

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

**November 18, 2003**

The November Banc Meeting of the Court of Appeals of Georgia was held in the Third Floor Conference Room on Tuesday, November 18, 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  
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:**

Judge Miller made a motion to approve the October Banc Minutes. The motion was seconded by Judge Phipps and passed unanimously.

**III. WRITTEN COURT HISTORY:**

Chief Judge Smith called upon Presiding Judge Ruffin, Chair of the Court's Centennial Committee, for a report on the written Court History. Presiding Judge Ruffin stated several of the judges had met with Professor E.R. Lanier on November 12, and that Professor Lanier was ready to proceed with the Court History and has the full support and resources of Georgia State Law School.

Presiding Judge Ruffin said there was a discussion with Professor Lanier whether to proceed with the Court History as a monologue or anthology. Additionally, there was a general discussion regarding the editorial content and the control regarding the Court History.

Presiding Judge Andrews recommended Presiding Judge Ruffin discuss with the Law Department the Court's rights and duties as to any copyright or proprietary interests that the Court or the state may have in the Court History. Judge Mikell made a motion that the Court authorize Presiding Judge Ruffin to do the things necessary in dealing with the Law Department and Professor Lanier regarding the Court History as a monologue or anthology. The motion was seconded by Judge Adams and passed unanimously.

Chief Judge Smith said that he wanted the judges to know that while the Court may have the right to review the drafts, the editorial control of the work would be with the author.

**IV. AMENDMENT TO RULE 4:**

Chief Judge Smith then asked the Court to look at the Certified Mail Rule of the Court of Appeals, Rule 4 and Rule 13 of the Supreme Court, which is an expansion of the Certified Mail Rule to include commercial carriers. Chief Judge Smith said the strict adherence to our Certified Mail Rule sometimes conflicts with the common sense reality that Certified Mail, while being committed to the mail in a timely fashion, most times arrives at the Court many days later than the next day courier service. Chief Judge Smith suggested the Court look at the Supreme Court's Rule as it deals with carrier delivery.

After a thorough discussion of the matter, Judge Mikell made a motion that the Court of Appeals adopt in essence the rule propounded by the Supreme Court as it deals with mail delivered by courier. The motion was seconded by Presiding Judge Johnson. All judges voted in favor except Presiding Judge Andrews who voted against the motion. Chief Judge Smith directed the clerk to prepare such a rule and advertise it to be implemented by January 1, 2004.

**V. PROCEDURE FOR NON-PANEL JUDGE TO REQUEST CONSIDERATION OF A CASE BY ALL TWELVE JUDGES:**

Mr. Martin reported the next three items on the Agenda were placed there for discussion purposes only. He said he was not requesting nor did he expect the Court to take any action on these items at this time. The first deals with a procedure for a non-panel judge to request consideration of a case by all twelve judges. Mr. Martin attached a copy of OCGA §15-3-1 which deals with the issue. The clerk said neither our rules nor the Internal Operations Manual provides for a procedure for non-panel judges to request consideration of an appeal by the entire Court.

Presiding Judge Ruffin asked Mr. Martin to check with the Eleventh Circuit to see how that Court dealt with this issue. Chief Judge Smith asked all the judges to think about the issue which may be addressed at a later time.

**VI. PROTOCOL ON CERTIFIED QUESTIONS TO THE SUPREME COURT:**

Mr. Martin said the Court's Internal Operations Manual (IOM) addressed the issue of certified questions but did not specifically state how questions would be certified. Contained in the handout materials was a proposed IOM change which was the product of the clerk's consultation with Presiding Judge Ruffin. Mr. Martin asked the judges to review the proposed IOM change and offer any comments or suggestions they felt appropriate.

Presiding Judge Ruffin also suggested the Court may want to look at a protocol for requesting opinions from the attorney general. Presiding Judge Blackburn suggested that Mr. Martin meet with the Rules Committee and come up with draft proposals on these issues and treatment of opinions on equal Divisions if the case is transferred to the Supreme Court.

**VII. TREATMENT OF OPINIONS ON EQUAL DIVISIONS CASES TRANSFERRED TO THE SUPREME COURT:**

The clerk stated the Court currently has a case in which there was an equal split on one division of the Court's opinion and an unanimous concurrence on the second division. Mr. Martin distributed to the Banc copies of orders and opinions which had been issued by the Court in the past. Mr. Martin said this situation occurs rarely, but when it does occur, there seems to be no consensus as to how the Court treats the matter, whether by opinion or order.

Mr. Martin stated it appeared opinions were never published, but were transferred to the Supreme Court via order referencing a draft opinion. He said he was looking for some guidance from the Court as to how the Court would like these matters treated. After a thorough discussion on the matter as to how to deal with the general issue, it was decided that matter would be discussed by the Rules Committee but the Court would deal with the current case which is on the Distress List.

Judge Mikell made a motion that the case be transferred to the Supreme Court no later than Friday. The motion was seconded by Judge Miller, passed unanimously.

Thereafter, there was a general discussion as to the procedure in which the Court would decide and transfer the case and how the opinion was to read. After several suggestions, the Court En Banc directed Mr. Martin to amend a proposed order to show Judge Barnes' name coming before Judge Eldridge's name in the transfer order and to prepare an opinion which had a judgment of transferred but parenthetically set out the vote of the Court, by number only, as to the first and second divisions.

VIII. ADJOURN:

There being no further business and upon hearing a motion to adjourn, Chief Judge Smith adjourned the meeting at 11:00a.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