Ga. Const. 1983, Art. VI, Sec. VII, Para. V and § 45-7-1 et seq.

15-3-1. Composition; divisions; how case is heard and decisions overruled; quorum; oral arguments; assistance of other judges.

(a) *Composition.* The Court of Appeals shall consist of 12 Judges who shall elect one of their number as Chief Judge, in such manner and for such time as may be prescribed by rule or order of the court.

(b) *Divisions.* The court shall sit in divisions composed of three Judges in each division. Two Judges shall constitute a quorum of a division. The assignment of Judges to each division shall be made by the Chief Judge, and the personnel of the divisions shall from time to time be changed in accordance with rules prescribed by the court. The Chief Judge shall designate the Presiding Judges of the divisions and shall, under rules prescribed by the court, distribute the cases among the divisions in such manner as to equalize their work as far as practicable.

(c) *How cases heard.*

(1) Each division shall hear and determine, independently of the others, the cases assigned to it, except that the division next in line in rotation and a seventh Judge shall participate in the determination of each case in which there is a dissent in the division to which the case was originally assigned.

(2) In all cases which involve one or more questions which, in the opinion of the majority of the Judges of the division or of the two divisions plus a seventh Judge to which a case is assigned, should be

passed upon by all the members of the court, the questions may be presented to all the members of the court; and if a majority of all the members of the court decide that the question or questions involved should, in their judgment and discretion, be decided by all the members of the court, the case shall be passed upon by all the members of the court, provided that a majority of the Judges passing upon the case concur in the judgment.

(3) In neither class of cases referred to in this subsection shall there be oral argument except before the division to which the cases are originally assigned.

(d) *How decision overruled.* It being among the purposes of this Code section to avoid and reconcile conflicts among the decisions made by less than all of the Judges on the court and to secure more authoritative decisions, it is provided that when two divisions plus a seventh Judge sit as one court the court may, by the concurrence of a majority, overrule any previous decision in the same manner as prescribed for the Supreme Court. As precedent, a decision by such court with a majority concurring shall take precedence over a decision by any division or two divisions plus a seventh Judge. A decision concurred in by all the Judges shall not be overruled or materially modified except with the concurrence of all the Judges.

(e) *Quorum.* When all the members of the court are sitting together as one court, seven Judges shall be necessary to constitute a quorum. In all cases decided by such court as a whole by less than 12 Judges, the concurrence of at least seven shall be essential to the rendition of a judgment.

(f) *Oral arguments.* The Court of Appeals may hear oral arguments at places other than the seat of government. Reasonable notice shall be given of such hearings.

(g) *Assistance of other judges; procedure.* Whenever the court unanimously determines that the business of the court requires the temporary assistance of an additional judge or additional judges or one additional panel, the court may request the assistance of senior appellate judges as provided in Chapter 3A of this title or senior superior court judges as provided in Code Section 47-23-101. The Judge whose case assignment is transferred to the additional judge shall not vote on the case. (Ga. L. 1916, p. 56, § 1; Code 1933, § 24-3501; Ga. L. 1945, p. 232, §§ 1-3; Ga. L. 1960, p. 158, § 1; Ga. L. 1961, p. 140, § 1; Ga. L. 1967, p. 538, § 1; Ga. L. 1982, p. 3, § 15; Ga. L. 1987, p. 291, § 1; Ga. L. 1995, p. 916, § 2; Ga. L. 1996, p. 405, § 1; Ga. L. 1998, p. 513, § 4; Ga. L. 1999, p. 10, § 1.)

The 1999 amendment, effective July 1, 1999, substituted "12" for "ten" in subsection (a); deleted "three" preceding "divisions" in the first and fourth sentences of subsection (b); and, in subsection (e), substituted "seven" for "six" in the first sen-

Banc Meeting

~~September 2~~
Oct. 2, 2003

Those Present

CJ Smith ✓
PG Andrews ✓
PG Johnson ✓
PG ~~Stalder~~ ✓
PG Ruffin ✓
J. Elbridge ✓
J. Barnes ✓
J. Miller ✓
J. Ellington ✓
J. Phipps ✓
J. Mikell ✓
J. Adams - ✓
Jan Kelley ✓
Marti Head ✓
Bud Tiney ✓
Bill Martin ✓
Chuck Williams, ✓

Martha Glisson ✓

CJ Smith called the meeting to order
at 10:00 am.

2.
Minutes of June Banc Mtg.
move GAB
22 AHA >

[Handwritten mark]

Marti' Head 10 years - WSM
 Pam Kilpatrick 10 years - PJ Johnson
 Martha Mc Gee - Gibson - 10 yrs - CJ Smith

ER.

Prof. Lawler - can't be here
 he will dates to meet w/ us - will
 coordinate dates for meeting w/ him -
 he will do our Coast history

4.

Budget - Difficult - probably worse
 than last year

State's Reserves down to 21 million -

- 03
- 04 - 13,800
- 05 - 40,000 improvement

EH3 - more
 HEP - 20
 clerks off position

Budget Committee to HEP - \$500 or less

More than \$1000⁰⁰ - to Jan - over
\$1000 to Exec. Council --

move - abolish per / 1000

FHS →

unanimous →

ATA → 2d

New Tech. Serv. Resource Center -

Computer Lab

Lap Tops -

1) Video Tape in House CHE

2) Make New tapes - video production center

1) Cost contained

Rent \$7000 + - IT-Budget

\$ Start up \$ 1/2 Start up
14,237.00 12,487.00

9000/yr - 7315 - Rent →

FME
MYM

unanimous

Staff Atty - Central v. Floater -

Vacancy -

Extra Staff Help -

Increase in Applications

FME

Worker's Comp increase

GAB - more

Increase Floater or Central Staff

MyM 2d

Chuck Wilhans

Defibrillators - ^{GAB} More for acquisition & training

FME

AAB

main S

Implement

CLE Seminar

Oct 23d

Fireplace Power

6 hour
2 hour & Prof.

Encom

Live Presentations

all topics suggested

by S.C.

COA Staff atge-

Man Court paid for-

← Six hours in Feb →

Bar
Rules

{ 6 hour in Nov
6 hr video

PD John wanted job w/ break up & money forward

New Run

Ry

MCA
JSC → assigned

11:20 AM

**MINUTES OF THE BANC MEETING
OF THE COURT OF APPEALS OF GEORGIA**

October 2, 2003

The October Banc Meeting of the Court of Appeals of Georgia was held in the Third Floor Conference Room on Thursday, October 2, 2003, at 10:00 a.m. Those present were:

Chief Judge J. D. Smith
Presiding Judge Gary B. Andrews
Presiding Judge Edward H. Johnson
Presiding Judge G. Alan Blackburn
Presiding Judge John H. Ruffin, Jr.
Judge Frank M. Eldridge
Judge Anne Elizabeth Barnes
Judge M. Yvette Miller
Judge John J. Ellington
Judge Herbert E. Phipps
Judge Charles B. Mikell, Jr.
Judge A. Harris Adams
Ms. Jan Kelley, Fiscal Officer
Mr. Bud Tirey, Technical Services
Ms. Martha Glisson, Staff Attorney
Ms. Marti Head, Clerk's Office
Mr. Chuck Williams, Central Staff Attorney
Mr. Bill Martin, Clerk/Court Administrator

I. CALL TO ORDER:

Chief Judge Smith called the meeting to order at 10:00 a.m.

II. APPROVAL OF THE MINUTES:

Presiding Judge G. Alan Blackburn made a motion to approve the Minutes of the June 4, 2003 Banc Meeting. Judge Adams seconded the motion and the motion passed unanimously.

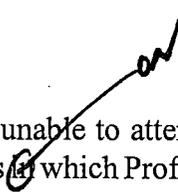
III. PRESENTATION OF AWARDS:

Chief Judge Smith called upon Mr. Martin to present a Ten Year Certificate to Marti Head, Opinions/Remittitur Clerk. Mr. Martin thanked Marti for her excellent work for the Court.

Chief Judge Smith presented a Ten Year Certificate to Martha Glisson, one of his staff attorneys. Chief Judge Smith thanked Martha for her service to his office.

Presiding Judge Johnson stated Pam Kilpatrick was also receiving a Certificate for ten years service to the Court, but Pam was telecommuting on that day. After Marti Head and Martha Glisson received their certificates they left the Banc Meeting.

IV. **PROFESSOR E.R. LANIER:**

Presiding Judge Ruffin stated that Professor Lanier was unable to attend the Banc Meeting. However, Presiding Judge Ruffin said he would get several dates  which Professor Lanier can meet with the Court so any judges that wish to meet with Professor Lanier may do so. Professor Lanier will be writing the History of the Court of Appeals in conjunction in with the Centennial Celebration.

V. **BUDGET MATTERS:**

Chief Judge Smith called upon Jan Kelley, the Court's Fiscal Officer, for a Budget presentation. Ms. Kelley stated the revenue projections were still down and that the fiscal condition has not improved from last year. Jan explained to the Court the three budgets she had prepared for the Banc Meeting; a Breakdown of the FY2003 Budget, the FY2004 Supplemental Request and the FY2005 Budget.

Jan suggested the Court fill a vacant position in the clerk's office which had been utilized as a floating administrative assistant position. Jan's concern is that the Court will lose the position if it is not filled.

Presiding Judge Johnson made a motion to authorize the position to go back to the clerk's office and that it be filled. Judge Phipps seconded the motion and it passed unanimously.

There was a brief discussion about doing away with the position of Budget Chairman. That position is filled by a judge who signs off on all purchase order requests. Jan stated the use of the Budget Chairman was probably left over from when all items valued \$100.00 or more had to be carried on inventory. Now, an item must cost in excess of \$1,000.00 to be carried on state inventory. Jan suggested that all purchases made by her office of \$1,000.00 or less be done through her office without prior approval from a judge. It was felt this practice would save time and make purchasing more efficient and free up a judge's time to work on cases rather than sign off on requisitions.

After a brief discussion, Presiding Judge Johnson moved to abolish the Purchasing Committee and raise the limit to \$1,000.00 for which the Fiscal Office can make a purchase without having the Court sign off on the purchase. The motion was seconded by Judge Adams and passed unanimously.

Chief Judge Smith called upon Bud Tirey to make a report regarding the proposed new Technical Services Resource Center. Basically, this would utilize three offices in the Health Building adjacent to Room 505 which is where floating central staff attorneys now work. The purpose of the Resource Center would be to have portals for staff attorneys to work with their lap tops, provide additional space for staging areas for a judge's office in case the office must be evacuated like Judge Mikell and Judge Ellington's offices were for the removal of asbestos and to be a place for interns to work in the Summer.

the Court secure *fast action is*
Jan Kelley said the space is available and can be obtained but felt ~~the Court~~ needed ~~to go ahead and act if they wanted~~ to get the space. The expense for the start up and rent will be borne through the Technical Services budget.

Judge Eldridge made a motion to approve the idea and go forward which was seconded by Judge Miller and passed unanimously.

Chief Judge Smith then called upon Judge Eldridge for a report of the central staff attorneys. Judge Eldridge stated Debbie Wellborn had gone to a full-time position and that the Court needed to make a decision as to utilizing the central staff attorney for the screening function of central staff or to allow the central staff attorney position to float as a full-time judge's staff attorney. Chuck Williams, head staff attorney for central staff, reported there had been a sharp increase in the number of filings, both direct appeals and applications. Chuck said he felt the impact on the Court was more severe for the screening staff attorneys than for the elbow clerks. After a brief discussion, Presiding Judge Blackburn made a motion to fill the central staff position with a staff attorney who would work in the screening process of applications as opposed to working as an elbow clerk for floating among judges offices. The motion was seconded by Judge Miller and passed unanimously. Judge Eldridge stated he will also be looking to fill the one half position that Debbie Wellborn ~~was currently~~ job sharing with Rachel Derrico. *had been*

Smith
Chief Judge thanked Jan Kelley, Bud Tirey and Chuck Williams and said that completed the Court's Budget Business. At that time, Chuck, Bud and Jan left the meeting.

VI. DEFIBRILLATORS:

Presiding Judge Blackburn pointed out two articles he had asked the Court Administrator to copy and present to the judges on defibrillators. After a brief discussion, Judge Eldridge made a motion, which was seconded by Judge Adams, that the Court take steps to obtain a defibrillator and train several persons in their use. The motion passed unanimously.

VII. VOTING TICKETS:

Chief Judge Smith stated the issue of attaching a copy of the voting ticket on dispositional orders and opinions had already been determined by the Court's vote by a memorandum, which vote was 10 in favor and 2 opposed. Chief Judge Smith said he wanted to put the item on the Agenda for the Banc Meeting in case anyone, particularly those who voted against the matter, wish to discuss it further.

Chief Judge Smith stated the change in procedure was not directed to any one individual; however, it is an attempt to have another check or fail safe to protect the Court from making embarrassing mistakes. Mr. Martin stated while the work may be slightly more for an administrative assistant, that work is multiplied by 12 when it impacts the clerk's office. Mr. Martin stated his office was willing to take on this extra step. Mr. Martin stated the process should have been implemented years ago and he was embarrassed that he had not considered it sooner. The process is the same thing we do for applications since they come back to the clerk's office with the vote of the judges.

After a short discussion, Chief Judge Smith directed Mr. Martin to implement the change in policy immediately.

VIII. OLD BUSINESS:

Presiding Judge Johnson reminded the judges that the Supreme Court and Court of Appeals would be hosting an In-House Continuing Legal Education (CLE) seminar on October 23rd at the Fireplace Room adjacent to the Capitol Education Center. The seminar will provide six hours of CLE and two hours of Ethics and Professionalism. He said all topics on the seminar had been suggested by staff attorneys and the seminar ~~has been~~ videotaped for any staff attorneys that cannot be present and also for future use. *will be*

Chief Judge Smith thanked Presiding Judge Johnson for his work in organizing and moving forward the In-House CLE. It will provide excellent continuing legal education to the Court's staff attorneys while saving literally thousands of dollars in costs.

IX. ADJOURN:

There being no further business and upon hearing a motion to adjourn by Judge Mikell and seconded by Judge Ellington, Chief Judge Smith adjourned the meeting at 11:30 a.m.

Respectfully submitted,

WILLIAM L. MARTIN, III
Clerk/Court Administrator
Court of Appeals of Georgia

Minutes approved by the Court
En Banc on the ____ day of _____, 2003



Court of Appeals

Memorandum

To: Judge Eldridge
From: Chuck Williams
Subject: Central Staff workload
Date: October 1, 2003

This memo is provided to illustrate the recent upturn in our workload. The change is primarily a function of recent increases in filings of discretionary and interlocutory applications which together represent approximately 80 % of our workload. The remaining 20 % of our time is devoted to jurisdictional reviews and other tasks more related to the number of direct appeals filed, a number which has remained almost constant for several years.

Since court year 2001, Central Staff has seen a steady increase in the number of applications filed. The number of interlocutory applications has increased more significantly this past year and that trend appears to be continuing into the 2004 court year. It is noted that on the whole an interlocutory application takes longer to complete than a discretionary

application. Below is a table showing the number of applications that were filed in the years 2001-2003.

year	discretionary	interlocutory	total	% change (01-03)
2001	413	356	769	
2002	435	346	781	
2003	453	402	855	11.2

These numbers show that in the past couple of years there has been more than an 11 percent increase in applications. During the same interval, our work force has been reduced approximately 10% by declining the assistance of floating staff attorneys. While tele-working has increased our productivity, we may be vulnerable in the future.

This brings us to the 2004 court year where we find a 63 percent increase in application filings in the first month. While I assume this rate of increase will not continue, it does seem apparent that Central Staff has begun a year which will probably be its busiest.

2004 increase over 2003	discretionary	interlocutory	total
First month of 2002 (thru September 12, 2002)	37	26	63
First month of 2003 (thru September 12, 2003)	46	52	98

For the first month of 2004 an increase of 63 %

Court of Appeals of Georgia

Fiscal Year 2003

Breakdown of Court of Appeals Budget

	Approp FY 2003	Actual FY 2003	VARIANCE FROM FY 2003 APPR	%
STATE APPROPRIATION				
GENERAL APPROPRIATION	\$11,571,428	\$11,571,428		
AMENDED APPROPRIATION	(\$300,000)	(\$300,000)		
GOVERNOR'S EMERGENCY FUND				
TRANSFER TO/FROM FUNCTIONAL BUDGETS				
APPROPRIATION	\$11,271,428	\$11,271,428	\$0	100%
EXPENDITURES				
PERSONAL SERVICES	\$10,409,106	10,255,653	(\$153,453)	99%
OPERATING EXPENSES	\$1,014,778	1,030,696	\$15,917	102%
TOTAL EXPENDITURES	\$11,423,884	\$11,286,348	(\$137,536)	99%
OTHER FUNDS				
REVENUE - COPY FEES	\$96,000	152,456	\$56,456	159%
Copy Fees in Excess of Budgeted Amt.	\$56,456		(\$56,456)	
REVENUE - OTHER				
	\$152,456	\$152,456	\$0	159%
TOTAL FUNDS	\$11,423,884	\$11,423,884	\$0	100%
ESTIMATED SURPLUS(DEFICIT) FROM BUDGET		\$137,536		

COURT OF APPEALS

FISCAL YEAR 2004 SUPPLEMENTAL REQUEST

Please amend the FY2004 Budget for the Court of Appeals as follows:

	<u>H.B. 1002</u>	<u>Requested FY2004 Continuation Fnds</u>	<u>Requested FY 2004 Enhancements</u>	<u>Total Requested Amended FY 2003 Budget</u>
Personal Services	10,716,181	0	13,800	10,729,981
Operating Expenses	<u>1,073,452</u>	<u>0</u>	<u>0</u>	<u>1,073,452</u>
	\$11,789,633	\$0	\$13,800	\$11,803,433
Less: Other Funds	<u>\$90,000</u>	<u>\$0</u>	<u>\$0</u>	<u>90,000</u>
	\$11,699,633	\$0	\$13,800	<u><u>11,713,433</u></u>

TOTAL ADDITIONAL STATE FUNDS NEEDED

13,800

IMPROVEMENT ITEMS:

MERIT SYSTEM ASSESSMENT

92 @

\$150

\$13,800

TOTAL PERSONAL SERVICES

\$13,800

OPERATING EXPENSES

\$0

TOTAL OPERATING EXPENSES

\$0

TOTAL ENHANCEMENT ITEMS*

\$13,800

NOTE: This enhancement is requested in order to reallocate money budgeted for merit system assessment for Court of Appeals employees from the Administrative Office of the Courts budget. This request is made so that the true operating costs are reflected in our budget. The \$13,800 should be added to the Court of Appeals personal services budget and subtracted from the Administrative Office of the Courts personal services budget.

COURT OF APPEALS

FISCAL YEAR 2005

FY 2004 CONTINUATION:

PERSONAL SERVICES	\$11,090,383	
OPERATING EXPENSES	<u>\$1,122,659</u>	
TOTAL FUNDS		\$12,213,042

IMPROVEMENT ITEMS:

PERSONAL SERVICES

ENHANCEMENT ITEMS

\$0

\$0

OPERATING EXPENSES

ENHANCEMENT ITEMS

\$40,000

\$40,000

TOTAL ENHANCEMENT ITEMS

\$40,000

FY 2005 BUDGET REQUEST

CONTINUATION BUDGET WITH IMPROVEMENT ITEMS

PERSONAL SERVICES	\$11,090,383	
OPERATING EXPENSES	<u>\$1,162,659</u>	
TOTAL FUNDS		
LESS: OTHER FUNDS		\$12,253,042
		<u>\$90,000</u>
TOTAL STATE FUNDS		<u>\$12,163,042</u>
TOTAL STATE FUNDS REQUESTED FOR FY 2005		\$12,163,042

COURT OF APPEALS

FY 2005 BUDGET

VIDEO EDUCATION PROJECT		\$40,000
--------------------------------	--	-----------------

A. Produce educational video about the Centennial of the Court of Appeals and its role in history. The video will be distributed to local school districts to be used in Middle and High School classes.

Projected Costs:	<p><i>Projection Equipment -</i> \$13,500</p> <p>Cameras & Accessories</p> <p>Lights</p> <p>Microphone Monitors</p> <p>Cables</p> <p><u>Post Production Equipment -</u> \$11,500</p> <p>Non-Linear Editing System</p> <p>Digital Music/Graphics</p> <p>Monitors</p> <p>Records Decks</p> <p>Tapes</p> <p><u>Services for rental</u></p> <p>Use of equipment</p> <p>Voice over narration and tape duplication \$5,000</p>
	\$30,000

B. Produce an informational video on the Do's and Don'ts of filing in the Court of Appeals for Pro Se parties. The tapes would be distributed to the local Clerk of Court's Offices to be viewed by the public. The video would also be made available on the State Web Portal to be viewed or downloaded through streaming and local bar associations.

Projected Costs:	<p><i>Services-</i> \$10,000</p> <p>Actors-voice narration</p> <p>Tape duplication</p> <p><i>Rental-</i></p> <p>Rental of one time use equipment.</p>
	\$10,000

COURT OF APPEALS OF GEORGIA

BUDGET STATUS REPORT

FY 2004 BUDGET

PERSONAL SERVICES	90.08%	\$	11,118,992
OPERATING EXPENSES	9.92%		<u>1,223,825</u>
	100.00%	\$	12,342,817
LESS OTHER FUNDS		\$	<u>90,000</u>
STATE FUNDS REQUESTED		\$	<u><u>12,252,817</u></u>

1 Budget submitted to Legislature for FY 04 was a stagnate budget except for the following factors:

- A. 5% COLA added to personal services by request of LBO.
The difference between the 5% COLA and a 0% COLA for the Court of Appeals is \$275,245 which will be reduced from our budget request.
- B. Remaining 3 months of FY 03 COLA.
- C. Increased equipment budget for due to non-replacement of scheduled items from previous year's budget due to lack of available funding. Also, included are replacement items scheduled for this year's budget.
- D. Our FY 04 Budget is comprised of the following:

2 The Court of Appeals voluntarily took a 1% budget reduction in accordance with the the Governor's request per a memorandum dated June 18, 2002 from OPB relating to budget submissions for FY 04.

Personal Services		90.08%
Operating Expenses		
Real Estate + Maint/Repairs	2.86%	
Telecommunications	0.51%	
Contracts-Legal Online Services, Appellate Case Management, Ongoing Computer Software Maintenance Contracts & Microfilming	<u>1.43%</u>	4.80%

For FY 04 Budget approx. 95% of our budget is comprised of fixed expenses.

94.89%

3 A recap of previous yearly expenses as well as FY 04 budget request have given to Senate and House Sub-Committees.

4 Our complete FY 04 Budget Submission as well as additional materials have been given to Senator Tom Price by his request.

COURT OF APPEALS

FY 2004 - ADDITIONAL JUDGESHIP COSTS

PERSONAL SERVICES

STAFFING PER JUDGESHIP

QTY POSITION		TOTAL		
1 JUDGE	\$195,887		\$195,887	
3 LAW ASSISTANTS	\$128,035		\$384,105	
1 ADMINISTRATIVE ASSISTANT	\$70,647		\$70,647	
1 INTERN	\$6,261		<u>\$6,261</u>	
				\$656,900
CURRENTLY 12 JUDGESHIPS PROCESS TWICE THE RECOMMENDED NATIONAL LEVEL.			X	<u>12</u>
				\$7,882,798

IF ADDITIONAL JUDGESHIPS NEED ONE LESS STAFF ATTORNEY				
1 JUDGE	\$195,887		\$195,887	
2 LAW ASSISTANTS	\$128,035		\$256,070	
1 ADMINISTRATIVE ASSISTANT	\$70,647		\$70,647	
1 INTERN	\$6,261		<u>\$6,261</u>	
				\$528,865
NEEDED JUDGESHIPS IN ORDER TO BRING IN LINE WITH RECOMMEND CASELOAD-NATIONALLY	24 JUDGESHIPS		X	<u>24</u>
				\$12,692,753

THE AMOUNT OF INCREASE FOR PERSONAL SERVICES ONLY JUDGES AND STAFF TO REDUCE CASELOAD PER JUDGE TO NATIONALLY RECOGNIZED MAXIMUM OF 100 YEAR. (WE HANDLE 210+ PER JUDGE). THIS FIGURE INCLUDES A REDUCTION IN JUDGES LAW CLERKS FOR THREE TO TWO IF CASELOAD REDUCED. DOES NOT INCLUDE SPACE AND OTHER OPERATING COSTS.

\$4,809,956

AVERAGE OPERATING COST PER JUDGESHIP	\$45,740	X	12	\$548,876
	\$45,740	X	<u>24</u>	\$1,097,752
ADDITIONAL OPERATING COST				\$548,876

CURRENT JUDGESHIPS	12	X	\$702,640	\$8,431,674
RECOMMENDED JUDGESHIPS-TO BRING TO NATIONAL CASELOAD LEVEL	24	X	<u>\$574,604</u>	\$13,790,506

NET DIFFERENCE BETWEEN 100 VS 210 CASELOAD FOR JUDGES AND STAFF ONLY. NO ADDITIONAL SUPPORT COSTS HAVE BEEN ESTIMATED.

\$5,358,832

NUMBER OF STATE INTERMEDIATE APPELLATE JUDGES
BASED ON STATE POPULATION RANK

<u>State</u>	<u>Population</u>	<u>Number of Intermediate Appellate Judges *</u>	<u>Ratio, # of Judges per million population</u>
1 California	33,871,648	100	2.95
2 Texas	20,851,820	80	3.84
3 New York	18,976,457	59	3.11
4 Florida	15,982,378	62	3.88
5 Illinois	12,419,293	52	4.19
6 Pennsylvania	12,281,054	24	1.95
7 Ohio	11,353,140	68	5.99
8 Michigan	9,938,444	28	2.82
9 New Jersey	8,414,350	34	4.04
10 Georgia	8,186,453	12	1.47
11 North Carolina	8,049,313	18	2.24
12 Virginia	7,078,515	11	1.55
13 Massachusetts	6,349,097	28	4.41
14 Indiana	6,080,485	15	2.47
15 Washington	5,894,121	22	3.74
16 Tennessee	5,689,283	24	4.22
17 Missouri	5,595,211	32	5.71
18 Wisconsin	5,363,675	16	2.99
19 Maryland	5,296,486	13	2.45
20 Arizona	5,130,632	22	4.29
21 Minnesota	4,919,479	16	3.25
22 Louisiana	4,468,976	53	11.86
23 Alabama	4,447,100	10	2.25
24 Colorado	4,301,261	16	3.72
25 Kentucky	4,041,769	14	3.47
26 South Carolina	4,012,012	9	2.24
27 Oklahoma	3,450,654	12	3.48
28 Oregon	3,421,399	10	2.92

NUMBER OF STATE INTERMEDIATE APPELLATE JUDGES
BASED ON STATE POPULATION RANK

<u>State</u>	<u>Population</u>	<u>Number of Intermediate Appellate Judges *</u>	<u>Ratio, # of Judges per million population</u>
29 Connecticut	3,405,565	10	2.93
30 Iowa	2,926,324	9	3.07
31 Mississippi	2,844,658	10	3.52
32 Kansas	2,688,418	10	3.72
33 Arkansas	2,673,400	12	4.49
34 Utah	2,233,169	7	3.14
35 Nevada	1,998,257	0 **	0
36 New Mexico	1,819,046	10	5.49
37 West Virginia	1,808,344	0 **	0
38 Nebraska	1,711,263	6	3.51
39 Idaho	1,293,953	3	2.33
40 Maine	1,274,923	0 **	0
41 New Hampshire	1,235,786	0 **	0
42 Hawaii	1,211,537	4	3.31
43 Rhode Island	1,048,319	0 **	0
44 Montana	902,195	0 **	0
45 Delaware	783,600	0 **	0
46 South Dakota	754,844	0 **	0
47 North Dakota	642,200	0 **	0
48 Alaska	626,932	3	4.76
49 Vermont	608,827	0 **	0
50 Wyoming	493,782	0 **	0

*Some states have more than one division or circuit. These figures reflect the total number of intermediate appellate judges in each state.

**States showing zero (0) for intermediate appellate judges are states with no intermediate appellate court.

**RATIO OF STATE INTERMEDIATE APPELLATE JUDGES
TO STATE POPULATION, SOUTHEASTERN STATES**

AS APPLIED TO GEORGIA POPULATION

This chart applies the ratio of judges per million population in each of the Southeastern states to the population of Georgia, showing the number of intermediate appellate judges Georgia would have under each Southeastern state's ratio of judges to population:

<u>State</u>	<u>Number of Intermediate Appellate Judges *</u>	<u>Ratio, # of Judges per million population (Southeastern states)</u>	<u># Of Judges (State Ratio Applied to Georgia)</u>
1 Florida	62	3.88	32
2 North Carolina	15	2.24	18
3 Virginia	11	1.55	13
4 Tennessee	24	4.22	35
5 Louisiana	53	11.86	97
6 Alabama	10	2.25	18
7 Kentucky	14	3.47	28
8 South Carolina	9	2.24	18
9 Mississippi	10	3.52	29
10 Arkansas	12	4.49	37

For reference, the ratio of Georgia intermediate appellate judges per million of population is 1.47.

*Some states have more than one division or circuit. These figures reflect the total number of intermediate appellate judges in each state.

The Court of Appeals
Office of the Clerk
334 State Judicial Building
Atlanta, Georgia 30334

WILLIAM L. MARTIN, III
CLERK AND COURT ADMINISTRATOR

(404) 656-3450

March 17, 2003

Senator Brian D. Kemp
Senate District 64
324A Legislative Office Building
18 Capitol Square
Atlanta, Georgia 30334

Dear Senator Kemp:

Enclosed please find some information you requested at the Budget Hearing last week concerning filing fees in the appellate courts. Statistics can often be confusing and I shall be happy to go over these documents with you or any of your Senate Research staff.

The first document I have identified as Exhibit 1. This is a listing of the filing fees in the appellate courts of 49 of the States and the District of Columbia. The fees range from \$265 in California to zero dollars in West Virginia. The fee in California is expected to increase from \$265 to \$630. Utah is also considering increasing its filing fees. Although I do not know it as a fact, I would not be surprised to see other states increasing their filing fees as a source of revenue enhancement since most states are experiencing financial difficulties like Georgia, and in many states the situation is more severe.

Exhibit 2 is a breakdown of the filings for the current fiscal year broken down by months as to direct appeals, discretionary applications, interlocutory applications and the number of pauper or indigent filings for each category of appeal for each month. Generally, approximately 70% of the criminal cases are filed as indigent cases and about 15% of the civil cases are filed as indigent cases. Most of the civil indigent cases are pro se appeals.

Exhibit 3 is a table showing the case filings from 1999 through 2002 broken down by civil and criminal direct appeals, indigent and non-indigent cases. This also projects the revenue based upon filings for increases at various levels from \$100 through \$300.

Exhibits 4 and 5 deal with filings in the Court of Appeals of Georgia. Exhibit 4 shows filings from 1991 through 2002. Exhibit 4 also shows the dispositions through 2001. We will not have concluded all dispositions for 2002 cases until March 28, 2003. Exhibit 4 shows a breakdown of direct appeals, discretionary applications and interlocutory applications.

Letter to Senator Brian D. Kemp
March 17, 2003
Page Two

Finally, Exhibit 5 shows the filings for 2002 broken down by the number of direct appeals, interlocutory applications and discretionary applications for each individual judge on the Court of Appeals. As you can see from Exhibit 5, the cases are assigned randomly on an equal basis, or as evenly as is possible.

I want to thank you again, and also Chairman Crotts and the subcommittee members for the courtesy and attention you showed to Chief Judge Smith, Jan Kelley, our Fiscal Officer and me at the Budget Hearing last week. If there is any information that we can provide to you to assist you in making your determinations regarding the budgets, please do not hesitate to contact me. As Chief Judge Smith said, we are happy to show you the details of our budget, our caseload and our dispositions.

If you have any questions I shall be happy to hear from you or any of your research staff.

Sincerely,



William L. Martin, III
Administrator/Clerk
Court of Appeals of Georgia

WLM, III/ld
Enclosures

Appellate Court Filings Fees by State

\$265	California*
\$250	Connecticut
	Delaware
	Florida
	Indiana
	Massachusetts
	Michigan
	Minnesota
	New York
	Washington
\$200	Nevada
	New Jersey
	Oklahoma
\$190	Utah*
\$150	Colorado
	Rhode Island
	Vermont
	Wisconsin
\$140	Oregon
\$130	Kansas
\$125	Hawaii
	Kentucky
	Maine
	New Hampshire
	New Mexico
	North Dakota
	Texas
\$120	Maine
\$117	Louisiana
\$100	Alabama
	Alaska
	Arizona
	Arkansas
	Mississippi
	South Carolina
\$95	Idaho
\$85	Wyoming
\$80	Georgia
\$75	Montana
\$61	Nebraska
\$55	Pennsylvania
	District of Columbia
\$50	Iowa
	Maryland
	Missouri
\$40	Ohio

\$25	Illinois
	Virginia
\$10	North Carolina
\$ 0	West Virginia

Of the states responding to a recent survey, 37 of 49 states or 76% of the states responding have higher filing/docketing fees than the Georgia Court of Appeals. Including Georgia and the District of Columbia, the mean filing fee is \$132 and the median fee is \$125. In order of high to low, the states responses are shown to the left. Please note for this display, the civil appeal filing fee is used as the basis of comparison among the states. In many states there is no fee for criminal filings or, as in Georgia, there is a high percentage of criminal defendants who are indigent, and therefore, are not required to pay fees. If a state does not have an intermediate court of appeals, the filing fee for the Supreme Court of that state is shown.

+In Tennessee there is no filing fee, instead costs are charged at the conclusion of the case based on costs for each filing each document. The costs in a simple two party appeal is usually \$250-350.

In addition, the filing fees in both the Eleventh Circuit US Court of Appeals (\$105) and US District Court, ND GA (\$150) exceed the fee in the Georgia Court of Appeals.

The Georgia fee was set at \$80 as a result of an increase from \$30 by legislation in 1991. Based on the rate of inflation as calculated by the US Department of Labor, Bureau of Statistics, the purchasing power of \$80 in 1991 would be equal to \$105.67 in 2002.

*An increase of the California fee to \$630 is expected to be proposed to its state legislature this year; Utah is also considering increasing its filing fee.

Revised 3/5/03

March 5, 2003

**Court of Appeals of Georgia
Docket System Statistics**

Pauper Filing From July 2002 through February 2003

Month Filed	Direct Appls. Filed	Pauper	Disc. Filed	Applic. Pauper	Inter. Filed	Applic. Pauper
<u>JULY</u>	0217	0082	0035	0008	0032	0003
<u>AUGUST</u>	0202	0084	0042	0014	0020	0000
<u>SEPTEMBER</u>	0219	0077	0038	0011	0048	0004
<u>OCTOBER</u>	0222	0087	0047	0022	0037	0004
<u>NOVEMBER</u>	0189	0072	0030	0004	0030	0001
<u>DECEMBER</u>	0179	0054	0048	0019	0036	0000
<u>JANUARY</u>	0202	0082	0035	0006	0028	0000
<u>FEBRUARY</u>	0197	0071	0028	0009	0024	0001

REPORT COMPLETED

Georgia Court of Appeals Estimation of Fees Based on Various Filing Fee Levels

Year		1999	2000	2001	2002
Civil Direct Appeals		1,297	1,370	1,341	1,289
Cases Non-Indigent	86.40%	1,121	1,184	1,159	1,114
Applications Not Granted*		644	639	619	625
App. Non-Indigent	86.40%	556	552	535	540
Criminal Dir. Appeals		1,224	1,226	1,203	1,190
Cases Non-Indigent	30.00%	367	368	361	357
Total Non-Indigent Filings		2,044	2,104	2,054	2,011
Total Fees					
	\$80	\$163,520	\$168,320	\$164,320	\$160,880
	\$100	\$204,400	\$210,400	\$205,400	\$201,100
	\$125	\$255,500	\$263,000	\$256,750	\$251,375
	\$150	\$306,600	\$315,600	\$308,100	\$301,650
	\$200	\$408,800	\$420,800	\$410,800	\$402,200
	\$250	\$511,000	\$526,000	\$513,500	\$502,750
	\$300	\$613,200	\$631,200	\$616,200	\$603,300
Projected Increase if Fee:					
	\$100	\$40,880	\$42,080	\$41,080	\$40,220
	\$125	\$91,980	\$94,680	\$92,430	\$90,495
	\$150	\$143,080	\$147,280	\$143,780	\$140,770
	\$200	\$245,280	\$252,480	\$246,480	\$241,320
	\$250	\$347,480	\$357,680	\$349,180	\$341,870
	\$300	\$449,680	\$462,880	\$451,880	\$442,420

* 2002 estimated based on 2000-2001 percent denied.

2000-2001 includes applications granted but for which no direct appeal was filed.

March, 2003

*Court of Appeals
Case Management System
Case Workload Summary 1991 through 2002*

YEAR	FILINGS	TOTAL FILED	SIGNED PUB OPINIONS	NONPUB RULE 36&33b	TOTAL COMPANION	TOTAL ORDER
91	DIRECT	2264	1003	177/na	89	355
91	DISC APP.	429				
91	INTR. APP.	449				
	TOTAL FILED	3142		TOTAL CASES DISPOSED		1624*
92	DIRECT	2449	1531	65/206	157	431
92	DISC APP.	473				
92	INTR APP.	486				
	TOTAL FILED	3408		TOTAL CASES DISPOSED		2464*
93	DIRECT	2608	1588	156/277	149	515
93	DISC APP.	475				
93	INTR APP.	453				
	TOTAL FILED	3536		TOTAL CASES DISPOSED		2685*
94	DIRECT	2842	1377	194/574	152	575
94	DISC APP	611				
94	INTR APP	458				
	TOTAL FILED	3911		TOTAL CASES DISPOSED		2872*
95	DIRECT	2883	1111	239/749	137	648
95	DISC APP	419				
95	INTR APP	330				
	TOTAL FILED	3632		TOTAL CASES DISPOSED		2884*
96	DIRECT	2546	1263	91/602	121	619
96	DISC APP	483				
96	INTR APP	421				
	TOTAL FILED	3450		TOTAL CASES DISPOSED		2706*
97	DIRECT	2596	1526	57/349	140	567
97	DISC APP	479				
97	INTR APP	438				
	TOTAL FILED	3513		TOTAL CASES DISPOSED		2639*
98	DIRECT	2476	1529	36/307	127	552
98	DISC APP	455				
98	INTR APP	434				
	TOTAL FILED	3365		TOTAL CASES DISPOSED		2551*

Court of Appeals
Case Management System
Case Workload Summary 1991 through ~~2001~~2002

Page 2

YEAR	FILINGS	TOTAL FILED	SIGNED PUB OPINIONS	NONPUB RULE 36&33b	TOTAL COMPANION	TOTAL ORDER
99	DIRECT	2521	1523	53/253	144	528
99	DISC APP	434				
99	INTR APP	404				
	TOTAL FILED	3359		TOTAL CASES DISPOSED		2501
*						
00	DIRECT	2596	1415	106/326	136	635
00	DISC APP	420				
00	INTR APP	378				
	TOTAL FILED	3394		TOTAL CASES DISPOSED		2618
*						
01	DIRECT	2544	1313	60/410	135	592
01	DISC APP	413				
01	INTR APP	356				
	TOTAL FILED	3313		TOTAL CASES DISPOSED		2510
*						
02	DIRECT	2479	Final disposition totals will be			
02	DISC APP	435	after March 28, 2003			
02	INTR APP	346				
	TOTAL FILED	3260		TOTAL CASES DISPOSED		

*DIRECT APPEALS ONLY

Court of Appeals
Number of Cases Assigned Each Judge in 2002

	Direct Appeals*	Interlocutory Applications	Discretionary Applications	Total
Judge Smith	208	29	36	273
Judge Andrews	207	29	37	273
Judge Barnes	206	30	36	272
Judge Blackburn	207	29	36	272
Judge Eldridge	207	29	36	272
Judge Ellington	204	28	36	268
Judge Johnson	208	29	37	274
Judge Mikell	206	28	36	270
Judge Miller	205	28	36	269
Judge Phipps	208	29	36	273
Judge Pope	206	29	36	271
Judge Ruffin	207	29	37	273
Total	2479	346	435	3260
Average per Judge	207	29	36	272

* The difference in the number of direct appeals assigned was due to computer glitch in assignment of two cases and the transfer of cases, particularly civil cases, after the docket closed.

March 14, 2003

COLLEGE OF LAW

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Phone: 404.651.2096
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GEORGIA STATE **LAW**
UNIVERSITY
20 Years of Excellence

March 19, 2003

The Honorable John H. Ruffin, Jr.
Georgia Court of Appeals
334 State Judicial Building
40 Capitol Square
Atlanta GA 30334

Re: History of the Georgia Court of Appeals

Dear Judge Ruffin:

Shortly after our brief discussion last month, I left the country for Europe where I was involved in planning for the Summer Academy in International Commercial Arbitration, a program jointly sponsored by Georgia State and the University of Warsaw which takes place annually in May and June. I am just now getting back to the desk here in Atlanta.

I want to confirm my strong interest in the project which we discussed last month. I think that you are aware of the fact that I teach Georgia Practice & Procedure here at Georgia State, as well as a very successful (I believe) Seminar in Georgia Legal History. These duties, along with my personal interest, have made me a close student of the Court of Appeals for many, many years. The prospect of documenting the Court's history over the first century of its existence is one which I find challenging, exciting, and profoundly interesting.

I would project the necessity for a leave of absence for some extended period of time here at the University in order to concentrate solely on this matter. Preparations for sabbaticals and leaves of absence, however, are tedious, somewhat time consuming, and require a substantial lead time. I would hope that, if this matter is to move forward with my participation, you will let me know the posture of the project at an early moment so this planning can go forward.

On another note, like most Georgians, I have been in and out of Augusta for what seems to be the bulk of my life. At the same time, I have had very little opportunity to really see the city at all. In April, however, the Board of Governors of the State Bar of Georgia will meet in Augusta for its Spring meeting and I will attend that session as a member of the Board of Trustees of the Institute for Continuing Legal Education in Georgia. This will award me an opportunity to see Augusta over a long weekend and I am looking forward very much to this opportunity. I am relying on my friends such as Lee Ann Caldwell - now the Chair of the History Department at Georgia College & State

University and formerly a member of the history faculty at Augusta State University, and Ed Cashin of Augusta State's history department, to give me advice and counsel on what I should see during my brief stay in the city.

Do you have any suggestions?

I send you my personal regards with this short note.

Sincerely yours,

A handwritten signature in cursive script that reads "Ray".

E. R. Lanier
Professor of Law

COLLEGE OF LAW

PO Box 4037
Atlanta, GA 30302-4037
Phone: 404.651.2096
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GEORGIA STATE **LAW**
UNIVERSITY
20 Years of Excellence

May 5, 2003

The Honorable John H. Ruffin, Jr.
Georgia Court of Appeals
334 State Judicial Building
40 Capitol Square
Atlanta GA 30334

Dear Judge Ruffin:

Each year I direct Georgia State University's Summer Academy in International Commercial Arbitration which is produced in cooperation with a number of arbitral courts scattered around central Europe. I will leave Atlanta in conjunction with my duties in that Program during the current week.

Before I am out of pocket, I wanted only to underscore my continuing interest in the production of the work on the history of the Georgia Court of Appeals which we discussed earlier this Spring. I understand, of course, your hesitation regarding any necessary funding for this project. If I may, I would add my thoughts on that aspect of the effort:

I believe that the University of Georgia Press would have a strong interest in the publication of such a work when and if it is produced, whether in connection with the Court's bicentennial observances or not. The history of the Court of Appeals is a matter of significance and importance, I believe, to the general public in the State of Georgia, in the Southeast, and nationally; in addition, I believe that it would be of interest not only to the legal and academic market, but to the general reading public as well. If the University Press assumed the responsibility for the publication of this volume, this would have clear implications respecting any budgetary requirements of the Court in connection with the production of this text. For my own part, I have no expectation of financial support or remuneration from any budget of the Court for this work. While I would hope to have limited concrete support from the Court—access to records, perhaps some filing space and a work surface at the Court for a limited period of time, and the like—I do not foresee any personal or individual budgetary requirement or compensation from the Court as such.

The production of this volume will represent a substantial effort and, if the book is to be available at or near the time of the Court's centennial, the work on it should begin as soon as possible, no later than this fall. An early decision to move forward on this matter would be most helpful.

I will be away from my desk in Atlanta until sometime in mid-summer, probably the first week or two of July or so. I can be reached, however, by e-mail at <ERLanier@aol.com> at any time and, in addition, any mail sent to me at this university address will be forwarded to me in Austria in short order.

Judge, I look forward to your thoughts on this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "E. R. Lanier". The letters are fluid and connected, with a prominent loop on the "L" and a long tail on the "n".

E. R. Lanier
Professor of Law

FY 2003
COURT OF APPEALS OF GEORGIA

PROJECTED RAISES - 6/1/03

POSITION-TITLE	NAME		INCR	%	CURRENT SALARY	PROMO MO	NEW S/M SALARY	S/MO VARIANCE	YEARLY SALARY			POSTED	ADJ PERIODS	VAR
	LAST	FIRST							OLD	NEW	VARIANCE			
1 DOCUMENTS CLERK	AVERA	KERI	X	.03	\$ 1,090.43	06/01/03	\$ 1,123.14	\$ 32.71	\$ 26,170.32	\$ 26,955.36	\$ 785.04		2	\$ 65.43
2 ADMINISTRATIVE CLERK	BENDER	PATTY	X	.03	\$ 1,384.18	06/01/03	\$ 1,425.71	\$ 41.53	\$ 33,220.32	\$ 34,217.04	\$ 996.72		2	\$ 83.05
3 DEPUTY CLERK	COLLINS	SHEILA			\$ 2,462.71	03/01/03	\$ 2,462.71	\$ -	\$ 59,105.04	\$ 59,105.04	\$ -	X	8	
4 MAIL CLERK	DANIEL	JOHN	X	.03	\$ 1,609.33	06/01/03	\$ 1,657.61	\$ 48.28	\$ 38,623.92	\$ 39,782.64	\$ 1,158.72		2	\$ 96.56
5 INTAKE CLERK	DANIELL	JUANITA	X	.03	\$ 1,355.92	06/01/03	\$ 1,396.60	\$ 40.68	\$ 32,542.08	\$ 33,518.40	\$ 976.32		2	\$ 81.36
6 ADMINISTRATIVE ASST.	DIAMOND	LOLA			\$ 2,240.02	06/01/03	\$ 2,240.02	\$ -	\$ 53,760.48	\$ 53,760.48	\$ -		2	\$ -
7 DOCUMENTS CLERK	HEAD	MARTI	X	.03	\$ 1,822.13	06/01/03	\$ 1,876.79	\$ 54.66	\$ 43,731.12	\$ 45,042.96	\$ 1,311.84		2	\$ 109.33
8 DEPUTY ADMINISTRATOR	SPARROW	HOLLY			\$ 2,343.24	04/01/03	\$ 2,343.24	\$ -	\$ 56,237.76	\$ 56,237.76	\$ -	X	6	
9 DOCKET CLERK	STEPHENS	MARY JO	X	.03	\$ 2,072.83	06/01/03	\$ 2,135.01	\$ 62.18	\$ 49,747.92	\$ 51,240.24	\$ 1,492.32		2	\$ 124.37
10 FISCAL ASST.	STEELE	CARRIE ANN	X	.05	\$ 1,669.16	06/01/03	\$ 1,752.62	\$ 83.46	\$ 40,059.84	\$ 42,062.88	\$ 2,003.04		2	\$ 166.92
11 PERSONNEL REPRES.	ROBINSON	BENITA	X	.05	\$ 1,333.45	06/01/03	\$ 1,400.12	\$ 66.67	\$ 32,002.80	\$ 33,602.88	\$ 1,600.08		2	\$ 133.35
12 SYSTEMS ANALYST	MCATEER	BOB	X	.05	\$ 1,704.17	06/01/03	\$ 1,789.38	\$ 85.21	\$ 40,900.08	\$ 42,945.12	\$ 2,045.04		2	\$ 170.42
13 SYSTEMS ANALYST	RUGGERI	JOHN			\$ 3,462.47		\$ 3,462.47	\$ -	\$ 83,099.28	\$ 83,099.28	\$ -			
14 SYSTEMS ANALYST	DOUGLASS	MICHAEL			\$ 3,462.47		\$ 3,462.47	\$ -	\$ 83,099.28	\$ 83,099.28	\$ -			
							\$21,602.95	\$515.38	\$ 506,101.68	\$ 358,410.72				\$1,030.77

IMPACT THIS FISCAL YEAR

SALARIES	\$	1,030.77
FICA/MED	\$	78.85
RETIREMENT	\$	109.88
HEALTH	\$	135.03
	\$	1,354.53

IMPACT NEXT YEAR

SALARIES	\$	12,369.21
FICA/MED	\$	946.24
RETIREMENT	\$	1,824.46
HEALTH	\$	1,620.37
	\$	16,760.27

Court of Appeals of Georgia

Fiscal Year 2003

Breakdown of Court of Appeals Budget

	Approp FY 2003	EST. ACTUAL	VARIANCE FROM FY 2003 APPR	%
STATE APPROPRIATION				
GENERAL APPROPRIATION	\$11,571,428	\$11,571,428		
AMENDED APPROPRIATION	(\$300,000)	(\$300,000)		
GOVERNOR'S EMERGENCY FUND				
TRANSFER TO/FROM FUNCTIONAL BUDGETS				
APPROPRIATION	\$11,271,428	\$11,271,428	\$0	100%
EXPENDITURES				
PERSONAL SERVICES	\$10,409,106	\$10,264,764	(\$144,342)	99%
OPERATING EXPENSES	\$958,322	\$1,020,943	\$62,621	107%
TOTAL EXPENDITURES	\$11,367,428	\$11,285,707	(\$81,721)	99%
OTHER FUNDS				
REVENUE - COPY FEES	\$96,000	\$148,515	\$52,515	155%
REVENUE - OTHER				
	\$96,000	\$148,515	\$52,515	155%
TOTAL FUNDS	\$11,367,428	\$11,419,943	\$52,515	100%
ESTIMATED SURPLUS(DEFICIT) FROM BUDGET	\$0	\$134,236		

Court of Appeals of Georgia

Fiscal Year 2004

Breakdown of Court of Appeals Budget

	Approp FY 2003	Requested FY 2004	Variance From Approp	%	Appr FY 2004	
STATE APPROPRIATION						
GENERAL APPROPRIATION	11,571,428	\$12,252,817	(\$566,984)		\$11,685,833	
AMENDED APPROPRIATION	(300,000)					
GOVERNOR'S EMERGENCY FUND						
TRANSFER TO/FROM FUNCTIONAL BUDGETS						
APPROPRIATION	11,271,428	\$12,252,817	(\$566,984)	95.4%	\$11,685,833	
		VAR FROM FY03 STATE FUNDS		3.7%	\$414,405	
EXPENDITURES						
PERSONAL SERVICES	10,409,106	\$11,118,992	(\$416,611)	96.3%	\$10,702,381	90.9%
OPERATING EXPENSES	958,322	\$1,223,825	(\$150,373)	87.7%	\$1,073,452	9.1%
TOTAL EXPENDITURES	11,367,428	\$12,342,817	(\$566,984)	95.4%	\$11,775,833	100.0%
	VARIANCE FROM FY 03	PERS SVCS	\$293,275	3%		
		OPER. EXP	\$115,130	12%		
OTHER FUNDS						
REVENUE - COPY FEES	\$96,000	\$90,000	\$0		\$90,000	
REVENUE - OTHER	\$0	\$0	\$0		\$0	
	\$96,000	\$90,000	\$0		\$90,000	
TOTAL FUNDS	\$11,367,428	\$12,342,817	(\$566,984)	95.4%	\$11,775,833	
EQUIPMENT BUDGET						
EQUIPMENT	\$5,000	\$42,000	(\$32,000)	23.8%	\$10,000	
COMPUTER EQUIPMENT	\$70,000	\$170,200	(\$24,250)	85.8%	\$145,950	
TOTAL EQUIPMENT BUDGET	\$75,000	\$212,200	(\$56,250)	73.5%	\$155,950	
		VARIANCE FROM FY 03	\$80,950	108%		
COMPUTER CHARGES						
	\$55,000	\$104,361	(\$20,361)	80.5%	\$84,000	
		VARIANCE FROM FY 03	\$29,000	53%		

Court of Appeals of Georgia

Fiscal Year 2003

Breakdown of Court of Appeals Budget

	Approp FY 2003	Actual FY 2003	VARIANCE FROM FY 2003 APPR	%
STATE APPROPRIATION				
GENERAL APPROPRIATION	\$11,571,428	\$11,571,428		
AMENDED APPROPRIATION	(\$300,000)	(\$300,000)		
GOVERNOR'S EMERGENCY FUND				
TRANSFER TO/FROM FUNCTIONAL BUDGETS				
APPROPRIATION	\$11,271,428	\$11,271,428	\$0	100%
EXPENDITURES				
PERSONAL SERVICES	\$10,409,106	10,255,653	(\$153,453)	99%
OPERATING EXPENSES	\$1,014,778	1,030,696	\$15,917	102%
TOTAL EXPENDITURES	\$11,423,884	\$11,286,348	(\$137,536)	99%
OTHER FUNDS				
REVENUE - COPY FEES	\$96,000	152,456	\$56,456	159%
Copy Fees in Excess of Budgeted Amt.	\$56,456		(\$56,456)	
REVENUE - OTHER				
	\$152,456	\$152,456	\$0	159%
TOTAL FUNDS	\$11,423,884	\$11,423,884	\$0	100%
ESTIMATED SURPLUS(DEFICIT) FROM BUDGET		\$137,536		

COURT OF APPEALS

FISCAL YEAR 2004 SUPPLEMENTAL REQUEST

Please amend the FY2004 Budget for the Court of Appeals as follows:

	<u>H.B. 1002</u>	<u>Requested FY2004 Continuation Fnds</u>	<u>Requested FY 2004 Enhancements</u>	<u>Total Requested Amended FY 2003 Budget</u>
Personal Services	10,716,181	0	13,800	10,729,981
Operating Expenses	<u>1,073,452</u>	<u>0</u>	<u>0</u>	<u>1,073,452</u>
	\$11,789,633	\$0	\$13,800	\$11,803,433
Less: Other Funds	<u>\$90,000</u>	<u>\$0</u>	<u>\$0</u>	<u>90,000</u>
	\$11,699,633	\$0	\$13,800	<u><u>11,713,433</u></u>

TOTAL ADDITIONAL STATE FUNDS NEEDED

13,800

IMPROVEMENT ITEMS:

MERIT SYSTEM ASSESSMENT

92 @

\$150

\$13,800

TOTAL PERSONAL SERVICES

\$13,800

OPERATING EXPENSES

\$0

TOTAL OPERATING EXPENSES

\$0

TOTAL ENHANCEMENT ITEMS*

\$13,800

NOTE: This enhancement is requested in order to reallocate money budgeted for merit system assessment for Court of Appeals employees from the Administrative Office of the Courts budget. This request is made so that the true operating costs are reflected in our budget. The \$13,800 should be added to the Court of Appeals personal services budget and subtracted from the Administrative Office of the Courts personal services budget.

COURT OF APPEALS

FISCAL YEAR 2005

FY 2004 CONTINUATION:

PERSONAL SERVICES	\$11,090,383	
OPERATING EXPENSES	<u>\$1,122,659</u>	
TOTAL FUNDS		\$12,213,042

IMPROVEMENT ITEMS:

PERSONAL SERVICES

ENHANCEMENT ITEMS	<u>\$0</u>	<u>\$0</u>
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OPERATING EXPENSES

ENHANCEMENT ITEMS	<u>\$40,000</u>	<u>\$40,000</u>
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TOTAL ENHANCEMENT ITEMS

\$40,000

FY 2005 BUDGET REQUEST

CONTINUATION BUDGET WITH IMPROVEMENT ITEMS

PERSONAL SERVICES	\$11,090,383	
OPERATING EXPENSES	<u>\$1,162,659</u>	
TOTAL FUNDS		
LESS: OTHER FUNDS		\$12,253,042
		<u>\$90,000</u>
TOTAL STATE FUNDS		<u>\$12,163,042</u>

TOTAL STATE FUNDS REQUESTED FOR FY 2005

\$12,163,042

COURT OF APPEALS

FY 2005 BUDGET

VIDEO EDUCATION PROJECT	\$40,000
--------------------------------	-----------------

A. Produce educational video about the Centennial of the Court of Appeals and its role in history. The video will be distributed to local school districts to be used in Middle and High School classes.

Projected Costs:	<i>Projection Equipment -</i>	\$13,500
	Cameras & Accessories	
	Lights	
	Microphone Monitors	
	Cables	
	<u>Post Production Equipment -</u>	\$11,500
	Non-Linear Editing System	
	Digital Music/Graphics	
	Monitors	
	Records Decks	
	Tapes	
	<u>Services for rental</u>	
	Use of equipment	
	Voice over narration and tape duplication	\$5,000
		\$30,000

B. Produce an informational video on the Do's and Don'ts of filing in the Court of Appeals for Pro Se parties. The tapes would be distributed to the local Clerk of Court's Offices to be viewed by the public. The video would also be made available on the State Web Portal to be viewed or downloaded through streaming and local bar associations.

Projected Costs:	<i>Services-</i>	\$10,000
	Actors-voice narration	
	Tape duplication	
	<i>Rental-</i>	
	Rental of one time use equipment.	
		\$10,000

POSITION ANNOUNCEMENT

The Court of Appeals of the State of Georgia is currently seeking qualified applicants for the position of Documents Clerk for the Court.

POSITION TITLE: Documents Clerk

POSITION CLASSIFICATION: Non-merit position. Serves at the pleasure of the Court and the Clerk/Administrator of the Court.

STARTING SALARY: \$25,000 - open

PAY CLASSIFICATION SALARY RANGE: \$25,000 - unlimited, based upon experience and qualifications.

STATE BENEFIT PROGRAMS AVAILABLE: Full Benefits

AVAILABILITY DATE:

WORK WEEK: Monday-Friday **HOURS:** 8:30 a.m. - 4:30 p.m.

JOB DESCRIPTION: The Documents Clerk reports to the Clerk/Court Administrator. This position performs duties associated with the intake of documents and processing of those documents in the Clerk's office primarily in a relief or in a secondary capacity to the Intake, Records, and Docketing Clerks. The Documents Clerk shall perform the following daily duties and such other tasks as assigned by the Clerk/Court Administrator.

FUNCTIONS AND DUTIES:

1. **Provide relief for the Intake clerk during lunch and morning and afternoon breaks and at any time the Intake clerk must be or is absent from the front desk.**
 - a. Receive telephone calls and respond to questions in a courteous, informative and efficient manner.
 - b. Route telephone calls to appropriate staff.
 - c. Greet visitors, providing information from the docketing system and authorized materials.
 - d. Request records from the file room for attorneys' and parties' review in the reception office.
 - e. Maintain the reception area in a neat and orderly fashion.
2. **Assist the Deputy Clerk and the Applications Clerk in the Processing of case filings.**
 - a. Assist the Deputy Clerk to process the documents related to Direct Appeal filings.
 - b. Assist the Applications Clerk to process the documents related to Applications filed in the Clerk's Office.
 - c. Perform the duties of either of these Clerks during any short absence from work.

Direct 4 1/2 % increase
applicant 9% " > Total 6% increase

3. **Provide assistance to the other staff in order to perform Court's work promptly and when some member of the other staff is absent.**
 - a. Assist the Motions, Orders or Remittiturs Clerks as necessary to docket and process the documents they receive.
 - b. Assume the duties of any of these Clerks during any absence from work.
4. **Provide assistance to the Records Clerk in the file room.**
 - a. Locate court records for review by court staff, attorneys and parties at the request of the Intake Clerk, a Judge's office or Clerk/Court Administrator.
 - b. Assist in filing documents and records.
 - c. Assist the Records Clerk to maintain the file room in a neat and orderly fashion.
 - d. Assist the Records Clerk in sorting mail as necessary.
5. **Maintain the break room in a neat, attractive and orderly fashion for the benefit of all court personnel.**

QUALIFICATIONS: The Documents Clerk shall have the following required education, experience, and knowledge.

A high school diploma or a GED. Must be able to utilize personal computers, fax machines, office copying equipment and other office machines. Must be able to handle multiple telephone line switchboard. Must have a working knowledge of computers and word processing equipment and be able to type a minimum of 45 words per minute. Applicants may be required to take a typing test. Knowledge of Corel WordPerfect v.8 and other software programs is beneficial.

PHYSICAL REQUIREMENTS: The physical requirements of the Documents Clerk position include bending, stooping, stretching and reaching. The docketing clerk must be able to lift up to forty pounds occasionally. Must be able to sit at a desk for long periods during the day and be able to type at a computer screen. The Documents Clerk must be able to communicate on the telephone and in person with attorneys and pro se parties.

The ability to speak, read and write English correctly and fluently and the ability to work under strict time constraints is required.

CLOSING DATE: Applications (including a resume and two references) should be postmarked by the close of business on _____ to: Clerk/Court Administrator, Court of Appeals of Georgia, 334 State Judicial Building, Atlanta, GA 30334. At least one reference should be from a prior employer.



Court of Appeals

Memorandum

To: Chief Judge Smith
Judge Eldridge
Court of Appeals Council

From: Bud Tirey, Technical Services *Bud*

Subject: New Technical Services Resource Center.

Date: October 1, 2003

Technical Services would like to create a Media Resource Center for the Court of Appeals. In order to do this, we would need additional office space. I have located a space next to 505H (Central Staff Floating Law Assistants Office) which I believe would work nicely. The space is approximately 720 square feet and consists of a large front room and one office and a small work area. This space would be utilized for multiple purposes to include:

- **Additional Computerized Work Space..**
This would allow us to accommodate staff with computerized workstations when job-share employees must come to work on the same day; when employees are temporarily relocated due to displacement for renovation projects, office repairs ,etc. Also, it would allow for additional work space for summer interns.

- **Computerized Training Lab.**

This training space would better accommodate computerized training orientation for new employees. Also, this space could be utilized to train small groups regarding updates for Lexis-Nexis, Westlaw and other computerized services utilized by our staff. We anticipate that the front room could be set up to accommodate approximately 10 staff attorneys, etc. for computerized training needs.

- **Teleworking Training.**

This space would also enable us to create a test and training environment to help assist teleworkers in setting up DSL/cable modem networks at home. We could give the users hands-on-experience in setting up broadband/wireless routers to better share their connections at home. Furthermore, we could show the users the proper security setup to protect their work at home.

- **Media Center.**

This space would better accommodate the media services which Technical Services provides for the Court. We are often asked to provide media support for Judges presentations, etc. This would give us a better place to work on the presentation materials. Also, Technical Services is in the process of developing the capability of creating video and audio taped materials for the Court. This development will allow the Court to video tape any type of presentation (CLE Training and other) for future use and will assist in the production of the Court Centennial program which is under development.

As part of the development of this Media Resource Center Technical Services would need to purchase five to ten docketing stations which will function as a library, or lab for staff to dock their notebook PCs and have immediate access to all Court resources. Estimated cost for each docking station would be \$350.

Page 3

Computer Resource Center

September 30, 2003

Georgia Building Authority currently charges \$10.16 per sq. ft. for rental of space.

Therefore, the annual cost for rental of 720 sq. ft. would be \$7,315 per year.

It estimated that we would need at least one telephone line to be installed in the Media Center.

The cost of a new telephone is approximately \$400 and the annual cost for the line would is estimated at \$350 per year.

Estimated costs for procurement of furnishings for the training area would be \$4,500.

This includes 12 chairs, 8 training desks and one online center station.

The estimated cost of this project for the start up year would be \$14,237 (includes 10 docking stations). If we only purchased five docking stations and utilized existing PCs for the remaining terminals, the start up costs would be around \$12,487. Thereafter, the annual cost of the Media Resource Center is estimated to be approximately \$9,000 a year (rent, telephone services, and \$100 per mo for supplies and materials).

Approved: _____

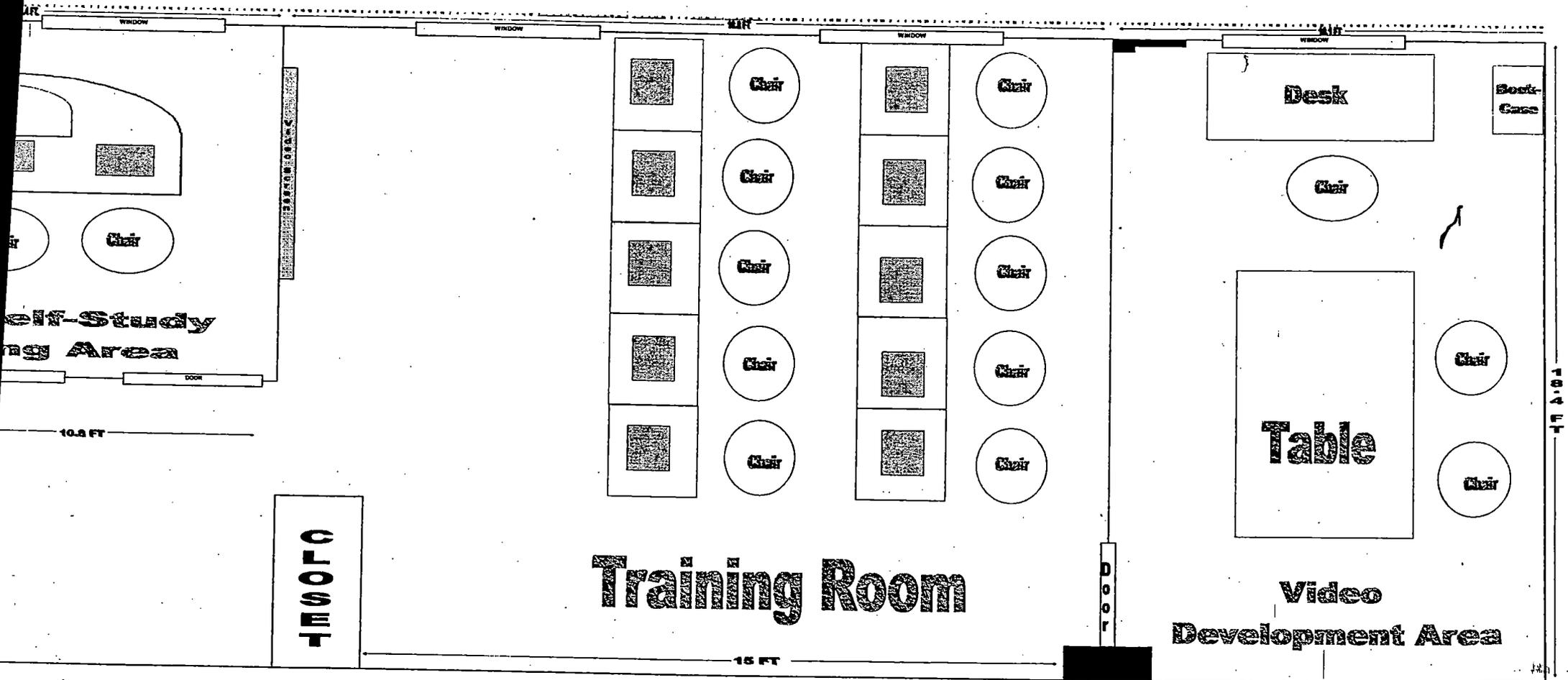
Miscellaneous Appellate Fees - Other States

<u>Jurisdiction</u>	<u>Admission to Practice</u>	<u>Certificate of Good Standing</u>	<u>Certification of Document</u>
			\$1
			\$5
Alabama		\$0	
Alaska		\$0	\$1
Arkansas		\$1	\$2
California		\$10	
Connecticut		\$2.30	\$1
Delaware		\$1	
Florida		\$1.25	\$1.25
Georgia	\$30	\$3	\$1
			\$0
Indiana		\$0	
Illinois		\$10	\$2
Kansas			
Kentucky		\$3	\$5
Louisiana		\$7	
Maine	\$20 in state/\$25 out state	\$15	
Maryland		\$5	
Massachusetts		\$5	\$2.50
Michigan	\$30, replacement \$15	\$10 replacement	\$1
Missouri		\$5	
Mississippi		\$5	
Nebraska		\$5	
New Hampshire		\$5	
New York		\$1	
North Carolina	\$25	\$0	
Nevada		\$5 (by bar)	
New Mexico			\$1
North Dakota			\$8 + \$1 each page thereafter
Ohio		\$25	
Oregon	\$50 (for certificate)	\$25	
Pennsylvania		\$5	\$4
Tennessee			\$2
Texas		\$3	
Utah	\$25	\$1	
Vermont		\$5	
Virginia		\$5	
Washington		\$3	
West Virginia		\$10	
Wisconsin		\$5	\$7
Wyoming		\$15	\$7
District of Columbia	\$15 replacement cert		
US Distr. Ct, N.D.GA.		\$7	
US 11th Cir. Ct		\$5.96/\$5	\$2.88/\$2
US Supreme Ct	\$27.50/\$25		
Average/Median			

COURT OF APPEALS OF GEORGIA

PROPOSED MEDIA CENTER

SUITE 501H-503H



Study Area

Training Room

Video Development Area

DOOR

Desk

Book-Case

Table

Chair

WINDOW

WINDOW

WINDOW

WINDOW

WINDOW

10.8 FT

15 FT

17.4 FT



Court of Appeals

Memorandum

To: Chief Judge Smith
Judge Eldridge
Court of Appeals Council

From: Bud Tirey, Technical Services *Bud*

Subject: New Technical Services Resource Center.

Date: October 1, 2003

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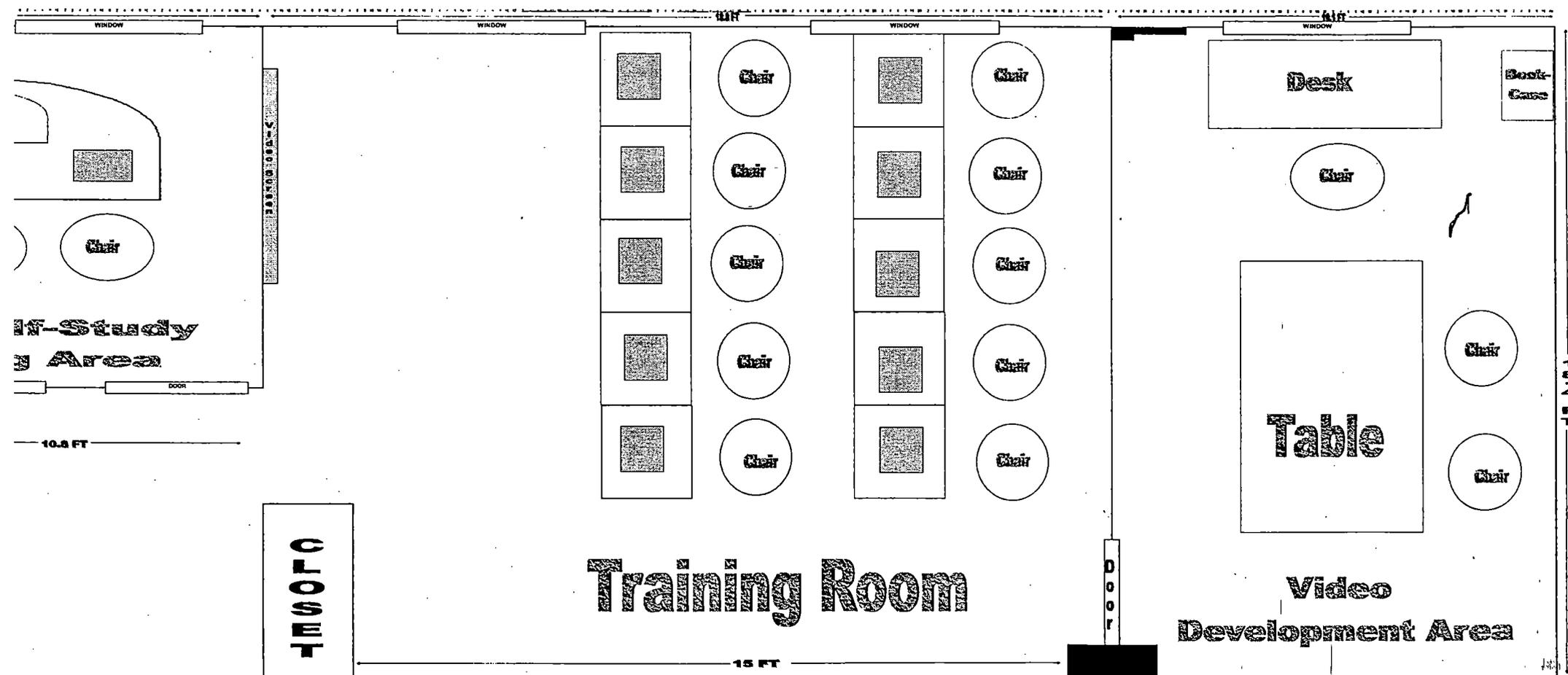
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COURT OF APPEALS OF GEORGIA

PROPOSED MEDIA CENTER

SUITE 501H-503H





Court of Appeals

Memorandum

To: All Judges
From: Chief Judge Smith 
Subject: Wednesday, June 4, Banc meeting
Date: June 3, 2003

Tomorrow's banc meeting will begin at 2:00 p.m., rather than 1:30 p.m., as originally scheduled. I think it best to move the starting time back by half an hour due to oral arguments scheduled for the First Division that morning. I understand some additional time has been granted for one of those arguments. The later starting time still should leave us ample time for the meeting, since I believe we will be able to complete our business in less than an hour and a half.

Please let me know if this new scheduling presents any problems for any of you.



Court of Appeals

Memorandum

To: Self

From: William L. Martin, III

Subject: Develop a Protocol

Date: May 19, 2003

Develop a protocol on how we handle letters that are sent to us by mistake or those that are sent to us on purpose where there are threats or bail threats or what we perceive to be a threat and not necessarily to this Court but to the institutions where these individuals are housed and what not. Something may want to take up in the Banc Meeting.



Court of Appeals

Memorandum

To: Self
From: William L. Martin, III
Subject: Memo to AAs
Date: May 6, 2003

Do a memo to the Administrative Assistants about cases that come back when we send the records up to the Supreme Court and they are giving them to John to file back. The problem is that they are 2001 records and they have all been recycled and there is no place for John to file them back and John will not know what to do with them.

April 11, 2003

Mr. Chuck Carpenter
DATEK, Ltd
Micrographics & Imaging
145 Nobel Court
Alpharetta, Georgia 30005

RE: Microfilming 2000 Court Records

Dear Mr. Carpenter :

Enclosed please find a Request for Bids for microfilming the files for direct appeals in the Court of Appeals of Georgia for docket year 2000, and a few miscellaneous files. If you would like to come to the Court of Appeals of Georgia to physically view the records, please feel free to contact me. Also, if your bid estimate assumes on-site microfilming, you may want to come to the Court to see if there is available space in our record storage facility to accommodate your equipment and microfilming team.

You may also like to come and look at the prior microfilmed documents in order to view the quality of the product which is anticipated from the contractor as well as an index to the microfilm which you will need to produce.

Any vendor submitting a bid will be notified of the winning bidder and the bid price. It is anticipated that work will be completed within 60 days of the execution of the contract.

If you have any questions about the Bid Proposal or any other aspects of the matter, please feel free to contact me.

Sincerely,

William L. Martin, III
Administrator/Clerk
Court of Appeals of Georgia

WLM, III/lid
Enclosure

MISCELLANEOUS RECORDS

To be filmed on a separate roll.

Court representatives will work with contractors for an initial period until contractors develop a familiarity with the Court's record. Document preparation will include re-filing the microfilmed documents in the original file folders in a loose or unstapled condition and returning them to the Court.

The documents to be microfilmed will be 8 ½"x 11" white paper with black ink, generally of good quality and printing on one side only. Microfilmed document shall be read from left to right in a sequential numerical order of the year of the case number.

Microfilm produced must conform to the Micrographic Standards as approved by the State Records Committee and as published by the Georgia Department of Archives and History which include:

Film density .9 to 1.2
Resolution 120+ lines per millimeter
Residual less than 1.4 micrograms/CM of sodium thiosulfate

Contractor will inspect all microfilm images produced to insure legibility, readability, integrity and image count correctness. Microfilm images must contain all the recorded information shown on the original documents, free of obstructions, shadows or glare which impair the legibility of the document. All film to be inspected and tested in accordance with quality standards specified in Micrographic Standards as approved the State Record Committee and as published by the Georgia Department of Archives and History. Contractor will re-film any rolls which are not legible or do not meet quality standards at no additional cost to the Court of Appeals. The contractor will verify, in writing, to the Court, that all inspections and testing have been accomplished and the film provided meets all expectations outlined in these specifications.

All bids must be delivered to the Court of Appeals no later than 4:30 p.m. on Friday, July 19, 2002. Bids may be submitted by fax to the Court at (404) 651-6187. Contractors who submit bids will be notified as to the contractor awarded and the amount of the winning bid.

If you have any questions, please contact:

Mr. William L. Martin, III
Clerk/Court Administrator
Court of Appeals of Georgia
334 State Judicial Building
Atlanta, Georgia 30334
(404) 656-3450

Court of Appeals of Georgia
334 State Judicial Building
Atlanta, Georgia 30334

REQUEST FOR BID

The Court is currently seeking bids for microfilming 2000 records of direct appeals.

Estimated number of boxes	79
Estimated number of case files per box	33
Estimated number of pages per case	60
Estimated number of pages for 2000 records	150,000
Estimated number of miscellaneous record	1 box
Total estimated number of pages to be microfilmed	160,000

ON-SITE OR OFF-SITE MICROFILMING

SPECIFICATIONS:

- 16mm roll microfilming with blip marks on the microfilm.
- Microfilming will also include separators or target sheets for each case, such separators will be provided by the Court and inserted by the contractor.
- Microfilming may be done on-site at the Court or, as part of the contractor bid, transported from the Court to the contractor for microfilming at contractors' place of business and return of the records to the Court.

REQUIREMENTS:

- 1 silver master negative
- 1 duplicating negative
- 2 reader copies

DOCUMENT PREPARATION:

Document preparation will include removing file folders from boxes, removing documents from file folders and removing staples or round head fasteners from the documents. The Court will provide contractor with the documents in the correct order in which they will be microfilmed in sequential numerical order. Microfilms will be indexed by case number. Records to be microfilmed include briefs, enumeration of errors, opinions, substantive motions and orders, remittiturs, docketing notices and the like for the Court of Appeals case files for direct appeals for 2000, approximately 150,000 pages.



Court of Appeals

Memorandum

To: Bill Martin

From: Sheila Collins *sc*

Subject: Supreme Court/Application Front Sheets

Date: April 10, 2003

Lynn Stinchcomb in the Supreme Court called and said their central staff want us to send up the green and pink sheets of applications. She said they needed to know which of our judges ruled and how.

I told her we were told NOT to send the up for those very reasons. If she had further questions she could contact you.

She said not to say anything until she talked to Amy in their Central Staff, but I thought you need and would like to have a warning in case she called you about this.

Page Limitations/Word Count and Font Size Requirements in Appellate Briefs
04/10/03

Court	Page Limits Opening/Reply	Word Count Opening/Reply	Font, etc.	Notes
Alaska	50/20		12-pt Courier, 13-pt serifed font or 12.5- pt non-serifed font	
California	50 (if typewritten)	14,000	13 point	use template by Lawyers Brief Service – L.A.
Delaware	35/20		11 characters/inch	ruler check
Florida	50/15 (100 in death penalty cases)			can check diskette submitted with brief
Georgia Court of Appeals	30 (civil) or 50 (criminal)/15		10 characters/inch or Times New Roman 14	
Louisiana Court of Appeals, First Circuit			Times New Roman 14	strictly enforced; use template; penalty for late brief: no oral argument
Maryland	50/25			
Massachusetts	50/20		12-pt Courier	hard to get overlength brief accepted
Michigan	50/10		12-pt	hard to get overlength brief accepted
Nebraska	50 total each party			
Nevada	30/10		10 characters/inch	motions for overlength usually granted but not over 80 pages
New Mexico	35/10		12-point	
New York Court of Appeals	no limit			
New York – Appellate Div., 4 th Dep., Rochester	70/35			rule prohibits footnotes in briefs
North Carolina Supreme Court	no limits			
North Carolina Court of Appeals	35/15 in non- proportional type	8,750/3,750 words in proportional type	12-pt Courier or 14- pt proportional type	very strictly enforced
North Dakota	40 in monospaced typeface	10,500 in proportional typeface		
Pennsylvania	50 pages of conventional typographical printing or 70 pages of reproduction by other means (?)		11-point	
South Carolina	50/25			request for overlength brief usually granted

Page Limitations/Word Count and Font Size Requirements in Appellate Briefs
04/10/03

Wisconsin	50/13 pages if monospaced font	11,000/3,000 words if proportional serif font	10 characters/inch for monospaced font; 13 point body text for proportional serif font	
Wyoming	70/35			pages over 70 would presumably be disregarded by court but would notify counsel first
United States Supreme Court				FRAP 32 Rule 33.1 booklet format briefs more strictly scrutinized for compliance than Rule 33.2 letter-size paper format briefs; use eyepiece to monitor type size: Type Size Finder/ Magnifier. We use model No. TSF-102 8X. Cost is \$19.95. The vendor is Arthur H. Gaebel, Inc., P.O. Box 8, East Syracuse, NY 13057-0008. Phone no. is 1-888-478-5377 or 315-656-2670. E-mail is info@gaebel.com
Court of Appeals for the Federal Circuit				FRAP 32 closely check page limit but not word count because of certificate Pro se briefs rarely rejected
DC Court of Appeals	50/20		11-point type	revising rule -- may be 12-point

State	General Oral Argument Time	Exceptions
Alaska	15/minutes/side	
Arkansas	20 minutes/side	
California (Supreme Court)	30 minutes/side	45 minutes/side in death cases
California (Circuit Courts)	30 minutes/side	local rules in 3 rd limit to 15 minutes/side
Delaware	30 minutes/side	Amending to 25/minutes/side
District of Columbia	30 minutes/side (regular case)	15 minutes/side (summary cases if permission granted)
Federal Circuit	30 minutes/side (en blanc) 15 minutes/side (panel)	
Florida	20 minutes/side	30 minutes/side (death cases)
Georgia (Supreme Court)	20 minutes/side	30 minutes/side (death penalty cases)
Georgia (COA)	No oral Arguments	Upon request, time given in 5, 10 & 15 minute increments
Indiana	30 minutes	State time in each oral argument order - can vary
Louisiana	20 minutes/side	5 th Circuit (30 minutes/side)
Maryland	30 minutes/side	
Michigan	30 minutes/side	If only one party is represented, only 15 minutes for remaining party
Minnesota	35 minutes for appellant 25 minutes for appellee	
Nebraska	10 minutes/side	20 minutes/side if 1 st or 2 nd degree murder
Nevada	Courts discretion - generally 15 minutes/side	Death penalty cases - 30 minutes/side
New Mexico	30 minutes/side	20 minutes/side on extraordinary writs and disciplinary matters
New Jersey	30 minutes/side (5 minutes of time can be requested as "uninterrupted statement")	
New York	10 minutes/side unless requested - can ask up to 30 minutes/side	
North Dakota	30 minutes/Appellant 20 minutes/Appellee	
Pennsylvania	No prescribed time limit Rebuttal not permitted	

South Carolina	10 minutes/side + 5 for rebuttal (appellant)	Death penalty cases (30 minutes/side, however, can be less)
US Armed Forces	30 minutes/side	
Wisconsin	30 minutes/side	
Wyoming	30 minutes/side	

>>> <tom_kahn@ca11.uscourts.gov> 04/10/03 02:50PM >>>

Sherie -- could you please refresh me as to what your court is doing or planning to do on electronic filing. If it would be easier to talk about, please just give me a call.

Thanks. Tom

Thomas K. Kahn, Clerk
U.S. Court of Appeals
Eleventh Circuit
56 Forsyth St., NW
Atlanta, GA 30303
Ph. 404-335-6222

CC: "Bill Martin" <MARTINW@appeals.courts.state.ga.us>

From: <tom_kahn@ca11.uscourts.gov>
To: Sherie Welchs <welchs@supreme.courts.state.ga.us>
Date: 4/10/03 4:43PM
Subject: Re: Electronic Filing

So far, all we are requiring, in addition to the submission of paper briefs, is for counsel also to upload through our website an electronic version of their briefs in PDF format. I use the term "upload" as we are not requiring a certificate of service or service on opposing parties for the electronic version. Otherwise, we are not doing electronic filings or issuance of orders although we are posting published opinions on our website. On occasion, mostly in expedited matters, we may e-mail an opinion or order to counsel but we still follow it up with paper copies.

I have heard there is some interest as we all go down these roads to consider what other courts in the area are doing to see if things can be done in a compatible way so that counsel don't have to learn a totally new system for each court they practice in. Similarly, as electronic records become more prevalent I think the same issues will be present and it certainly would behoove us all to have some compatibility. As you know, in most of our state habeas appeals we need the state records and if they are going to be electronic some day these issues need to be worked out.

I asked Bill Martin the same question I posed to you, so I am taking the liberty to copy him on this response as well. Might help save reinventing the wheel.

Thanks. Tom

Thomas K. Kahn, Clerk
U.S. Court of Appeals
Eleventh Circuit
56 Forsyth St., NW
Atlanta, GA 30303
Ph. 404-335-6222

Sherie Welchs <welchs@supreme.courts.state.ga.us>
04/10/2003 04:00 PM

To: tom_kahn@ca11.uscourts.gov
cc:
Subject: Re: Electronic Filing

Tom, We are not doing much. We have asked court reporters in death penalty cases to submit their transcripts on CD so we can put those huge records in a searchable format on a server for all the judges to access, but that is it. We are not in a big rush as everyone wants briefs on paper and I do not want to turn into a print shop. What are you doing?
sherie

DEFIBRILLATORS

Student deaths start push for device

By **TODD HOLCOMB**
tholcomb@ajc.com
and **JOHN MANASSO**
jmanasso@ajc.com

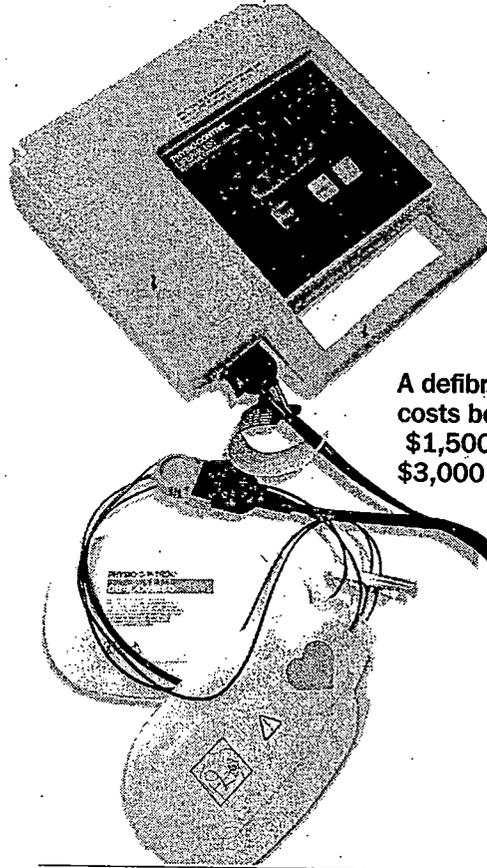
About the size of a lunchbox, an automated external defibrillator can resuscitate victims of sudden cardiac arrest with an electrical charge that restores normal heartbeat.

The mother of Shai Owens, the Cedar Grove junior who died after a cross country race last August, wonders what might have been if an AED had been present when her daughter was stricken.

"If there had been someone there with a defibrillator, you never know what could have happened with Shai," Nicolette Owens said. "The bottom line is I want our children to have a chance, and one way to do that is to have medical personnel right there at every event. To lose a child like that is such a terrible thing. I know."

Prompted by Owens' death, DeKalb County and the city of Atlanta are pursuing funds to buy defibrillators for every high school and middle school. The \$1,500- to \$3,000 machines are often effective if used within five minutes of the attack.

Chattahoochee Principal Robert E. Burke recommended to the Fulton County School Board that all of its high schools have them, and they will this year. Chattahoochee had



A defibrillator costs between \$1,500 to \$3,000 each.

just begun training its staff to use its defibrillator at the time of Ryan Boslet's death in February but did not know how to use the device when the football player collapsed during an offseason workout.

Said Sandy Boslet, Ryan's mother: "Who's to say whether it would have started his heart, but there's always that chance. . . . I wish [Ryan] had the chance to try it."

Use of the devices varies widely in Georgia. Coweta County recently bought 13 AEDs and will pay for staff training. In Columbus and LaGrange, public programs have provided AEDs to more than 40 schools in Muscogee and Troup counties. Many local private schools, such as Marist and Woodward Academy, already possess them.

But only two Cobb County high schools have AEDs, and there are none in Gwinnett County schools. Norcross High has the funds but awaits final school board approval.

From: Marilyn May <MMay@appellate.courts.state.ak.us>
To: "ncacc@lists.washlaw.edu" <ncacc@lists.washlaw.edu>
Date: 4/8/03 9:36PM
Subject: [Ncacc] page limitations

How does your court limit and monitor brief size? Do you have page limitations? Word count limits? Do you monitor font size? How are your current procedures working - do you have cheaters?

Alaska Appellate Rule 212(c)(4) limits appellant's and appellee's opening briefs to 50 pages, and the reply to 20 pages. Appellate Rule 513.5 specifies spacing, margins, and font size, and requires a certificate of font size if it's in anything other than 12-point Courier. Still, we receive briefs that appear not to be in compliance, despite the author's certificate and assurance that all rules were followed. We're tired of trying to police this and hope you have some good ideas.

I look forward to hearing from you.

Marilyn May
State of Alaska
Clerk of the Appellate Courts

NCACC mailing list
NCACC@lists.washlaw.edu
<http://lists.washlaw.edu/mailman/listinfo/ncacc>



Court of Appeals

Memorandum

To: All Judges
From: J.D. Smith
Subject: Banc meeting
Date: March 13, 2003

This is a reminder of the banc meeting scheduled for Tuesday, March 18, at 10:00 a.m. in the conference room on the third floor. The primary reason for this meeting is to discuss budget issues, but if any of you want to add any other agenda items, please submit them to Bill by noon on Monday, March 17.

With regard to budget, one of the most pressing issues we must decide is the future of our summer intern program. Several judges have made commitments for internships for this summer. As you know, I have asked all judges, including those who have already made commitments, to put those plans on hold temporarily. A decision must be made immediately, even though the General Assembly probably will not have taken final action on the FY 2003 supplemental budget, let alone the FY 2004 budget, before our meeting.



Court of Appeals

Memorandum

To: Presiding Judge John H. Ruffin, Jr.
From: *WLM*
William L. Martin, III
Subject: Clerk's Office Matters
Date: March 5, 2003

Thank you for meeting with me on some of the items of discussions regarding questions I had regarding clerk's office procedures. The following is a list of items I believe you suggested we bring up at the next Banc Meeting.

1. Certified Mail Rule regarding receiving certified mail filings without the check enclosed and the check having been delivered to the Court before the certified mail is delivered.
2. The practice of swearing-in lawyers again who have been disbarred or suspended and later reinstated.
3. The process by which attorneys filing amicus curiae briefs would be permitted to view sealed records, whether by motion filed in this Court or the trial court or otherwise.
4. Whether this Court wishes to require permission in writing for a lawyer's staff or paralegal who is appointed to a case to view records which are sealed by the trial court or by order of this Court.

If I have omitted anything or if you have any questions, please do not hesitate to contact me.

Thank you.

/ld



Court of Appeals

Memorandum

*Red - Dis -
yellow - Sup
Bar cards
to disbar
disbarred - readmitted
to our -
Banc*

To: Bill
From: Lola *Lola*
Subject: Presiding Judge Ruffin Topics of Discussion
Date: February 28, 2003

During the Staff Meeting this morning, you asked that I remind you of certain topics you wanted to talk over with Presiding Judge Ruffin. They are:

[1] The possibility of having to swear-in a lawyer again to the Court of Appeals if the lawyer has been disbarred and reinstated.

Banc
[2]

Amicus curiae attorneys and sealed records. Will those attorneys need to move this Court for permission to view a sealed record?

Rule re: motion by Amicus

Party - filed in this Court or trial ct.

[3] Court of Appeals sealed records. If briefs are not sealed, the public can view them. The rule is that you cannot file documents under seal in this Court unless you first file a Motion for Permission to File Sealed Records. The same holds true for applications. There are no provisions to filing applications under seal unless they are first and contemporaneously filed under seal.

In writing from lawyer

On a different subject and as a reminder, you stated you wanted to talk a little more in depth with the following concerning the following topics:

Holly Certificates of Good Standing

Bud The docketing procedure for pauper or pro se parties and the cost due letters being mailed out to them with the order

Banc

*(4) Emergency motion - or Direct appl re:
1 or 3 judges*

Supersedeas

(5) cert mail rule - no check - etc - check thru mail - cert.

**BANC MEETING
COURT OF APPEALS OF GEORGIA**

February 5, 2003
1:30 p.m.
Third Floor Conference Room
Judicial Building

A G E N D A

- | | | |
|-------|--|--------------------------------|
| I. | Call Meeting to Order | Chief Judge J.D. Smith |
| II. | Approval of December Banc Meeting Minutes | |
| III. | Applications
- Granting All Non-Frivolous Domestic Relation Applications | Chief Judge J.D. Smith |
| IV. | Publishing Orders | Chief Judge J.D. Smith |
| V. | Reimbursement for Outside Organization with Expenses and Dues
- Illegible and Ineligible Reimbursements | Presiding Judge John H. Ruffin |
| VI. | Court's Centennial Report | Presiding Judge John H. Ruffin |
| VII. | Old Business | |
| VIII. | New Business | |
| IX. | Adjournment | |

**MINUTES OF THE BANC MEETING
OF THE COURT OF APPEALS OF GEORGIA**

December 17, 2002

The December Banc Meeting of the Court of Appeals of Georgia was held in the Third Floor Conference Room on Tuesday, December 17, 2002, at 11:00 a.m. Those present were:

Chief Judge G. Alan Blackburn
Presiding Judge Gary B. Andrews
Presiding Judge Edward H. Johnson
Presiding Judge J. D. Smith
Presiding Judge John H. Ruffin, Jr.
Judge Frank M. Eldridge
Judge Anne E. Barnes
Judge M. Yvette Miller
Judge John J. Ellington
Judge Herbert E. Phipps
Judge Charles B. Mikell, Jr.
Senior Judge Marion T. Pope, Jr.
Ms. Jan Kelley, Fiscal Officer
Mr. Bill Martin, Clerk/Court Administrator

I. CALL TO ORDER:

Chief Judge Blackburn called the meeting to order at 11:00 a.m.

II. APPROVAL OF THE MINUTES:

Judge Mikell made a motion to approve the Minutes of the September 5, 2002 Banc Meeting, as submitted. Judge Eldridge seconded the motion and the motion passed unanimously.

III. IOM CHANGES

Chief Judge Blackburn discussed some proposed changes to the Court's Internal Operations Manual, some of which were only to approve language, some were to change or clarify policy. The first item was a language approval for the Court's earlier action on donated leave. The item presented for approval was IOM IX.B.5. Presiding Judge Smith made a motion to approve the language which was seconded by Judge Eldridge and passed unanimously.

The next item was for language approval only dealing with the Court's Travel/Dues Policy, which had been approved by the Court via memorandum of May 8, 2001. After a thorough

discussion by the Banc members as to what dues would be reimbursed and what were proper submissions under the Travel/Dues Policy, Chief Judge Blackburn appointed a committee of Presiding Judge Ruffin, Judge Miller and Judge Mikell to study the issue and make recommendations, either as to items that would be approved and not approved and to make other such recommendations as the committee should deem appropriate. Chief Judge Blackburn asked Jan Kelley to serve as staff to the committee.

Presiding Judge Smith made a motion to approve the language change in the IOM, which motion was seconded by Judge Eldridge and passed unanimously.

The next IOM item dealt with the Protocol on Disqualification and Recusal of Judges. Chief Judge Blackburn stated Bud Tirey and Bill Martin had requested a change from the existing protocol to simplify the steps necessary for technical services and the clerk's office to make transfers from one judge's office to another in the case of a disqualification or recusal.

Judge Mikell made a motion to approve the changes, which was seconded by Judge Eldridge and passed unanimously.

Along the same lines, Chief Judge Blackburn stated the next IOM change dealt with conforming the judgment lines to the opinion header. Sometimes when a case is transferred from one judge to the other, while the judgment line accurately reflects the judges who signed off on the opinion, the opinion header does not.

Thereafter, there was a general discussion regarding the appropriateness of listing judges who are disqualified, or who were recused, and a discussion as to when it was appropriate to state a judge was recused and when it was appropriate to state a judge was disqualified.

Presiding Judge Johnson made a motion to approve the IOM change and to direct the clerk/administrator to prepare a memorandum for the Court as to the reason and purpose of stating whether a judge is disqualified or whether a judge is recused in the judgment line, the need for such action and the uniformity of such actions on the Court. The motion was seconded by Judge Phipps and passed unanimously.

The next IOM matter involved clarification of the language in XV.W.1 and provided that an opinion would circulate to twelve judges if either the majority opinion or a dissenting opinion is seeking to overrule a prior opinion of this Court. After a general discussion of the matter, Judge Eldridge made a motion to adopt the proposed IOM change, which was seconded by Judge Phipps. All judges voted in favor of the motion except Presiding Judge Smith and Presiding Judge Ruffin.

IV. INTERLOCUTORY APPLICATIONS

Chief Judge Blackburn brought to the attention of the Court the Court's prior actions of October 15, 2002 by memorandum regarding the treatment of the interlocutory applications. Chief Judge Blackburn stated there has been a concern on the Court that parties filing interlocutory

applications who have the right of a direct appeal should have the applications granted similar to the grant of an application under OCGA §5-6-35(j) in Discretionary Applications. Chief Judge Blackburn said there was a slight change in the earlier language approved by the Court to further define and clarify the matter.

There was a general discussion regarding the matter, and Judge Barnes stated she would like the opportunity to read and study the proposed language change before voting. Thereafter, it was decided that the revised language would be circulated to the Court via memorandum for vote and reported to the chief judge.

V. **BUDGET:**

Chief Judge Blackburn discussed with the Banc members the current budget situation. Jan Kelley distributed copies of the Court's budget and proposed changes to accommodate a three, four and five percent budget cut which may come from the Governor's Office and legislature.

After a general discussion about the autonomy of the Court of Appeals to create and present its own budget and the ultimate role in the budget process played by the legislature, Judge Eldridge made a motion that it continue to be the policy of the Court of Appeals of Georgia that only a majority vote of the Court or the General Assembly can amend or alter the Court's budget, and no other individual, agency or organization, including the Supreme Court, Judicial Council of the Administrative Office of the Courts, has the authority to amend or alter the Court's budget or represent the Court's budget to the legislature.

After a general discussion of the budget plans, the motion and the budget philosophy of this Court, Judge Eldridge's motion was seconded by Judge Mikell and passed unanimously.

VI. **CHIEF JUDGE G. ALAN BLACKBURN:**

Presiding Judge Smith thanked Chief Judge Blackburn for conducting an excellent Banc Meeting and also thanked him for his service as chief judge for the past two years. Chief Judge Blackburn thanked Presiding Judge Smith and the Court and adjourned the meeting at 12:10 p.m.

VII. **ADJOURN:**

There being no further business, and upon hearing a motion to adjourn, Chief Judge Blackburn adjourned the meeting at 12:10 p.m.

Respectfully submitted,



WILLIAM L. MARTIN, III
Clerk/Court Administrator
Court of Appeals of Georgia

Minutes approved by the Court
En Banc on the _____ day of _____, 2002



Court of Appeals

Memorandum

Bill

To: All Judges

From: J.D. Smith *JDS*

Subject: Banc meeting

Date: January 28, 2003

There will be a banc meeting on Wednesday, February 5, 2003 at 1:30 p.m. in the 3rd floor conference room. The purpose of this meeting is to discuss whether we should create a pilot project on domestic appeals similar to the one recently implemented by the Supreme Court. Attached to this memo you will find some data compiled by Bill Martin that may be helpful. These include: copies of documents from the Supreme Court describing their project; statistics on domestic applications in this court for the last three years; and partial results from an informal survey Bill conducted by contacting representatives of other state appellate courts around the country.

If anyone would like to add an agenda item, please submit it to Bill not later than noon on Monday, February 3.

DATE: January 13, 2003

CONTACT: Richard Diguette

Public Information Officer Georgia Supreme Court

(404) 651-9385

**SUPREME COURT OF GEORGIA:
DIVORCE AND ALIMONY PROJECT**

The Supreme Court will begin a Pilot Project to study and gather data on divorce and alimony cases. The Pilot Project will commence with all divorce and alimony discretionary applications filed with the Court on or after January 6, 2003, and will continue until December 16, 2003, unless extended by further order of the Court.

Under the terms of the Pilot Project, all discretionary applications filed in divorce and alimony cases will be automatically granted unless the application is found to be frivolous by the Court. If the Court finds that an application is frivolous, it will be denied, and the applicant as well as his or her attorney may be assessed a penalty of up to \$1000.

An attorney filing an application on or after January 6, 2003, must certify that the application "is not taken for the purpose of delay, harassment or embarrassment." Presiding Justice Leah Sears says that the certificate must also state that the lawyer is familiar with the trial court record in the case, and based thereon and his/her understanding of the applicable law, he/she has a good faith belief that the application has merit. He/she must also certify that he/she has been authorized by his client, the applicant, to file the application.

No certificate will be required of pro se litigants. Opposing parties may, but are not required to, file a response to the application within 10 days of docketing. Responses may be no more than 5 pages in length and are limited to the issue of whether the application is frivolous.

Thirty days from the date an application is docketed, the Supreme Court will decide whether to grant it, deny it as frivolous, dismiss it on procedural grounds, or transfer it to the Court of Appeals. When an application is granted, the Court will issue an order directing the applicant to file a notice of appeal in the trial court within 10 days.

Once the Supreme Court receives the record and transcript from the trial court, the case will be docketed and proceed as any other appeal. Oral argument in such cases, if requested in a timely manner, will be limited to 10 minutes for each side unless the Court directs otherwise.



Supreme Court
State of Georgia

STATE JUDICIAL BUILDING

Atlanta 30334

NORMAN S. FLETCHER, CHIEF JUSTICE
LEAH WARD SEARS, PRESIDING JUSTICE
ROBERT BENHAM
CAROL W. HUNSTEIN
GEORGE H. CARLEY
HUGH P. THOMPSON
P. HARRIS HINES
JUSTICES

SHERIE M. WELCH, CLERK
WM. SCOTT HENWOOD, REPORTER

January 6, 2003

New Procedure for discretionary applications in domestic relations cases

You have recently filed a discretionary application in a family matter that lacks the certificate required by a December 20, 2002, order of the Court.

The Court has initiated a pilot project related to divorce and alimony cases. Under this pilot project, divorce and alimony cases will be automatically granted unless the application is found to be frivolous by a majority vote of the Court. The pilot project commenced on January 6, 2003, until further order of the Court.

Discretionary applications in divorce and alimony filed by an attorney must now be accompanied by a certificate as follows: *"I, the undersigned attorney of record in the above-styled case, am a member of the State Bar of Georgia in good standing, and, as such attorney, do make this certificate of good faith as required by order of the Supreme Court of Georgia. I hereby certify that I am familiar with the trial court record in the above-styled case, and based thereon and my understanding of the applicable law, I have a good faith belief that this application has merit, and that it is not filed for the purpose of delay, harassment or embarrassment. I further certify that I have been authorized by my client, the applicant, to file this application. This the _____ day of _____, 20__."*

If the application is nevertheless found to be frivolous, it will be denied and a sanction of up to \$1000 may be imposed upon the attorney or party filing it.

If the discretionary is not frivolous, however, the Court will grant the application and direct that a notice of appeal be filed in ten days. Thereafter the appeal will proceed as any other appeal except that timely requested oral argument will be limited to ten minutes to the side. The argument will generally be scheduled for the third Tuesday of the month noted on the accompanying docket notice.

Enclosed please find a copy of the required certificate. Please return the completed original to the Court within 5 days. Because your original signature is necessary, please do *not* send it by facsimile.

Sherie M. Welch,
Clerk

In the Supreme Court of Georgia

Application No. _____

v.

I, the undersigned attorney of record in the above-styled case, am a member of the State Bar of Georgia in good standing, and, as such attorney, do make this certificate of good faith as required by order of the Supreme Court of Georgia. I hereby certify that I am familiar with the trial court record in the above-styled case, and based thereon and my understanding of the applicable law, I have a good faith belief that this application has merit, and that it is not filed for the purpose of delay, harassment or embarrassment. I further certify that I have been authorized by my client, the applicant, to file this application.

This the _____ day of _____, 20__.

Attorney for Applicant
State Bar No. _____

New Procedure for discretionary applications in domestic relations cases

Under this pilot project, divorce and alimony cases will be automatically granted unless the application is found to be frivolous by a majority vote of the Court. The pilot project will commence with all divorce and alimony discretionary applications filed on or after January 6, 2003, until further order of the Court.

Discretionary applications in divorce and alimony filed by an attorney must now be accompanied by a certificate, as follows: *"I, the undersigned attorney of record in the above-styled case, am a member of the State Bar of Georgia in good standing, and, as such attorney, do make this certificate of good faith as required by order of the Supreme Court of Georgia. I hereby certify that I am familiar with the trial court record in the above-styled case, and based thereon and my understanding of the applicable law, I have a good faith belief that this application has merit, and that it is not filed for the purpose of delay, harassment or embarrassment. I further certify that I have been authorized by my client, the applicant, to file this application. This the _____ day of _____, 20__."*

If the application is nevertheless found to be frivolous, it will be denied and a sanction of up to \$1000 may be imposed upon the attorney filing the discretionary.

If the discretionary is not frivolous, however, the Court will grant the application and direct that a notice of appeal be filed in ten days. Thereafter the appeal will proceed as any other appeal except that timely requested oral argument will be limited to ten minutes to the side. The argument will generally be scheduled for the third Tuesday of the month, except in August and December when the Court is in recess.

M E M O R A N D U M

TO: All Court Employees

FROM: Presiding Justice Leah Ward Sears
Justice George H. Carley

DATE: January 7, 2003

RE: New procedures for domestic cases

New procedure for divorce/alimony cases

Under this pilot project, divorce and alimony cases will be automatically granted unless the application is found to be frivolous by a majority vote of the Court. The pilot project will commence with all divorce and alimony discretionary applications filed on or after January 6, 2003, until further order of the Court.

1. Applications for discretionary appeal are filed, docketed, and assigned as previously. However, the docket notice (attachment B) will be modified to notify respondents that responses, if any, must be filed in 10 days, be no more than 5 pages, and be limited to the issue whether the application is frivolous. The application shall include a certificate by the applicant's attorney that the application "is not taken for the purposes of delay, harassment or embarrassment." (No certificate is required for pro ses.)
2. Central Staff will review the discretionary for jurisdictional and procedural defaults and prepare a very short red-tag memo.
3. Within 30 days, the assigned justice shall:
 - a. Circulate a vote memo attached to a red tag memo recommending transfer for jurisdictional and dismissal for procedural defaults; or
 - b. Circulate a vote memo of no more than one page setting out the reasons why the application is frivolous and recommending denial and, if appropriate, urging sanctions; or
 - c. Decide the application is *not* frivolous and should be granted, no memo is required.
 - (1) The assigned justice will then hold the application for the remainder of the 30-day period.

- (2) Each of the other six justices should review the petition and response, if any, and within the 30-days, inform the assigned justice in writing with copies to the other justices *only* if he or she would deny the application as frivolous.
 - (3) If any one of the six justices so advises the assigned justice, the application should be placed on the next banc agenda for discussion, or
 - (4) If no justice indicates that the application is frivolous, it is granted.
4. The original application should be returned, with appropriate orders if necessary, to the clerk's office with the notation on the front sheet that the application should be denied, dismissed or granted.
5. If granted, an order (attachment C) will issue from the clerk's office directing the applicant to file a notice of appeal in ten days.
6. Upon receipt of the record and transcript from the trial court, the clerk's office will docket the appeal on a new "F" wheel, which will be limited to divorce and alimony ("family"). Cases will be assigned anew on the "F" wheel by the computer. The docket notice (attachment D) will notify the parties that if oral argument is timely requested, it will be scheduled during the appropriate docketing month and that oral argument will be limited to ten minutes to each side. (All such oral arguments will be confined to one day, which will likely be the fourth ordinarily-scheduled day of oral argument in the month.)
7. Except for the time limitation imposed on oral argument, the appeal will proceed as any other appeal.
8. Data sheets will follow the case from discretionary application through appeal so that statistics may be analyzed during and at the end of the trial period. The data sheet will be attached to the original just under the cover sheet and should be completed by Central Staff, the assigned justice's office, and the clerk's office staff, as designated on the data sheets.



SUPREME COURT OF GEORGIA

Atlanta December 30, 2002

The Honorable Supreme Court met pursuant to adjournment.

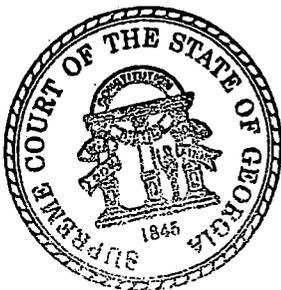
The following order was passed:

All applications for Discretionary Appeal in divorce and/or alimony cases filed pursuant to OCGA § 5-6-35 on or after January 6, 2003, must be accompanied by a certificate signed by the attorney of record, certifying that he or she has a good faith belief that the application has merit and that it is not taken for the purposes of delay, harassment or embarrassment. The certificate should be in the following form:

I, the undersigned attorney of record in the above-styled case, am a member of the State Bar of Georgia in good standing, and, as such attorney, do make this certificate of good faith as required by order of the Supreme Court of Georgia. I hereby certify that I am familiar with the trial court record in the above-styled case, and based thereon and my understanding of the applicable law, I have a good faith belief that this application has merit, and that it is not filed for the purpose of delay, harassment or embarrassment. I further certify that I have been authorized by my client, the applicant, to file this application.

This the _____ day of _____, 20__.

Attorney for Applicant
State Bar No. _____



SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from
The minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
Affixed the day and year last above written.

Shirley M. Kuleh

, Clerk

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

(404) 656-3470

Sherie M. Welch, Clerk

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Docketing Date: October 25, 1999

Sean Aaron Black
Black Law Offices, LLC
305 B West Savannah Street
Toccoa, GA 30577-

Case No. S00D0202

JUDITH CRYSTAL LINDSEY v. KYLE EUGENE LINDSEY

An Application for Discretionary Appeal has been docketed in the Supreme Court today and assigned the case number shown above.

Pursuant to a pilot project currently being undertaken by this court, all non-frivolous applications in divorce and/or alimony cases will be granted 30 days after the date on which the application was filed. If an opposing party wishes to contend that an application is frivolous, he or she must file a response of no more than five type written pages within ten days of the date on which the application is filed arguing only that issue to the Court.

Sherie M. Welch, Clerk

B



**Supreme Court
State of Georgia**

STATE JUDICIAL BUILDING

Atlanta 30334

NORMAN S. FLETCHER, CHIEF JUSTICE
LEAH WARD SEARS, PRESIDING JUSTICE
ROBERT BENHAM
CAROL W. HUNSTEIN
GEORGE H. CARLEY
HUGH P. THOMPSON
P. HARRIS HINES
JUSTICES

SHERIE M. WELCH, CLERK
WM. SCOTT HENWOOD, REPORTER

February 5, 2003

TO ALL COUNSEL:

RE: Application No. **S03D0999, Applicant v. Respondent**

The Supreme Court today granted the above referenced application for Discretionary Appeal.

The appellant's notice of appeal must be filed in the trial court within ten days of the date shown above. Once the record is received from the trial court and docketed in this Court, notices will be mailed to all counsel showing the date of docketing, the case number assigned, and the date of the oral argument, if requested within 20 days. The appellant's brief will be due in this Court within 20 days of docketing; appellee's brief will be due within 40 days of docketing, or within 20 days of the filing of appellant's brief, whichever is later. See **Rule 10**. Oral argument will be limited to 10 minutes for each side.

Sherie M. Welch, Clerk

By: _____

Richard Diguette

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

(404) 656-3470

Sherie M. Welch, Clerk

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Docketing Date: February 28, 2003

Attorney Name and Address

Case Number and Name

has been docketed in the Supreme Court today.

Oral Argument

This case is expected to be assigned to the May 2003, oral argument calendar. To have the case placed on the calendar, written request must be made to the Clerk within 20 days of docketing. Argument shall be limited to 10 minutes for each side. (See Rule 50)

Briefs and Costs

Appellant's briefs are due within 20 days of docketing (see Rule 10). No costs are due. Appellee's briefs are due within 40 days of docketing, or within 20 days of the filing of the appellant's briefs, whichever is later. When the due date for a filing falls on a Saturday, Sunday, or official holiday the time is extended to the next business day. The contents of properly addressed registered or certified mail shall be deemed filed as of the official postmark date. Documents delivered to the United States Postal Service or a commercial delivery company for overnight delivery shall be deemed filed on the date delivered as evidenced by the receipt provided.

Filing Format

Briefs, to be limited to 30 pages, are bound front and back in recyclable paper heavier than regular stationery and fastened, preferably with staples, on the left-hand side, the front cover bearing the style of the case and case number, as well as the attorney's name, address and bar number.

Extensions of Time

A request for an extension of time to file a brief, or to exceed the 30-page limitation (see Rules 12 and 20), must be made in writing to the Clerk and copy served on opposing counsel in advance of the due date in order that the brief may be timely filed should the request be denied.

Sherie M. Welch, Clerk



SUPREME COURT OF GEORGIA

Case No. S03DXXXX

Atlanta January 2, 2003

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

Name of Case

The discretionary application in the above-styled case having been deemed frivolous under Supreme Court Rule 6, a penalty of [up to \$1000] will be assessed against **NAME** and in favor of the respondent by the trial court upon remittitur.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from
The minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
Affixed the day and year last above written.

, Clerk

A P P L I C A T I O N F O R
D I S C R E T I O N A R Y A P P E A L

D3-016

Case No. S03D0627

DONALD MILLER v. ELIZABETH MILLER

Trial Court Order: December 20, 2002

Filed: January 6, 2003

Response by: January 16, 2003

Final order due by: February 5, 2003

Grant: _____ Was a certificate filed? _____
Deny: _____ (as frivolous)
Sanction: _____ Against? _____ Amount? \$ _____
Transfer: _____
Dismiss: _____
Other: _____

Data Sheet for Family Cases
APPLICATION DISPOSITION

Case number: _____

Judge number: D _____

I. To be filled in by Clerk's office:

- A. Was a certificate filed with the application? Y N
- B. If not, was a reminder letter sent? Y N

II. To be filled in by Central Staff:

- A. Date filed: _____
- B. By: attorney Pro se
- C. Number of issues enumerated: _____
- D. Jurisdiction: Circle all relevant
 - 1. Divorce
 - 2. Alimony
 - 3. Child Custody
 - 4. Child visitation
 - 5. Support enforcement/paternity (ex rel cases)
 - 6. Contempt
 - 7. Modification
 - 8. Other: _____
- E. Applicant: Husband Wife Third-party

III. To be filled in by Assigned Justice's office:

- A. Was a certificate filed? Date: _____
- B. Was a response filed? Y N
- C. Result. Circle one:
 - 1. Granted
 - 2. Dismissed for procedural defect
 - 3. Denied as frivolous
 - 4. Sanction imposed? Y N How much? _____
- D. Date judgment entered: _____

Data Sheet for Family Cases
APPEAL DISPOSITION

Case number: _____ Judge number: F _____

I. *Date discretionary application granted: _____

II To be filled in by clerk's office:

A. Date notice of appeal filed: _____

B. Date docketed: _____

C. Argument requested? Circle all relevant

1. By appellant

2. By appellee

D. Date argued: _____

III To be filled in by assigned justice's office:

A. Number of enumerations of error: _____

B. Precedent setting case? Y N

C. Date opinion issued: _____

D. Result: Circle one

1. Affirmed by Rule 59

2. Affirmed summarily

3. Affirmed

4. Affirmed in part; reversed in part

5. Remanded

6. Reversed

7. Dismissed as improvidently granted

8. Other

II To be filled in by Clerk's office:

A. Mfr filed? Y N

B. Date mfr ruled on: _____

C. Date remitted: _____

*Total elapsed time *in days* from action on discretionary application* to remittitur.: _____

DISCRETIONARY APPLICATIONS - DOMESTIC RELATIONS

The following applications were filed the week of January 13, 2003 - January 17, 2003

	<u>Docket Date</u>		<u>Certificate</u>
			<u>filed,</u> <u>requested,</u> <u>received</u>
S03D0660 (D6-017)	1/10/03	Love v. Love (pro se)	
S03D0667 (D7-017)	1/14/03	O'Grady v. O'Grady	X

GEORGIA COURT OF APPEALS
DOMESTIC RELATIONS FILINGS

TYPE OF DOMESTIC FILING	YEAR 2000			YEAR 2001			YEAR 2002			YEAR 2003*		
	NUMBER		PERCENT	NUMBER		PERCENT	NUMBER		PERCENT	NUMBER		PERCENT
	FILED	GRANTED	GRANTED	FILED	GRANTED	GRANTED	FILED	GRANTED	GRANTED	FILED	GRANTED	GRANTED
TOTAL DOMESTIC FILINGS	74	11	15%	67	11	16%	46	5	11%	20	3	15%
TERMINATION OF PARENTAL RIGHTS	2	1	50%	0	0	0%	0	0	0%	0	0	0%
ADOPTION	2	0	0%	4	1	25%	0	0	0%	0	0	0%
CHILD SUPPORT	10	0	0%	19	3	16%	9	1	11%	7	1	14%
CHILD CUSTODY	54	10	19%	37	7	19%	24	3	13%	11	2	18%
CHILD CUSTODY/ET AL	0	0	0%	1	0	0%	4	0	0%	0	0	0%
DIVORCE	5	0	0%	5	0	0%	8	1	13%	2	0	0%
VISITATION RIGHTS	1	0	0%	1	0	0%	1	0	0%	0	0	0%

* Cases docketed through 12/30/02.

DOMESTIC FILINGS

TOTAL APPLICATION 2000 : 000⁷⁴~~796~~

TERMINATION OF PARENTAL RIGHTS:	0002	0001
ADOPTION	0002	0000
CHILD SUPPORT	0010	0000
CHILD CUSTODY	0054	0010
CHILD CUSTODY/ET AL	0000	0000
DIVORCE	0005	0000
VISITATION RIGHTS	0001	0000

COURT OF APPEALS DOCKET SYSTEM

DOMESTIC FILINGS

TOTAL APPLICATION 2001	:	000067	
TERMINATION OF PARENTAL RIGHTS:	0000		0000
ADOPTION	0004		0001
CHILD SUPPORT	0019		0003
CHILD CUSTODY	0037		0007
CHILD CUSTODY/ET AL	0001		0000
DIVORCE	0005		0000
VISITATION RIGHTS	0001		0000

COURT OF APPEALS DOCKET SYSTEM

DOMESTIC FILINGS

TOTAL APPLICATION 2002	:	000046	
TERMINATION OF PARENTAL RIGHTS:	0000		0000
ADOPTION	0000		0000
CHILD SUPPORT	0009		0001
CHILD CUSTODY	0024		0003
CHILD CUSTODY/ET AL	0004		0000
DIVORCE	0008		0001
VISITATION RIGHTS	0001		0000

COURT OF APPEALS DOCKET SYSTEM

DOMESTIC FILINGS

TOTAL APPLICATION 2003	:	000020	
TERMINATION OF PARENTAL RIGHTS:	0000		0000
ADOPTION	0000		0000
CHILD SUPPORT	0007		0001
CHILD CUSTODY	0011		0002
CHILD CUSTODY/ET AL	0000		0000
DIVORCE	0002		0000
VISITATION RIGHTS	0000		0000

Web Questions: Domestic Relations Appeals

State /District	1. What appellate court(s) in your state has (have) jurisdiction of domestic relations appeals?	2. Must the appellate court(s) mandatorily accept a domestic relations appeal or does a party have to file an application which the court in its discretion may grant or deny?	3. What is the number of domestic relations cases filed in your appellate courts and the percentage these cases are of the total filings for the most recent year figures are available?
AK	Supreme Court	Mandatory all civil	20% of total excluding child in need of aid ¹
AR	Supreme Ct & COA; probably 95% COA	Mandatory if timely	15-20% of total ²
CAL	Court of Appeals (Districts)	Mandatory	5th District 36% = 2% of total appeals; 6th District 46 = 4% of total
CO	Court of Appeals	Mandatory	215 D. R. cases = 8.23% of total
KS	Court of Appeals	Mandatory	66 D. R. cases = 4% of total
KY	Intermediate Court of Appeals	Mandatory	Unknown
LA	Intermediate Circuit Court of Appeals	Mandatory, unless statute held to be unconstitutional	2ND CIR 44 D.R. cases = 13% of civil appeals; 3RD CIR-65 cases = 9.2% of civil appeals
MA	Court of Appeals	Mandatory	115 = 14%
MI	Court of Appeals	Mandatory for divorce & post judgment child custody; application for alimony, child support and visitation.	Estimate 8-10% of 3800 civil appeals = 304-380

¹ NCSC 2000 caseload statistics AK Supreme Court 529 filings so 20% = 106.

² NCSC 2000 caseload statistics AR Supreme Court and COA 1,937 filings so 15-20% = 291-386.

Web Questions: Domestic Relations Appeals Continued Page 2

State /District	1. What appellate court(s) in your state has (have) jurisdiction of domestic relations appeals?	2. Must the appellate court(s) mandatorily accept a domestic relations appeal or does a party have to file an application which the court in its discretion may grant or deny?	3. What is the number of domestic relations cases filed in your appellate courts and the percentage these cases are of the total filings for the most recent year figures are available?
PA	Superior Court	Mandatory from trial courts	653 in 2001 ³
TN	Civil Court of Appeals	Mandatory	Not Known.
WI	Court of Appeals	Mandatory if timely filed	Not known.
WY	Supreme Court	Mandatory	Not more than 10% ⁴
DC	Court of Appeals (which is only appellate court)	Almost all mandatory	6 D.R. appeals of 1466 but this does not include child abuse, neglect, termination of parental rights and dom. violence.

³ PA has two courts with intermediate appellate jurisdiction: Superior Court and Commonwealth Court. Superior Court had 8,131 cases in 2000. If the 2001 total was similar, then the 653 D.R. cases in 2001 would = about 8%.

⁴ WY does not have an intermediate appellate court. The Supreme Court had 364 total filings in 2000 so ten percent is about 36 cases.

its liability, since the alarm was
 raser or user but for third parties
 after not being warned. *Restate-*
motor Co. v. Williams, 85 Ga. App.
. Martin Motor Co., 76 Ga. App.
Co. v. Arbogast, 42 Ga. App. 666
 id purpose of the device is what
 the truck itself.

er had alarm mechanisms in its
 rchasers, there is evidence that it
 y of such safety devices.

r sold this rig without an alarm,
 ably foresee that an alarm would
 mpleted or thereafter, and there
 eted so as to present a blind spot
 o persons behind the truck. See
 also *Lewis*, supra; *Moody*, supra;
 ening cause factors which Navis-
 , the failure of a purchaser to add
 he pedestrian to observe an open
 foreseeable so as to cast a duty on
 ent of the cause of action. Of
 haser or modifier could be liable.

nternational Harvester could rea-
 did in fact occur.

ow the imposition of a duty. The
 relate to action which an ordina-
 e under the circumstances. Inter-
 a matter of law that an ordinarily
 install the alarm. Rather the evi-
 ble for about \$40, the cost could
 nternational Harvester knew how
 evidence of economic feasibility,
 ability. See *Verge*, supra.

pute regarding the following fac-

eseable the truck would be com-
 the creation of a blind zone;

ry practice, which relates to the
 by an ordinarily prudent person;
 required International Harvester
 nomic feasibility, cost relative to
 ild install, assuming it should be
 rucial versus good to have versus

unnecessary), technical feasibility, all of which involve a balancing
 process; see *Verge*, supra;

d. degree of foreseeability of this particular use, i.e., backing op-
 eration where there is a pedestrian whom driver cannot see (on scale
 of remote to certainty). Restatement 2d, Torts, §§ 395 and 291; *Dor-*
sey Trailers Southeast, supra at 172; *Ford Motor Co. v. Stubblefield*,
 171 Ga. App. 331, 335 (319 SE2d 470) (1984); *Pepper v. Selig Chem.*
Indus., 161 Ga. App. 548 (288 SE2d 693) (1982).

This nonresolution by undisputed evidence of the two primary
 areas in the element of duty in this case, foreseeability and reasona-
 bleness, precludes summary judgment to defendant Navistar.

Questions of negligence are ordinarily left for juries, except in
 plain, palpable, and indisputable cases. *Brooks v. Coliseum Park*
Hosp., 187 Ga. App. 29, 34 (1) (369 SE2d 319) (1988); *Beck v. Black-*
erby, 156 Ga. App. 15 (274 SE2d 68) (1980).

2. We have examined the material evidence which is in dispute,
 and we cannot say that plaintiff has shown Navistar's liability as a
 matter of law. Thus the trial court was correct in denying partial
 summary judgment to her.

Judgment affirmed in part and reversed in part. Carley, C. J.,
and McMurray, P. J., concur.

DECIDED NOVEMBER 28, 1989 —

REHEARINGS DENIED DECEMBER 19, 1989 — CERT. APPLIED FOR.

Product liability action. Fulton State Court. Before Judge Lam-
 bros.

Winburn, Lewis & Barrow, Gene Mac Winburn, John J. Barrow,
 for appellant.

Neely & Player, Edgar A. Neely III, Richard B. North, Jr., Long,
Weinberg, Ansley & Wheeler, Charles B. Marsh, for appellee.

Bell & Bell, John Bell, Beltran & Buckley, Frank J. Beltran,
William Q. Bird, Devine & Morris, Foy Devine, amici curiae.

A89A0937. WHALEY v. THE STATE.

(390 SE2d 677)

ORDER OF COURT.

This court having held that the issue of whether municipal courts
 have jurisdiction over state traffic offenses is one which requires a
 construction of the Georgia Constitution (*Kolker v. State*, 193 Ga.
 App. 306 (387 SE2d 597) (1989)), and the Supreme Court having ex-
 clusive jurisdiction over cases requiring construction of constitutional
 provisions (id.), it is hereby ordered that our decision in this case,

dated November 8, 1989, is vacated and this case is transferred to the Supreme Court.

DEEN, Presiding Judge, dissenting.

I dissent from the transferral of this case to the Supreme Court, for basically the same reasons I dissented in *Kolker v. State*, 193 Ga. App. 306 (387 SE2d 597) (1989). Moreover, the fact that the Supreme Court actually transferred this case to us in the first place should foreclose our conclusion that the issue to be resolved involves construction of the Constitution. Regardless of the eventual outcome of *Kolker*, the instant case is properly before this court.

Concerning the merits of the State's motion for rehearing, I believe we correctly determined that under the Constitution and OCGA § 40-13-21, municipal courts have jurisdiction over misdemeanor traffic offenses. Accordingly, the motion for rehearing should be denied.

I am authorized to state that Judge Beasley joins in this dissent.

DECIDED DECEMBER 19, 1989 —

REHEARING DENIED DECEMBER 19, 1989.

Motion to dismiss. Spalding Superior Court. Before Judge Miller.
Virgil L. Brown & Associates, Virgil L. Brown, Eric D. Hearn,
for appellant.

*W. Fletcher Sams, District Attorney, J. David Fowler, Assistant
District Attorney*, for appellee.

A89A0842. BANKS COUNTY SCHOOL DISTRICT
v. BLACKWELL et al.
(389 SE2d 782)

BANKE, Presiding Judge.

Ruby Mae Blackwell brought this action against Irma Griffin Payne and the Banks County School District to recover for personal injuries sustained when her car was struck by a school bus being driven by Ms. Payne. The collision occurred as the bus was entering the highway from the school grounds. Prior to the collision, a flagman stationed at the entrance to the school had stopped Ms. Blackwell's progress on the highway to permit several other buses to depart the premises. When it appeared to this flagman that the last bus had departed, he directed Ms. Blackwell to proceed. As she was doing so the bus being driven by Ms. Payne came around the corner of one of the school buildings and struck the rear portion of her vehicle.

A jury returned a verdict against both defendants, and the Banks County School District appealed to this court. In *Banks County School District v. Blackwell*, 191 Ga. App. 790 (383 SE2d 159) (1989),

A94A2187. IN RE SHAFER.
(451 SE2d 121)

BLACKBURN, Judge.

ORDER OF COURT.

Appellant, Herbert Shafer, moved this court to disqualify Judge Dorothy T. Beasley from participating in his appeal from the order of the Superior Court of Douglas County, holding him in contempt of court and from participating in any other case wherein he is a party or a lawyer for a party. The motion to recuse was assigned to Judge G. Alan Blackburn, as one not involved in the controversy, by Marion T. Pope, Jr., Chief Judge, Court of Appeals of Georgia.

Movant has filed an affidavit with his motion to recuse and attached thereto, copies of assorted letters covering the period December 6, 1989, through September 17, 1992, which he contends show that Judge Beasley has a "festering" bias towards him.

Movant contends that "[t]here has been an implacable, festering and long-standing enmity between Judge Beasley and [Movant]." Movant contends also, that Judge Beasley's failure to disclose, on the record, information (the existence of the letters), that he or his lawyer might consider relevant to the question of disqualification, is further evidence of her bias towards him.

The attachments which Movant has submitted in support of his recusal motion consist of three letters to governors of Georgia, giving his thoughts relative to Judge Beasley's potential appointment to the Georgia Supreme Court, two letters from Judge Beasley to Movant, which thank him for the copies of the governors' letters which she received, a copy of the Court of Appeals order dismissing as moot Movant's petition for emergency order, and one letter from Movant to Judge Beasley, advising her that he felt the governor had made an excellent Supreme Court selection.

While the rules of the Georgia Court of Appeals do not specifically provide for a recusal procedure, our Supreme Court has provided guidelines for such in *State v. Fleming*, 245 Ga. 700 (267 SE2d 207) (1980).

The standard for recusal is stated in *Birt v. State*, 256 Ga. 483 (350 SE2d 241) (1986). "In order to be disqualifying the alleged bias must stem from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge learned from [his or her] participation in the case. The alleged bias of the judge must be of such a nature and intensity to prevent the defendant from obtaining [an appellate review] uninfluenced by the court's prejudgment. To warrant disqualification of [an appellate judge] the affidavit supporting the recusal motion must give fair support to the charge of

RE SHAFER.
2d 121)

COURT.

ved this court to disqualify Judge ng in his appeal from the order of nty, holding him in contempt of other case wherein he is a party to recuse was assigned to Judge ved in the controversy, by Marion Appeals of Georgia.

ith his motion to recuse and at- tters covering the period Decem- , 1992, which he contends show bias towards him.

as been an implacable, festering Judge Beasley and [Movant].” asley’s failure to disclose, on the the letters), that he or his lawyer ion of disqualification, is further

has submitted in support of his s to governors of Georgia, giving s potential appointment to the from Judge Beasley to Movant, he governors’ letters which she peals order dismissing as moot , and one letter from Movant to felt the governor had made an

court of Appeals do not specifi- , our Supreme Court has pro- lemington, 245 Ga. 700 (267 SE2d

l in *Birt v. State*, 256 Ga. 483 e disqualifying the alleged bias ce and result in an opinion on at the judge learned from [his alleged bias of the judge must event the defendant from ob- nced by the court’s prejudg- 1 appellate judge] the affidavit e fair support to the charge of

a bent of mind that may prevent or impede impartiality of judgment. Under Canon 2 of the Georgia Code of Judicial Conduct, a judge must avoid all impropriety and *appearance* of impropriety. Canon 3.C. (1) provides that “Judges should disqualify themselves in proceedings in which their impartiality *might reasonably be questioned*, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party’s lawyer. It is not necessary that there be shown any actual impropriety on the part of the trial court judge. The fact that his impartiality might reasonably be ques- tioned suffices for his disqualification.” (Citations and punctuation omitted.) *Birt v. State*, 256 Ga. 483, 485-486, *supra*.

The material submitted by Movant does not contain a single doc- ument or fact which would support any claim of wrongdoing by Judge Beasley or bias on her part towards Movant. While the letters do show a historic enmity on the part of Movant towards Judge Beasley, the record reflects a unilateral condition and contains no indication that Judge Beasley has ever expressed bias or responded to the goad- ing commentary of Movant. Standing alone, the fact that an attorney or party has a bias towards a judge, will not support or authorize the recusal of such judge, absent a biased response by the judge to the bias of said attorney or party. There is nothing in this record which would authorize or require the recusal of Judge Beasley based upon her conduct or bias towards Movant.

The contention of Movant, that Judge Beasley’s failure to place the existence of Movant’s correspondence upon the record, demon- strates her bias towards him, is without merit. There was no require- ment that the subject history of Movant’s communications concerning Judge Beasley be placed by her on the record in the contempt appeal. Absent bias on the part of Judge Beasley, or the existence of facts or circumstances of which Movant or his attorney were unaware, from which a reasonable person might infer bias, there was no requirement that such material be placed upon the record. The purpose in placing on the record, any circumstances which might indicate a bias by the judge towards any party or attorney, is to provide notice of such cir- cumstances to said individuals for their edification and possible ac- tion. Inasmuch as Movant was the author of the desultory correspon- dence and the recipient of Judge Beasley’s “thank you” notes, he was fully aware of the history and had no need for notice thereof. Movant’s attorney was also timely aware of the history herein in- volved as indicated by Movant’s affidavit, executed August 10, 1994, which was submitted with the subject motion.

The remaining issue is whether or not Judge Beasley’s impartial- ity might reasonably be questioned, absent any wrongdoing on her part, based upon a human response to Movant’s attempt to influence others concerning her qualifications for appointment. Judges are rou-

tinely exposed to bad manners, untruths and insulting behavior, some of it by those who are demented, some by those who are simply boorish by nature, and some of it by those who have a specific purpose or agenda. It is even conceivable that a cunning attorney might attempt to create a record of bias by a judge, based solely upon a negative letter-writing campaign against such judge for the purpose of seeking the recusal of the judge in any matter involving such attorney.

Most judges understand that the type of conduct engaged in by one expressing his or her views about the judge for the purpose of influencing others in the decision-making process, is a constitutionally-protected right which they would be the first to defend. There is no basis therefore, to assume that such a campaign would result in a bias by a judge towards a citizen exercising his constitutional rights. Movant's conduct likewise creates no basis upon which to reasonably question the impartiality of Judge Beasley in the handling of the subject appeal.

"We note also the well-settled rule that it is as much the duty of a judge not to grant the motion to recuse when the motion is legally insufficient as it is to recuse when the motion is meritorious; nor does the simple filing of an affidavit automatically disqualify a judge." (Citations omitted.) *State v. Fleming*, 245 Ga. 700, 702, *supra*.

Movant's Motion to Recuse Judge Dorothy T. Beasley from the subject case and from any future cases in which Movant is a party or an attorney representing a party, is denied.

It is so ordered.

DECIDED DECEMBER 6, 1994.

Motion to recuse. Douglas Superior Court. Before Judge Emerson.

Spruell, Dubuc & Goldberg, Billy L. Spruell, for appellant.

Herbert Shafer, pro se.

David McDade, District Attorney, William H. McClain, Assistant District Attorney, for appellee.

A94A2433. THOMAS v. THE STATE.

(451 SE2d 516)

BLACKBURN, Judge.

Following a trial by jury, the appellant, Paul R. Thomas, Eddie L. Thomas and Vanessa Walker were found guilty of conspiracy to defraud the state and appellant was acquitted on the charge of criminal attempt to commit theft. On appeal, the appellant asserts that the evidence was insufficient to support his conviction of conspiracy in that: (1) the jury could not find him guilty of conspiracy because he

Under Georgia law, there is no authority to grant movant's request. OCGA § 17-16-4 requires the State to provide certain witness statements to a defendant who has been indicted, at least ten days prior to trial but is not applicable to an unindicted individual. Movant will hear everything the grand jury hears in considering his case and will thus have an advantage in preparing his sworn statement which ordinary citizens do not enjoy.

Movant's Emergency Motion is hereby denied, this seventh day of February 1996, 10:30 a.m.

DECIDED FEBRUARY 7, 1996.

Emergency Motion for Stay of Grand Jury Proceedings. Fulton Superior Court.

L. David Wolfe, for appellant.

Henry Newkirk, Assistant District Attorney, for appellee.

A95A2365. SOUTH GWINNETT ATHLETIC ASSOCIATION,
INC. v. NASH et al.
(469 SE2d 276)

JOHNSON, Judge.

After playing in a little league baseball game on property owned by the South Gwinnett Athletic Association, Inc., eight-year-old Adam Nash stayed on the Association's property to watch his younger brother play in a t-ball game. Adam climbed onto a cinder block wall, which was part of an unfinished set of new bleachers, to watch his brother's game. Mark Nash, Adam's father, was coaching third base in the t-ball game when he saw Adam standing on the wall and signaled for him to get off of it. Adam got off the wall and then walked into nearby woods where he found a three-foot chain. Adam returned to the wall and hooked one end of the chain around a bolt that was sticking out of the top of the wall. Adam then began climbing the side of the wall, using the chain to pull himself upwards. Adam was about halfway up the wall when it collapsed. Adam's leg was injured in the fall. Adam, by his next friend Mark Nash, and Mark Nash individually, sued the Association for failure to guard or warn against a dangerous condition. The lawsuit was tried before a jury, which returned a verdict in favor of the Association. The Nashes filed a motion for a new trial, challenging the sufficiency of the evidence and the jury charge. The trial court granted the Nashes' motion. The Association then moved for summary judgment on the ground that it cannot be held liable under Georgia's Recreational Property Act, OCGA § 51-3-20 et seq. The trial court denied that motion, but granted the Association a certificate of immediate review. This Court granted the Association's application for im-

ciation's application for im-

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benefit." *Cedeno v. Lock*
265) (1983). In the instai
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that the Association is a
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21 (1)." *Majeske v. Jeky*
(433 SE2d 304) (1993). I
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Our review of the transcript of the hearing reveals that when defendants' counsel asked the court to grant summary judgment on all counts contained in plaintiffs' amended complaint, plaintiffs' attorney failed to raise any objections and instead chose to argue the merits of the unconscionability claim. We find, therefore, that plaintiffs have waived any defect as to the timeliness of the granting of summary judgment on their amended complaint. See *Mobley v. Coast House*, 182 Ga. App. 305, 309 (355 SE2d 686) (1987).

Accordingly, we need not address the merits of plaintiffs' unconscionability claim or the jurisdiction of the State Court to grant the relief sought by plaintiffs in Count 3 of the amended complaint.

Judgment affirmed. Andrews, C. J., and Smith, J., concur.

DECIDED JANUARY 13, 1997 —

RECONSIDERATION DENIED FEBRUARY 5, 1997 — CERT. APPLIED FOR.

Action on lease. Fulton State Court. Before Judge Baxter.

Phillip J. Walsh, for appellants.

Awtrey & Parker, Toby B. Prodgers, Robert B. Silliman, Harvey D. Harkness, Levine & Block, Stephen H. Block, for appellees.

A96A2106. DOE v. DEPARTMENT OF CORRECTIONS.

(481 SE2d 837)

ORDER OF COURT.

Appellant Jane Doe No. 102 brought this action under the Georgia Tort Claims Act, OCGA § 50-21-20 et seq., claiming personal injuries arising out of the alleged mistreatment of inmates at the State Women's Prison at Hardwick in Baldwin County. Among other grounds of appeal, she asserts that OCGA § 50-21-28, the portion of the 1992 Georgia Tort Claims Act which places venue in the state or superior court of the county where the loss occurred, is in direct conflict with the venue provisions of Ga. Const., Art. VI, Sec. II, Par. VI, placing venue in the county where the defendant resides. The Supreme Court has exclusive appellate jurisdiction of such an issue. Ga. Const., Art. VI, Sec. VI, Par. II (1). *Beauchamp v. Knight*, 261 Ga. 608, 609-610 (409 SE2d 208) (1991), cited by Doe, is inapposite because that decision involved the Supreme Court's *general* equity jurisdiction, Ga. Const., Art. VI, Sec. VI, Par. III (2), not its *exclusive* jurisdiction to rule on the constitutionality of statutes.

The question was properly raised and preserved in the trial court, to the extent that Doe could do so, which is a prerequisite to consideration of such an issue on appeal. *Hardison v. Haslam*, 250 Ga. 59, 61 (3) (295 SE2d 830) (1982); *Walker v. Hall*, 226 Ga. 68, 69

(172 SE2d 411) (1970). ing on the question of ve ment's motion. She file venue, including two br those pleadings, Doe h with fair precision, she which she claims is viol the statute violates the requirements of *Blackst* 18 (334 SE2d 679) (198

This case does not jurisdiction in the Cour *pendent School System* (1996). The Fulton Cou ferring the case, and th the earlier order, neces although they did not e the trial court did not " ality because it based it found it unnecessary to *Ga. Bd. of Dentistry v.* 437) (1996). Nor is th became moot. See, e.g., (464 SE2d 865) (1995). ously resolved by the St sion involving a newly *Corrections*, 218 Ga. A to enactment of OCGA presented constitution appropriate for resolut Court.

Accordingly, it is h the Supreme Court.

A97A02

RUFFIN, Judge.

A jury found Undr of an officer, trafficking commission of a felony possession of cocaine cocaine with intent to

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APPLIED FOR.
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Liman, Harvey
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Haslam, 250
6 Ga. 68, 69

(172 SE2d 411) (1970). Doe did everything she could to obtain a ruling on the question of venue even before it was raised by the Department's motion. She filed three separate pleadings on the issue of venue, including two briefs addressing her constitutional claims. In those pleadings, Doe has shown the challenged part of the statute with fair precision, she has shown the provision of the constitution which she claims is violated by the statute, and she has shown how the statute violates the constitutional provision, thus fulfilling the requirements of *Blackston v. Dept. of Natural Resources*, 255 Ga. 15, 18 (334 SE2d 679) (1985).

This case does not appear to fall within any of the grounds for jurisdiction in the Court of Appeals as enumerated in *Atlanta Independent School System v. Lane*, 266 Ga. 657, 658 (1) (469 SE2d 22) (1996). The Fulton County trial court's preprinted form order transferring the case, and the Baldwin County trial court's order adopting the earlier order, necessarily found OCGA § 50-21-28 constitutional, although they did not expressly so state. This is not a case in which the trial court did not "distinctly pass" upon an issue of constitutionality because it based its decision upon alternative grounds and thus found it unnecessary to reach the constitutional question. See, e.g., *Ga. Bd. of Dentistry v. Pence*, 223 Ga. App. 603, 604 (1) (478 SE2d 437) (1996). Nor is this a case in which the constitutional issue became moot. See, e.g., *In the Interest of I. B.*, 219 Ga. App. 268, 269 (464 SE2d 865) (1995). Nor has the constitutional issue been previously resolved by the Supreme Court, as this is a case of first impression involving a newly enacted statute. Compare *Hoffman v. Dept. of Corrections*, 218 Ga. App. 363 (460 SE2d 882) (1995) (decision prior to enactment of OCGA § 50-21-28). This is a significant and clearly presented constitutional conflict with a recently enacted statute, appropriate for resolution by the Supreme Court rather than this Court.

Accordingly, it is hereby ordered that this case be transferred to the Supreme Court.

A97A0215. WESTER v. THE STATE.

(480 SE2d 921)

RUFFIN, Judge.

A jury found Undrell Wester guilty of misdemeanor obstruction of an officer, trafficking in cocaine, possession of a firearm during the commission of a felony, possession of a firearm by a convicted felon, possession of cocaine with intent to distribute, and possession of cocaine with intent to distribute within 1,000 feet of a public park.

on the security of the property." OCGA § 16-8-7 (a).

There was evidence that defendant knew of the burglary and deaths within minutes of when Michael McKoon and Michael Blankenship returned from their murderous spree, and that he assisted the youths in disposing of a car stolen from one of the murder victims. The jury was thus authorized to infer that defendant knew the crossbow (or compound bow), rifle, and military flashlight were stolen property when he exercised exclusive dominion or control by locking these items in his office. There was no fatal variance in the indictment's description of one stolen item as a crossbow versus a compound bow, for defendant was not unfairly surprised or deprived of a valid defense thereby. *Mitchell v. State*, 218 Ga. App. 330, 331 (461 SE2d 292). "After the fact knowledge' would tend to show a guilty retention under the Code and will sustain a conviction. There was ample evidence of this in the case sub judice." *Johnson v. State*, 135 Ga. App. 768, 769 (2) (219 SE2d 25). The enumeration of the general grounds is without merit.

Judgment affirmed. Johnson and Ruffin, JJ., concur.

DECIDED OCTOBER 17, 1996.

Possession of sawed-off shotgun, etc. Spalding Superior Court.
Before Judge Miller.

Mullins & Whalen, Harold A. Sturdivant, for appellant.

William T. McBroom III, District Attorney, Daniel A. Hiatt,
Assistant District Attorney, for appellee.

Motion Docket 237. KNAPP v. THE STATE.
(477 SE2d 621)

ORDER OF COURT.

In his emergency motion, Knapp claims error in the trial court's failure, after a sentence of imprisonment had been imposed, to make a fresh determination of appellant's custody pending a final decision on appeal of his conviction for driving under the influence in violation of OCGA § 40-6-391 (a) (5) pursuant to *Birge v. State*, 238 Ga. 88 (230 SE2d 895) (1976). Knapp also enumerates as error the trial court's refusal to grant him bond pending his appeal of his misdemeanor conviction.

The governing statute, OCGA § 17-6-1, which previously provided for bail in misdemeanor cases as a matter of right, was amended effective September 1, 1996, to provide that the grant or denial of an appeal bond in certain misdemeanor cases, including

convictions under OCGA § 40-6-391, is in the discretion of the convicting court. OCGA § 17-6-1 (g). The effect of this statutory change is to treat the subject misdemeanor cases in the same manner as felony conviction bail cases are generally treated.

Defendant was convicted on October 16, 1996, of driving under the influence in violation of OCGA § 40-6-391 (a) (5). On October 17, 1996, defendant was sentenced to twelve months, with the first five days to be served in jail, and the balance to be probated and a \$1,000 fine. On October 17, 1996, defendant filed a motion for new trial and a request for supersedeas bond which was denied without an evidentiary hearing by the trial court. On October 17, 1996, defendant's counsel requested that the court immediately hold a bond hearing. As of the date of this order the court has not set an appeal bond or scheduled a bond hearing in this case. This case is subject to OCGA § 17-6-1, as amended.

The standards to be applied in determining whether bail pending appeal should be granted or denied are described in *Birge*, supra and *Moore v. State*, 151 Ga. App. 413 (260 SE2d 350) (1979).

"The procedure required by the law is that '(A)fter a sentence of imprisonment has been imposed, the question of the appellant's custody pending final decision on appeal should be reviewed and a *fresh determination* made by the trial court.' (Emphasis supplied.) *Birge v. State*, 238 Ga. 88, 89, supra. In doing so, the court must give applicant notice of the hearing and a chance to appear and be heard.' *Moore v. State*, 151 Ga. App. 413, 414 (260 SE2d 350) (1979), modifying the procedure outlined and overruling anything to the contrary in the order of court in *White v. State*, 146 Ga. App. 147, 148 (245 SE2d 870) (1978). See *Edwards v. State*, 166 Ga. App. 270, 271 (304 SE2d 438) (1983), which noted *Moore's* refinement of the *White* procedure." *Ingle v. State*, 216 Ga. App. 836, 838 (456 SE2d 281) (1995).

While the trial court is free to exercise its discretion consistent with *Birge* in determining whether or not to grant bond, it is not free to refuse to exercise its discretion or to provide defendant the opportunity to be heard on this issue in an evidentiary hearing. "The trial court's refusal to consider [bond] constitutes a refusal to exercise . . . discretion." *Jones v. State*, 208 Ga. App. 472 (431 SE2d 136) (1993).

Under the clear language of the amended statute, the trial court is required to exercise discretion in determining whether to grant appeal bond. Pursuant to *Moore*, the trial court must hold an evidentiary hearing at which it may consider evidence presented during the trial of the case as well as additional oral or documentary evidence. The trial court must then answer four questions: 1) whether there is a substantial risk the defendant will flee; 2) whether there is a substantial risk the defendant will pose a danger to others in the community; 3) whether there is a substantial risk the defendant will

intimidate witness of justice; and intended only for questions will use also *Ingle*, supra

The trial court hearing on the questions raised in unable to hold the pending its holding

Knapp shall the bond hearing issues not herein

A96A2026

BLACKBURN, J.

The juvenile children's father, who for sexually molested appeal, the father reported by the evidence been granted to the & Children Service

1. In determining supported by sufficient reasonable inference court's ruling and found by clear and rights had been lost (417 SE2d 344) (1

In support of trial court should probative evidence father was convicted nile court did not claims he is in the viction.

Pretermitted the trial court proper As the record shows father in this criminal conviction to have

is in the discretion of the court. The effect of this statutory change in cases in the same manner as felons are treated.

On October 16, 1996, of driving under the influence of alcohol, O.C.G.A. § 40-6-391 (a) (5). On October 17, 1996, defendant was sentenced to twelve months, with the first five months to be probated and a \$1,000 fine. Defendant filed a motion for new trial and the motion was denied without an evidentiary hearing. On October 17, 1996, defendant's motion was denied without an evidentiary hearing. The court immediately hold a bond hearing. The court has not set an appeal bond or a hearing date. This case is subject to OCGA

determining whether bail pending appeal is described in *Birge*, supra (260 SE2d 350) (1979).

The law is that "(A)fter a sentence of imprisonment, the question of the appellant's custody should be reviewed and a fresh hearing should be held." (Emphasis supplied.) *Birge v. State*, 260 SE2d 350 (1979), modifying anything to the contrary in 46 Ga. App. 147, 148 (245 SE2d 366) (1979), 46 Ga. App. 270, 271 (304 SE2d 456) (1979), 46 Ga. App. 270, 271 (304 SE2d 456) (1979), 46 Ga. App. 270, 271 (304 SE2d 456) (1979), 46 Ga. App. 270, 271 (304 SE2d 456) (1979).

In exercising its discretion consistent with the law, if the court does not grant bond, it is not free to provide defendant the opportunity for an evidentiary hearing. "The trial court's refusal to exercise its discretion . . . is reversible error." 46 Ga. App. 472 (431 SE2d 136) (1993).

Under the amended statute, the trial court must determine whether to grant bond. The trial court must hold an evidentiary hearing on the evidence presented during the hearing, whether oral or documentary evidence. The court must answer the following questions: 1) whether there is a danger to the defendant; 2) whether there is a substantial danger to others in the community; 3) whether the defendant will

intimidate witnesses or otherwise interfere with the administration of justice; and 4) whether it appears the appeal is frivolous or intended only for delay. An affirmative answer to any of these four questions will uphold denial of bond. *Moore*, supra at 414, n. 1. See also *Ingle*, supra.

The trial court is ordered to hold, *immediately*, an evidentiary hearing on the question of Knapp's appeal bond so as to prevent the issues raised in this case from becoming moot. If the trial court is unable to hold this hearing *instanter*, the court shall release Knapp pending its holding of the hearing herein provided.

Knapp shall be entitled to appeal the ruling of the trial court on the bond hearing as provided by law and to address therein all other issues not herein addressed.

A96A2029. IN THE INTEREST OF J. E. L. et al., children.
(477 SE2d 412)

BLACKBURN, Judge.

The juvenile court terminated the parental rights of these children's father, who is serving a prison sentence in excess of 100 years for sexually molesting them. Their mother is deceased. In this appeal, the father claims that the lower court's ruling is not supported by the evidence and that custody of his children should have been granted to his parents rather than to the Department of Family & Children Services (Department). We reject both his arguments.

1. In determining whether a termination of parental rights is supported by sufficient evidence, we construe that evidence and all reasonable inferences from it in a light most favorable to the trial court's ruling and ask whether a rational trier of fact could have found by clear and convincing evidence that the natural parent's rights had been lost. *In the Interest of L. F.*, 203 Ga. App. 522, 523 (417 SE2d 344) (1992).

In support of his insufficiency claim, the father argues that the trial court should not have considered his criminal convictions as probative evidence because those convictions were not "final." The father was convicted of molesting his children in 1991, and the juvenile court did not conduct its hearing until 1995. But the father claims he is in the process of seeking an appeal from his criminal conviction.

Pretermitted whether such an appeal would be viable, we find the trial court properly considered the convictions and incarceration. As the record shows, at least one of the children testified against the father in this criminal trial, and the court properly considered the conviction to have "a demonstrable negative effect on the quality of