

9/2/03



FROM:

Presiding Judge Blackburn

TO:

Bill Martin

See our discussion.

[Handwritten signature]

DEFIBRILLATORS

Student deaths start push for device

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

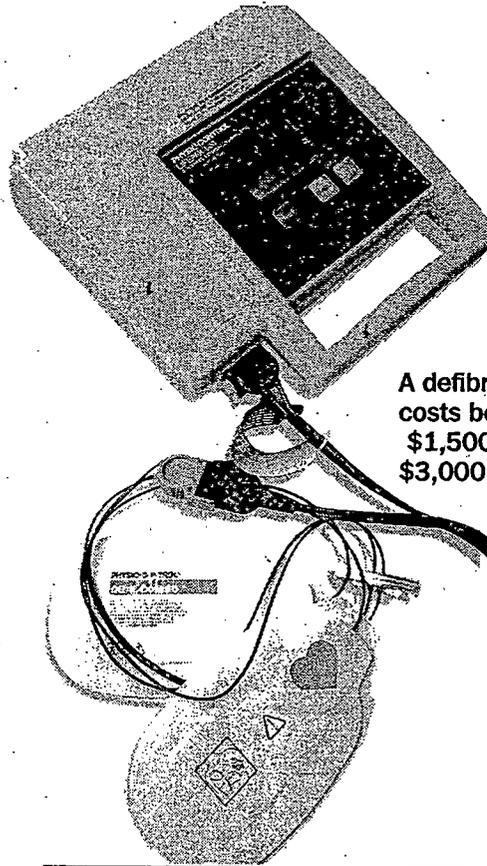
About the size of a lunchbox, an automated external defibrillator can resuscitate victims of sudden cardiac arrest with an electrical charge that restores normal heartbeat.

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.



Court of Appeals

Memorandum

To: Chief Judge J.D. Smith
From: *William L. Martin, III*
Subject: Thomson West Purchase of Briefs
Date: February 24, 2004

Attached please find a letter I received by facsimile transmission from Mr. Thomas C. Leighton of West Group. Basically, West Group would like to have copies of our Briefs to make them available as a part of their West Law service.

There are some up sides and down sides to this endeavor. Obviously, the up side is that we get to keep the money we receive from copying costs. However, once the Legislative Budget Office and/or the Office of Planning and Budget realize that our income from copying costs will go up significantly, I am certain they would cut our appropriations elsewhere.

The down side is that it would be quite time consuming to make copies of these Briefs available, whether we make the copies or mail them to West Group to make the copies. Of course, we could require an additional copy from the attorneys, but I am not sure I would want to make the lawyers do the extra work to generate income for us.

At any rate, please call me when you get a chance so we can discuss this.

Thank you.

/ld

Attachments

THOMSON

Fax Cover Sheet

From Mosimann, Robert

Company WEST

Department

Phone

Fax

To William L. Martin, Clerk and Cou

Fax 14046516187

Company

Date 19-FEB-2004

Subject Georgia Court of Appeals briefs

COMMENTS:



Thomas C. Leighton
Vice President
Government Relations and Information Acquisition

610 Opperman Drive
Eagan, MN 55123
Telephone 651.687.5676
Fax 651.687.5686
E-mail tom.leighton@thomson.com

February 19, 2004

William L. Martin III
Clerk/Court Administrator
Georgia Court of Appeals
334 State Judicial Bldg.
Atlanta, GA 30334

FAX: 404.651.6187

Dear Bill,

Per our recent conversation, our initiative to make state appellate briefs available on Westlaw is progressing and has been well received. We now have briefs for the Georgia Supreme Court available back to 1990.

Many courts have reported that having the most current briefs on Westlaw is particularly useful for judges preparing for oral argument. For the Georgia Court of Appeals, we would like to make newly filed briefs available for civil cases on an ongoing basis, and archival briefs for civil cases back one or more years. I noticed that your Rule 42 indicates that court records are retained for only one year; we are most interested in prospective briefs as they are filed, and perhaps accumulating an archive on Westlaw will be of benefit to your office.

The arrangements that we make to obtain briefs vary from court to court depending on their specific needs. Where documents are available in paper only, we scan them to create electronic files for Westlaw. Most scanning is done by our facility in Philadelphia, PA; usually, we provide boxes and labels to ship briefs at our expense on a weekly basis. If your court does not have an extra copy of briefs, we can scan the documents and return them to you. These are typical arrangements, but we have flexibility to tailor the process to your needs.

I will call you to discuss specific arrangements. If you have any questions or concerns in the meantime, please call either myself or Rob Mosimann at (651) 848-7838.

We appreciate your assistance in meeting our commitment to provide the highest level of service to our customers on the bench and bar.

Sincerely,

Thomas C. Leighton
Vice President
Government Relations and Information Acquisition

From: "Leighton, Tom" <tom.leighton@thomson.com>
To: "Bill Martin (E-mail)" <martinw@appeals.courts.state.ga.us>
Date: 4/19/04 11:53AM
Subject: WEST BRIEFS PROJECT

Dear Bill,

Thanks for taking the time to discuss West's briefs project with me last Friday. While we are willing to pay the Court to get your archival briefs information for display on Westlaw a better option for both sides may be to strike a barter deal. In return for your providing briefs we would be willing to add access to Georgia Supreme Court and Court of Appeals briefs to your current Westlaw account. Judges and law clerks have told us that being able to access briefs on Westlaw is a very useful feature. As we discussed, the briefs are fully searchable and linked to the cases cited within them and are fully integrated into KeyCite, West's citator service.

Please let me know if there are any questions likely to come up at the meeting that I can address in advance. I appreciate your bringing our proposal before the court and look forward to continuing the discussion.

Sincerely,

Tom Leighton
VP Information Acquisition
West
610 Opperman Drive
Eagan, MN 55123
651-687-5676

Survey Responses Re: Providing Briefs to Thomson/West

Alaska - Supreme Court & Court of Appeals	Not yet. In discussions with West. Expect to agree with some limits. Concerns: Attorney unease about release of work product; privacy issues including protection of the names of victims & children and data mining of personal information.
Arkansas - Supreme Court & Court of Appeals	Not yet. Court is considering it now. Will probably permit West to publish briefs.
California - Supreme Court	Yes. Court provides briefs to State Law Library & three county law libraries. One of the county law libraries obtained permission to send its copy to West. Recently the Court began to send briefs directly to West in exchange for microfiche for the Court and the 4 libraries as well as online access to the briefs. Lexis has now expressed interest in obtaining a copy of the briefs.
Colorado - Supreme Court & Court of Appeals	Yes. Supreme Court. Provides briefs to West. Does not receive compensation. Not yet, Court of Appeals. Approached by West but has not agreed yet. Concerns: 80% of opinions unpublished and privacy of sexual assault victims.
D.C. Court of Appeals	No
Delaware - Supreme Court	Not Yet.
Florida - 1st & 4th District Courts of Appeals	No, 1st District. Would require copying paper briefs. No, 4th District. Only recently approached.
Illinois - Supreme Court	Not yet. Court has been approached.
Kansas - Supreme Court & Court of Appeals	Yes. Court provides law library extra set of copies for shipment to West. Library is using own copy to provide briefs back to 1995 to West. If any compensation, does not cover costs.

Kentucky - Supreme Court	Not yet. A paper copy of the briefs in cases that are scheduled for oral argument are scanned by a state law school library and placed on its website. West has requested approval of its use of these electronic briefs, but this has not been formalized yet. The librarian has worked with the Court to ensure confidentiality of parties in certain types of cases.
Louisiana - 1st Circuit Court of Appeals	Not yet.
Massachusetts - Supreme Court & Court of Appeals	Yes, Supreme Court. Reporter of Decisions is providing West briefs. Not yet, Court of Appeals. Proposal has been made to Court of Appeals. Both courts paid the Social Law Library to microfilm briefs which were provided to subscribers for a fee. Concerns: Library cannot afford to do just the Court of Appeals briefs; privacy of sexual assault victims, attorneys are upset that West will be able to profit from their work product. The West proposal is to provide free microfiche and an electronic copy of the briefs for the Court's document management system.
Maryland - Court of Appeals	Yes. West picks up paper briefs each week and returns them the following week since there are no extra copies. Maryland receives no compensation.
Minnesota - Supreme Court & Court of Appeals	Not yet, has been contacted. Court provides two copies of the briefs to the state law library. Library microfilms one and permits public access to the other paper copy. Concerns: West services will result in public copy being taken off site and replaced by only a subscription service.
Missouri - Western Distr. Court of Appeals	Not yet contacted by West.
Nevada - Supreme Court	Not yet. Concerns about privacy of parties and the point at which the brief would be provided to West. If the brief is provided as soon as filed, the Court would have to update if it later received a corrected or amended brief.
New Mexico	No
North Carolina - Supreme Court	Yes. Briefs are already on the web. No fee.

North Dakota - Supreme Court & Court of Appeals	Not contacted by West. N.D. has already posted briefs on their own website and, thus, they are available to West from the web. The Court webmaster (a justice) monitors and redacts, as necessary, names for confidentiality reasons.
Pennsylvania - Middle District Supreme Court	No. Court currently ships briefs to various law libraries in the state.
Tennessee - Supreme Court	No. Court made a decision not to provide briefs to West.
Texas - Supreme Court	Yes. Court provides briefs. The Court receives access to Westlaw electronic briefs at no charge as compensation for the briefs.
Virginia - Supreme Court	No. Court is inclined to refuse West because West would charge a fee for access. Instead, the University of Richmond Law School is interested in providing the same service to the public without a fee. The Court is considering this option.
West Virginia - Supreme Court	Not yet, under consideration. Satisfied with the Court's current process which is to post briefs in selected cases of substantial public or media interest on its on web page by scanning the documents. The Court plans to expand this process to include all cases orally argued. Concerns: Confidentiality of parties in certain cases; West would provide the Court only a PDF version of the brief which the Court would be constrained from posting until West completes its process; and there would be no free public access unless the Court continued its web posting.
Wisconsin - Supreme Court & Court of Appeals	Yes. Law library provides briefs to West, Univ. of Wisconsin Law School and others on CD. The Univ. has put the briefs online. West paid \$25,000 for briefs last fall and receive CD updates at \$25 per CD.
U.S. Court of Appeals for the Armed Forces	No. Has not been contacted by West.
U.S. 11th Circuit, Court of Appeals	No. In the past, the Court did send briefs to a company now owned by West. The Court currently sends copies of the briefs to the Library of Congress and West obtains copies from that Library. Recent civil briefs are online through the PACER system.

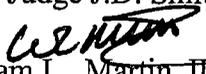
April 15, 2004



Court of Appeals

Memorandum

To: Chief Judge J.D. Smith

From: 
William L. Martin, III

Subject: 2004 Legislation

Date: April 19, 2004

Attached please find a short synopsis of several bills which were in the legislature and had the opportunity to effect courts. As you can see from Holly's review, only two bills passed.

Thank you.

/ld

Attachments

2004 Legislation of Interest to the Court of Appeals of Georgia

Bills Passing Both Houses

*HB1450 **Declaration of Judicial Emergency; Appeal.** Sponsors: Rep. Bordeaux, Campbell, Stokes and Fleming. Adds new code sections O.C.G.A. §§ 38-3-(50-56) providing for declaration of a judicial emergency by order, extension of certain deadlines, and appeal of that order to the Court of Appeals with a further right of appeal to the Supreme Court. Provides that an appeal shall be filed no later than 45 days after the expiration of the judicial order, filing in the superior court, waiver of costs, and immediate hearing following the procedure of emergency motions.

*SB411 **Supersedeas Bonds.** Sponsor: Sen. Tanksley. Amends O.C.G.A. §5-6-46 to provide in a civil case appeal that the trial court, upon motion of the appellee, may require another form of security as an alternative to a supersedeas bond; changes limit on the amount of bond or security to no greater than the amount of the judgment and no greater than \$25 million regardless of the value of the judgment. Casts provisions in gender neutral language. Revises O.C.G.A. §9-12-134 to refer to the appropriate sections of the amended O.C.G.A. §5-6-46.

Bills which Failed to Pass

*HB322 **Appellate Procedure Changes.** Sponsors: Rep. Moraitakis, Campbell, Oliver, Ralston, & Stokes Suggested changes from State Bar Appellate Practice Section. Amends O.C.G.A. §§5-6-34, 35, 39 and 9-11-56 consolidating and clarifying code provisions on direct appeal versus applications and providing for extensions of time to file applications.

*HB869 **Court Fines & Fees Increase.** Sponsors: Rep. Coleman, Jenkins, and Stephenson. Failed at Conference Committee stage. Amends O.C.G.A. Title 15 increasing certain court fees for the purpose of funding the indigent defense system. Original bill designated AOC as collection agent, but Senate substitute redefines membership of Superior Court Clerks Cooperative Authority and designates it collection agent for certain fees, surcharges and penalties collected by trial courts. As a result of this bill's failure to pass, the Governor intends to call a special session for the purpose of balancing the budget and funding the recently created indigent defense system.

*HB1215 **Application Process Not Apply to Zoning or Land Use Issues.** Sponsor: Rep. Richardson Amends O.C.G.A. §5-6-35 creating an exception for cases involving zoning or land use issues from the provisions of this code section requiring certain cases to be appealed by application.

HB1387 **Attorney Fees; Appeal by Application.** Sponsors: Rep. Heard, Sheldon, Post, Crawford, Marin & Floyd Adds new code section O.C.G.A. §9-15-16 to provide attorney's fees and litigation expenses in any civil action in any court to the prevailing parties upon motion and to provide for an appeal by application.

HB1399 **Medical Malpractice Expert Witness Qualifications and Testimony; Direct Appeal.** Sponsors: Rep. Porter, Bordeaux, Parrish, Skipper, & Campbell, etc. Adds new code sections

O.C.G.A. §§ 9-11-37.1 and 24-9-67.1 and amends O.C.G.A. §24-9-67. Provides that in a medical malpractice case, a plaintiff may take a direct appeal from an order dismissing a defendant or the action when the order was the result of plaintiff's failure to designate a expert witness qualified under this act. Tolls statutes of limitation, repose, and renewal of actions during appeal.

*HB1455 **Continuance when General Assembly Member Is Party or Attorney.** Sponsors: Rep. Buck, Smyre, Hugley & Buckner Adds O.C.G.A. §9-10-150.1 and amends O.C.G.A. §§ 9-10-150 and 17-8-26. Provides that continuance shall apply to days that the general assembly member is attending a legislative committee meeting as well as attendance of the general session and provides that the continuance will be granted upon written notice to the court.

HB1490 **Change Concurrent Jurisdiction of Superior and Juvenile Courts and Provisions regarding Transfer of Serious Violent Felony Cases; Eliminates Appeal of Transfer Decision.** Sponsors: Morgan, Stokes, Oliver, Sinkfield, Bruce Amends O.C.G.A. Title 15 Chapter 11 and O.C.G.A. §17-10-14. Although the original bill eliminated appeal of the decision to transfer a juvenile from the superior to the juvenile court, the House Substitute eliminated this provision from the bill as well as making other substantial changes.

SB45 **Demand for Trial/ Appeals.** Sponsors: Sen. Clay, Tanksley & Hamrick. Amends O.C.G.A. §17-7-170 to provide that if a case in which a demand for trial was filed is reversed on appeal, a new demand must be filed during the term of court the remittitur was received by the trial court clerk or the next succeeding term.

SB435 **Certification of Class Actions; Appellate Procedures.** Sponsors: Tolleson, Price, Johnson & Unterman Amends O.C.G.A. §9-11-23 (f) to provide procedures for certification of a class; appeal of an order either certifying or refusing to certify a class in the manner of a final order; and a deadline for filing the appeal of 42 days from the order. This procedure does not affect the right of a party after final judgment to appeal although if it is the second appeal, it shall be on the record and considered on the basis of any change in the facts or law since the earlier decision. The action in the trial court is stayed until adjudication of the appeal.

* Bills which passed at least one House of the 2004 Legislature.

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.

O. TRANSFERS TO AND FROM THE SUPREME COURT

1. To: Supreme Court

a. A case shall be transferred from the Court of Appeals to the Supreme Court if (a) jurisdiction lies in the Supreme Court rather than this Court or (b) when there is an equal division of the all the judges of this Court when sitting as a body to decide a case.

~~c:~~ b. The assigned central staff attorney shall draw the entire order on of transfer when jurisdiction is proper in the Supreme Court.

~~b:~~ c. Each judge shall devise a system in his/her office to ~~ferret out early~~ identify as soon as possible those cases over which the Supreme Court, rather than this court, has jurisdiction, for prompt transfer. Transfers at the end of a term should be ~~prevented~~ avoided.

~~a:~~ d. Only the order of transfer shall be sent to the Supreme Court along with the case, unless the transferring judge desires the opinion be published. The remittitur does not go out. The assigned judge's office shall be responsible for instructing the clerk to send the order of transfer with the case to the Supreme Court. The assigned judge to the case may also send up a copy of the file memorandum analyzing the reasons for transfer. At the assigned judge's discretion, he or she shall determine whether an opinion will be published and whether a copy of the file memorandum stating the reason for transfer shall be sent to the Supreme Court.

e. A remittitur is not issued when a case is transferred to the Supreme Court.

2. From: The Supreme Court:

a. The docketing date in this Court of a case transferred from the Supreme Court is the date on which the record is received in this Court.

b. When no briefs have been filed and an appeal is transferred from the Supreme Court and docketed in this Court, the time for filing briefs runs from the date of docketing in this Court.

c. If appellant's brief and enumeration of errors and appellee's brief have been filed in the Supreme Court, no additional briefing is required in this Court.

d. However, the time for filing of the appellees' brief always runs from the date of filing of appellant's brief and enumeration of errors, whether the appellant's brief and enumeration of errors is filed in this Court or the Supreme Court.

W. OVERRULING PRIOR CASES

[SECTION W. REMOVE ITEMS 6 AND 7 AND CREATE A NEW SECTION. RE-NUMBER REMAINING SECTIONS]

X. DECISIONS BY WHOLE COURT (TWELVE JUDGES)

~~6-1.~~ Any judge of this Court may request a case under consideration by a division or two divisions plus a seventh judge be presented for decision to the whole Court. ~~In all cases which involve one or more questions which, in an 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 members of the Court, the questions may be presented to all members of the Court; if all the members of the Court~~ Such request shall be honored, if a majority of the judges of the division or of the two divisions plus a seventh judge decide that the question or one or more questions involved in the case should, in their judgment and discretion, be decided by all the members of the whole Court, the case shall be passed upon by all members of the Court, and provided that a majority of all the judges passing upon the case the whole Court concur in the judgment this decision.

~~7-2.~~ When the Court has elected to have a case passed upon by ~~all twelve (12)~~ members of the whole Court under OCGA 15-3-1 (c) (2), the author of the majority opinion shall circulate the opinion along with any ~~the~~ dissent and any memoranda of the majority and/or dissent to all members of the whole Court immediately. The case shall then circulate to the ~~five (5)~~ judges who do did not initially vote on the case in the order of seniority.

[RE-NUMBER PRIOR X, Y, AND Z TO Y, Z, AND AA.]



Court of Appeals

Memorandum

To: William L. Martin, III
From: H. Sparrow *HS*
Subject: IOM - Minor updates or corrections
Date: December 1, 2003

At your request, I have gone back through the IOM to determine if there are any corrections or revisions that should be made as the Court is considering the language of amendments discussed at the last banc meeting. The following are some minor changes I suggest be made at the same time.

1. Media Coverage of Court Proceedings, Page 29. The form requesting permission to install audio and video equipment indicates that the current court order on this subject was issued September 19, 2000, but Appendix 5 contains a 1994 order. Therefore, Paragraph B on page 29 should be altered to indicate the September 19, 2000 date and a copy of that order should replace the one currently in Appendix 5.
2. Travel/Dues Policy, Page 30. The judges approved a form for payment of membership dues which should be added as Appendix 15 and included in the Table of Appendices. Furthermore, a new sentence should be inserted into A (2) page 30 to state, "A judge shall complete the form in Appendix 15 to authorize payment of membership dues to professional organizations."
3. Inclement Weather, Page 54. Since Lola is updating the stations which will announce weather-related court closings, I suggest she update the list in item G.
4. Protocol on Disqualification and Recusal of Judges, Page 64. Per my notes in the IOM, a sentence

should be added to item 4 which would read, "The Clerk's memorandum shall also notify the newly assigned judge whether oral argument has been scheduled or a request is pending."

If you have any questions about the above items or wish me to do anything further, just let me know.

**Rules
Court of Appeals of Georgia**

- Rule 1. To clarify that conformed signatures or s/ signatures are not permitted on pleadings in the Court of Appeals of Georgia.
- Rule 2. Style change.
- Rule 4. To incorporate our commercial overnight delivery amendment and to change the rule to reflect the current operating hours of the Judicial Building.
- Rule 9(c) and (d). Possibly add fee for courtesy appearance. If irrelevant, delete provision regarding agreements or consents.
- Rule 14(a). Grammatical change.
- Rule 17. To add commercial courier delivery service.
- Rule 18(a). To add new Times Roman Western Point 14 type as is allowed in Rule 1.
- Rule 19. To clarify position of persons authorized to certify transcripts.
- Rule 23 (a)(b)(d). To clarify Briefs permitted to be filed, conformity of Briefs to Rule 1, delete name of publisher of Official Reports.
- Rule 24. To limit Reply Briefs to Appellant's Brief only.
- Rule 26(c). To provide that the appellee has not right to respond to the appellant's Reply Brief other than as provided in Rule 24, the Supplemental Brief rule.
- Rule 28(a)(2). To clarify the rule about oral argument on companion and cases in cross appeals.
- Rule 28(b). To add reference to Rule 28(h) which states the presiding judge shall decide all procedural questions arising at oral argument."
- Rule 28(f). Style change.

- Rule 28(g). To change notification for closing oral arguments to the public from five (5) days to 24 hours, same as the rule on Media Requests.
- Rule 29. Correct statement. All arguments are now taped.
- Rule 30(e) and 31(e). To provide that no application nor portion thereof may be filed under seal in unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.
- Rule 30(d). To add the statement that applications are subject to be returned or dismissed if not properly bound.
- Rule 31(b). Same as Rule 30(d).
- Rule 32. To add the language seven (7) days for a dispossessories pursuant to OCGA §44-7-56.
- Rule 33(a). Style change.
- Rule 37(b). To add to the rule that courier service, like certified mail, does not apply to Motions for Reconsideration.
- Rule 41(f). To clarify that a Motion to Withdraw requires permission.

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I. GENERAL

Rule 1.

(a) Requirement for Written and Signed Documents

(1) All filings, documents, motions, briefs, requests and communications relating to appeals shall be in writing, shall be filed with the Clerk's office, shall be signed by ~~counsel~~ an attorney of record, an attorney granted courtesy appearance or pro se parties, and shall include the mailing address and telephone number of the attorney or pro se party signing the document, and shall show that copies have been furnished to opposing counsel. Conformed signatures by law firm staff or an attorney's employee will not be accepted. Service shall be shown by written acknowledgment, certificate of counsel or affidavit of server, to include the mailing address of all opposing counsel. Service shall be made before filing. Any document without a Certificate of Service will not be accepted for filing. All signed documents shall include the State Bar of Georgia membership number of all submitting attorneys.

(b) Service

All documents shall show that copies have been furnished to opposing counsel. Service shall be shown by written acknowledgment, certificate of counsel or affidavit of server, to include the mailing address of all opposing counsel. Service shall be made before filing. Any document without a Certificate of Service will not be accepted for filing. (The Certificate of Service shall be attached to the document filed.)

(c) Communications with the Court ~~(b)~~— There shall be no communications relating to pending cases to any judge or member of the judge's staff.

(d) Documents ~~(c)~~—All documents filed with the Court shall be typed or printed on non-transparent, letter size (8 ½" x 11") white paper and bound at the top with staples or ~~round head fasteners~~ (round head or Acco) and all matters contained therein, including quotations and footnotes, shall have no less than double spacing

between the lines. Letter spacing and type or font size shall be no smaller than Courier 10 cpi, 12 point (or equivalent). Notwithstanding the ten (10) characters per inch requirement, the Court will accept in lieu thereof Times New Roman Regular 14pt (Western). Any documents which the Court deems inappropriate as to type size, type style and/or form may be returned to counsel after filing by the Court, and counsel may be ordered to redact and recast such documents. All documents filed with this Court shall have a non-glossy, white ~~manuscript cover~~ back of recyclable paper, heavier than regular stationery-type paper.

(e) **Counsel** ~~(d)~~—All reference to counsel in these rules shall include pro se parties.

(f) **Facsimile Filing** ~~(e)~~—The Court does not accept facsimile filings.

Purpose of change: to clarify conformed signatures or s/signatures are not permitted on pleadings

Rule 2.

(a) Clerk's Office Hours of Operation and Location

The Clerk's office shall be open Monday through Friday from 8:30 a.m. to 4:30 p.m. E.S.T./E.D.T. The address is: Clerk, Court of Appeals of Georgia, 334 State Judicial Building, 40 Mitchell Street, Atlanta, Georgia 30334. The telephone number is (404) 656-3450.

~~(b) Drop Box~~

~~The Clerk's office has provided a drop box for filing documents after business hours. Any items placed in the drop box after 4:30 p.m., Monday through Friday, will be docketed to the date the documents were placed in the drop box. The Judicial Building is open from 7:30 a.m. until 5:30 generally 5:00 p.m. Court personnel will remove the documents the morning of the following business day and clock documents to the present time and date and file the documents to the date they were placed in the drop box.~~

(b) Filing Fees

All filings requiring fees must be accompanied by a check or money order or a sufficient pauper's affidavit. The Clerk's office cannot be responsible for filings accompanied by cash.

(c) Stamped Filed Copy

If a stamped filed copy of the filed document is needed, parties filing such documents must include an extra copy and a pre-addressed stamped envelope with sufficient postage to have the document returned.

Rule 3. Expiration Date

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

Rule 4. Filing

(a) Drop Box

The Clerk's office has provided a drop box for filing documents after business hours. Any items placed in the drop box after 4:30 p.m., Monday through Friday, will be docketed to the date the documents were placed in the drop box. The Judicial Building is open from 7:30 a.m.

until 5:30 generally 5:00 p.m. Since the building hours of operation are controlled by the Georgia Building Authority, check the court web site at www.ga.appeals.us for current hours. Court personnel will remove the documents the morning of the following business day and clock documents to the present time and date and file the documents to the date they were placed in the drop box.

(b) **Motions for Reconsideration**

Motions for reconsideration are ~~A motion for reconsideration is~~ deemed filed only on the date they are ~~it is~~ are physically received in the Clerk's office. See Rule. 37.

(c) **Other Documents**

Any other document shall be deemed filed on the date:
(1) It is physically delivered to the Clerk's office, with sufficient costs, if applicable, and clocked in by the Clerk's office staff;
(2) It is deposited in the United States Postal Service registered or certified mail, with sufficient costs, if applicable; or
(3) It is delivered to the United States Postal Service or a commercial delivery company, with sufficient costs, if applicable, for overnight delivery.

(d) **Proof of Filing**

The United States Postal Service or commercial delivery company receipt must be submitted to the Clerk's office upon request. An office or private postage meter date is not sufficient.

Rules 2-4 Purpose of change: Style change. Rule 4-To reflect current operating hours of Judicial Building and to incorporate commercial overnight delivery amendment made December 2003.

II. ATTORNEYS

Rule 9. Attorneys.

(a) Application and Oath.

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

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

(b) Fee.

The fee for admission is \$30.00, payable to the Clerk, who will issue a license under the seal of the Court as evidence of applicant's authority to practice.

(c) Appearance by Courtesy.

As a matter of professional courtesy, a visiting attorney from another state, or from a district or territory, if admitted to practice in the highest court of the state, district, or territory of such attorney's residence, by leave of court, may be heard as associate counsel or counsel in a single case, without being admitted as a regular practitioner in this Court. A resident attorney, who is not a member of the State Bar of Georgia, may petition this Court for courtesy appearance by showing that the attorney is certified in good-standing in the Bar of the highest court of another state. If a petition for courtesy appearance is granted, the attorney shall remit to the court an admission fee of \$30.00 prior to the docketing of any other documents or an appearance at oral argument.

~~(d) **Agreements or Consents to be in Writing.**~~

~~No agreement or consent will be recognized unless it is in writing, signed by the parties or their counsel, and filed with the Clerk.~~

~~(e)~~ **(d) Withdrawal or Substitution of Counsel.**

Any withdrawal or substitution of attorneys of record in the Court shall be communicated to the Court by written motion with a copy to substituted counsel, opposing counsel and the withdrawing or substituting attorney's client. A Motion to Withdraw as Counsel shall contain the address of the withdrawing counsel's client, or if the address is unknown, the motion shall contain a statement that the client's address is unknown and shall contain the client's last known address.

~~(f)~~ **(e) Change of Address or Telephone Number.**

If during the pendency of any appeal or application counsel for either party has a change of address or telephone number, counsel shall file a notification of change of address or telephone number with the Court, notifying the Court of counsel's correct address and telephone number, and the effective date of such change.

The notification of change of address or telephone number shall be filed as a separate document, an original and two copies, with service made to opposing counsel.

Upon receipt of the notification of change of address or telephone number, the Clerk will enter the change of address or telephone number on the Court's docket and all further notices generated from the Court will be to counsel's new address.

Failure of counsel to properly notify the Court of any change of address or telephone number, which may result in counsel not receiving notification of Court action, shall not be grounds to reinstate or reconsider any matter adverse to counsel or parties because of the failure of counsel to receive notification from the Court.

~~(g)~~(f) The Court of Appeals does not recognize, nor grant, Leaves of Court or Leaves of Absence.

Purpose of change: ¶ (c) possibly add a fee for courtesy appearance and ¶ (d) delete provision about agreements and consents if not relevant any longer.

Rule 10. Personal Remarks.

Opposing Counsel or Judge.

Personal remarks, whether oral or written, which are discourteous or disparaging to opposing counsel, to any judge or the Court, are strictly forbidden.

Rule 14. Notice of Call.

(a) Calendars to be Mailed.

The Clerk shall mail the calendar to counsel in each appeal to be orally argued at least 14 days prior to the date the call is to begin at the addresses shown on the notice of appeal unless the Court is otherwise advised under Rule 9(f) 9(e). ~~at least 14 days prior to the date the call is to begin.~~

Purpose of change: Change in grammar structure.

V. RECORDS AND TRANSCRIPTS

Rule 17. Duty of Trial Court Clerks.

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

Purpose of change: To add commercial courier or overnight delivery service.

Rule 18. Preparation and Arrangement of Records and Transcripts.

- (a) Records and transcripts, to include depositions, shall be printed on one side of white paper not less than letter size of good quality with ample spacing (at least double spaced) and margins so that they may be easily read. The margin at the top shall be of sufficient space so that the transcript may be read when folded over at the top. Type size shall not be smaller than Courier 10 cpi, 12 point (or equivalent). Notwithstanding the 10 characters per inch requirement, the Court will accept in lieu thereof Times New Roman Regular 14pt (Western).
- (b) Any records or transcripts delivered to this Court from the trial court, and sealed by the trial court, with an order of the trial court attached to the record, shall remain sealed until a motion is made to unseal the record and/or the record is unsealed by this Court. Counsel for any party may move this Court for an order to unseal or seal any record in the Court.

Purpose of change: ¶ (a) add Times Roman Western Point 14 types as is permitted in Rule 1.

Rule 19. Transmission of Transcript.

The original transcript shall be a separate document and not attached to the record. It should show the style of the case and an index. Voluminous transcripts

may be bound in separate parts. The court reporter and trial court clerk shall certify each part.

Purpose of change: Clarify titles of persons authorized to certify transcript.

VII. BRIEFS

Rule 23. Preparation.

(a) Briefs shall be limited to a initial appellant's brief, a responding appellee's brief and a reply brief of the appellant. Other briefs will be accepted only if filed as a Amicus Curiae brief (Rule 25) or in accordance with Rule 24. Briefs will be not accepted unless filed by a member of the State Bar of Georgia admitted to the Court or an attorney granted a courtesy appearance in accordance with Rule 9 (c).

~~(a)~~(b) Paper, Spacing.

All briefs shall be filed in conformity with Rule 1 (a) and ~~(c)~~(b) and (d).

~~(b)~~(c) Margins.

Writing shall be on only one side of each sheet with a margin of not less than two inches at the top and a margin of at least one inch on the sides and bottom of each page.

~~(c)~~(d) Citations.

All citations of cases shall be by name of the case as well as by volume, page and year of the Official Report ~~(Harrison or Darby)~~. Cases not yet reported shall be cited by the Court of Appeals or Supreme Court case number and date of decision.

~~(d)~~(e) Pages to be Numbered.

The pages of each brief shall be sequentially numbered with Arabic numerals.

~~(e)~~(f) Limitation as to Length.

Briefs and responsive briefs shall be limited to 30 pages in civil cases and 50 pages in criminal cases including indexes, exhibits and appendices, except upon written application directed to the Clerk and approved by the Court. Appellant's reply brief shall be limited to 15 pages. See Rule 24 for additional briefs.

~~(f)~~(g) Attachments and Exhibits.

Documents attached to an appellate brief, which have not been certified by the clerk of the trial court as a

part of the appellate record and forwarded to this Court, will not be considered on appeal.

~~(g)~~ **(h) Address of Defendant.**

Counsel for defendant shall include the address of the defendant in a criminal case on the face of the brief and shall notify the Court of any change of address.

Purpose of change: ¶ (a) Clarify briefs allowed to be filed without motion to permit filing. ¶ (b) Conformity of briefs with Rule 1. ¶ (d) Delete name of publishers of Official Reports because of recent change.

Rule 24. Supplemental Briefs.

(a) Briefs shall be limited to an appellant's brief, an appellee's brief, and ~~a~~ an appellant's reply brief. Supplemental briefs may be filed only by leave of the Court. Counsel may file a motion for permission to file supplemental briefs. Contemporaneously with filing a motion, counsel may file, as a separate document, an original and two copies of the supplemental brief, not to exceed 15 pages.

(b) Parties are not permitted to file letter briefs nor letter cites. Any communication with the Court regarding recent authority which comes to the attention of a party subsequent to the filing of such party's brief or after oral argument, but before decision, must be filed in compliance with (a) above as a supplemental brief, an original and two copies, with a Certificate of Service, and service must be made on opposing counsel. Any response shall be made promptly and in accordance with this rule.

Purpose of change: Limit reply brief to appellant only.

Rule 25. Amicus Curiae Briefs.

Amicus Curiae briefs may be filed without leave of Court, disclosing the identity and interest of the person or group on whose behalf the brief is filed and limited to issues properly raised by the parties. Only members of the Bar of this Court or attorneys appearing by courtesy may file Amicus Curiae briefs.

Rule 26. Time of Filing; Contempt; Dismissal; Service.

(a) Appellant's brief, which shall contain as Part 2 an enumeration of errors, shall be filed within 20 days after the appeal is docketed. Failure to file within that time, unless extended upon motion for good cause shown, may subject the appeal to dismissal, and may subject the offender to contempt. See Rule 7 and Rule 13.

Appellant's motion for extension of time to file brief and enumeration of errors must be filed prior to the date the documents are due or the Court may dismiss the appeal.

(b) Appellee's brief shall be filed within 40 days after the appeal is docketed or 20 days after the filing of appellant's brief, whichever is later. Failure to timely file may result in non-consideration of the brief and may subject counsel to contempt. See also Rule 13.

(c) Appellant may file a reply brief within 20 days from the date of filing of appellee's brief. Appellee has no right to respond to appellant's reply brief except as permitted under Rule 24.

Purpose of change: Restatement that appellee has no right to respond to appellant's reply brief without permission.

VIII. ARGUMENT

Rule 28.

(a) Request and Time.

- (1) Unless expressly ordered by the Court, oral argument is never mandatory and argument may be submitted by briefs only. A case will be placed on the calendar for oral argument only upon the granting of the request of either party.

A request for oral argument shall be filed within 20 days from the date the case is docketed in this Court. The request must be a separate document, an original and two copies, directed to the Clerk, certifying that opposing counsel has been notified of the request and that opposing counsel desires, or does not desire, to argue orally. The request shall identify counsel who is scheduled to argue, and any change shall be communicated to the Clerk as soon as practicable.

An extension of time to file brief and enumeration of errors does not extend the time to request oral argument.

A request shall contain a brief statement demonstrating that the decisional process will be significantly aided by oral argument. The request should be self-contained and should convey the specific reason or reasons oral argument would be beneficial to the Court. Counsel should not assume the brief will be considered in ruling on the request for oral argument.

After either side has been granted oral argument, it may be waived by either side, but waiver by the requester does not remove the case from the oral argument calendar. Argument will not be allowed on behalf of any party whose brief has not been timely filed, unless permission is granted by the Court. Counsel requesting extension of time to file briefs waive oral argument if the extension is beyond the end of the term.

Rule 28 continued.

- (2) Argument is limited to 30 minutes for each case, 15 minutes on each side, unless by special leave an extension of time is granted. No additional time will be granted except on application made in writing at least 5 days before the date set for the call of the case. If additional time is granted, the case will be placed at the end of the calendar unless otherwise ordered by the Court. Appeals, cross-appeals, and companion cases shall be considered to be one case for purpose of oral argument. In the discretion of the Court, a ~~A~~ companion case may, ~~in the discretion of the Court,~~ be treated as a separate case for oral argument if counsel so requests by written motion at least 5 days before the date set for oral argument. Where there are third parties or additional parties with divergent interests, additional time may be requested and granted as set out above.
- (3) Appeals in which oral argument has been granted pursuant to Rule 28 (a) will be assigned to the calendar in the order in which they appear on the docket, unless otherwise ordered. When a case has been reached in its order on the calendar, it will not be postponed except for good reason shown.
- (4) If either counsel decides to waive oral argument after it has been granted, waiving counsel must notify other counsel and the Court of that fact.

(b) Number of Arguments.

Ordinarily, when both sides of an appeal are argued, only two counsel on each side will be heard. When only one side of an appeal is argued, or when arguments are to be made on behalf of more than two parties, no more than one counsel per party shall be heard. For exception, See paragraph 28(h).

- (c) **Opening and Concluding; Rebuttal.**
Appellant has the right to open and conclude the arguments.
- (d) **Courtroom Decorum.**
- (1) Counsel appearing for oral argument shall check in with the Clerk in the courtroom at 9:30 a.m. on the date of oral argument specifying who will argue and for how long.
 - (2) Talking, reading newspapers or other material, and audibly studying briefs and arranging papers are prohibited in the courtroom. The lawyers' lounge has been provided for this purpose.
 - (3) All counsel appearing before the Court must be properly attired.
- (e) **Presence of Counsel.**
Oral argument is waived if counsel is not actually inside the courtroom when the case is formally called in its order for argument.
- (f) **Time of Argument.**
Counsel may request 5, 10 or 15 minutes for argument. If counsel do not agree on the ~~type~~ length of oral argument, the longer time requested shall prevail and each counsel shall be given the same amount of time. Ordinarily, cases will be argued in the following order: first, 5 minute cases, second 10 minute cases and third, would be called before 10 minute cases and 10 minute cases would be called before 15 minute cases.
- (g) **Oral Argument Open to the Public.**
Unless ordered by the Court, oral argument is open to the public. Counsel may move the Court to exclude the public for a good cause shown. Such motion shall be filed not later than ~~5 days~~ 24 hours prior to oral argument. News media are permitted to photograph or

videotape oral argument pursuant to the Court's standing order regarding media in the Courtroom.

(h) Procedural Questions.

The Presiding Judge shall decide all questions or issues arising at oral argument.

Purpose of change: ¶(a) (2) Clarify rule about oral argument on cross-appeals and companion cases. ¶(b) Refer to presiding judge's discretion to control argument. ¶ (f) style change ¶ (g) Alter time limit for requesting closure of argument to public from notification of 5 days to 24 hours which is comparable to rule on media access requests.

Rule 29. Hearing by Quorum.

(a) Whenever a Division of the Court is on the bench for the purpose of hearing oral argument, and a quorum (two judges) is present, the Division shall proceed with the call of the docket.

(b) ~~In such instances, the~~ Oral arguments shall be tape recorded for the use and benefit of the Court.

Purpose of change: ¶ (b) Correct statement-all arguments are now taped.

IX. APPLICATION FOR INTERLOCUTORY APPEALS

Rule 30. Applications.

- (a) An application for leave to appeal an interlocutory order will be granted only when it appears from the documents submitted that:
- (i) The issue to be decided appears to be dispositive of the case; or
 - (ii) The order appears erroneous and will probably cause a substantial error at trial or will adversely affect the rights of the appealing party until entry of final judgment in which case the appeal will be expedited; or
 - (iii) The establishment of precedent is desirable.
- (b) Applications for interlocutory appeal shall contain a jurisdictional statement and have attached a stamped "filed" copy of the court's order to be appealed and a stamped "filed" copy of the certificate of immediate review.
- (c) The clerk is prohibited from receiving the application without the \$80.00 filing fee or sufficient pauper's affidavit.
- (d) Applications for interlocutory appeal pursuant to OCGA § 5-6-34 (b) should have copies of all materials from the record tabbed and indexed and shall be securely bound at the top with staples or fasteners (round head or Acco). If not tabbed and indexed, indexed and securely bound at the top, the petition is subject to dismissal or return for preparation according to the Court's rules. The materials must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced. Applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of attached exhibits and parts of the record, and should follow the general format of briefs as to margins.

IX. APPLICATION FOR INTERLOCUTORY APPEALS

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- (i) The issue to be decided appears to be dispositive of the case; or
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- (d) Applications for interlocutory appeal pursuant to OCGA § 5-6-34 (b) should have copies of all materials from the record tabbed and indexed and shall be securely bound at the top. If not tabbed ~~and indexed~~, indexed and securely bound at the top, the petition is subject to dismissal or return for preparation according to the Court's rules. The materials must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced. Applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of attached exhibits and parts of the record, and should follow the general format of briefs as to margins.
- (e) No application for interlocutory appeal shall be filed under seal unless counsel has moved the Court for

permission to file under seal and the Court has granted such motion.

~~(e)~~ (f) No extension of time shall be granted for filing of interlocutory applications or responses to interlocutory applications.

~~(f)~~ (g) Responses are due within 10 days of docketing. No response is required, unless ordered by the Court.

~~(g)~~ (h) If an interlocutory application is granted, appellant must file a notice of appeal in the trial court within 10 days of the date of the order granting the application.

Purpose of change: ¶(d) to require applications to be bound in manner of briefs and to be subject to return for failure to conform to required format. ¶(e) to provide counsel must request for permission to file application under seal.

X. APPLICATION FOR DISCRETIONARY APPEAL

Rule 31. Leave to Appeal.

(a) An application for leave to appeal a final judgment in cases subject to appeal under OCGA § 5-6-35 will be granted only when:

(i) Reversible error appears to exist; or

(ii) The establishment of a precedent is desirable.

(b) Applications for discretionary appeal pursuant to OCGA § 5-6-35 should have copies of all material from the record tabbed and indexed and shall be securely bound at the top with staples or fasteners (round head or Acco). If not tabbed and indexed, indexed and securely bound at the top, the petition is subject to dismissal or return for preparation according to the Court's rules. The material must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced. Applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of attached exhibits and parts of the record, and should follow the general format of briefs as to margins.

(c) The clerk is prohibited from receiving the application without the \$80.00 filing fee or sufficient pauper's affidavit.

(d) Discretionary appeals must contain a stamped "filed" copy of the trial court's order from which the appeal is sought.

(e) No application for interlocutory appeal shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.

~~(e)~~ (f) No extensions of time will be granted in filing discretionary applications or responses to discretionary applications.

~~(f)~~ (g) Responses are due within 10 days of docketing. No response is required, unless ordered by the Court.

X. APPLICATION FOR DISCRETIONARY APPEAL

Rule 31. Leave to Appeal.

- (a) An application for leave to appeal a final judgment in cases subject to appeal under OCGA § 5-6-35 will be granted only when:
- (i) Reversible error appears to exist; or
 - (ii) The establishment of a precedent is desirable.
- (b) Applications for discretionary appeal pursuant to OCGA § 5-6-35 should have copies of all material from the record tabbed and indexed and shall be securely bound at the top. If not tabbed ~~and indexed,~~ indexed and securely bound at the top, the petition is subject to dismissal or return for preparation according to the Court's rules. The material must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced. Applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of attached exhibits and parts of the record, and should follow the general format of briefs as to margins.
- (c) The clerk is prohibited from receiving the application without the \$80.00 filing fee or sufficient pauper's affidavit.
- (d) Discretionary appeals must contain a stamped "filed" copy of the trial court's order from which the appeal is sought.
- (e) No application for interlocutory appeal shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.
- ~~(e)~~ (f) No extensions of time will be granted in filing discretionary applications or responses to discretionary applications.
- ~~(f)~~ (g) Responses are due within 10 days of docketing. No response is required, unless ordered by the Court.

~~(g)~~ **(h)** If the discretionary application is granted, appellant must file a notice of appeal in the trial court within 10 days of the date of the order granting the application.

Purpose of change: ¶(b) same as ¶(d) in Rule 30. ¶(e) same as ¶ (e) in Rule 30.

XI. TIME OF FILING APPLICATIONS

Rule 32. Time of Filing.

- (a) An application for interlocutory appeal shall be filed in this Court within 10 days of the entry of the trial court's order granting the certificate for immediate review. Entry of the trial court's order shall be the date it is filed with the trial court clerk.

- (b) An application for discretionary appeal shall be filed in this Court generally within 30 days of the date of the entry of the trial court's order being appealed. Pursuant to OCGA §44-7-56, a discretionary application involving a dispossessory action must be filed within 7 days of the entry of the trial court's order. Entry of the trial court's order shall be the date it is filed with the trial court clerk.

- (c) Applications to appeal interlocutory or discretionary orders of which the Supreme Court has jurisdiction shall be transferred to that Court, if timely filed.

Purpose of change: add 7 day filing requirement for dispossessory action applications.

XII. OPINIONS AND JUDGMENTS

Rule 33. Showing of Concurrence or Dissent.

Each judgment shall show on its face the votes, non-participation, or disqualification of each judge.

(a) Judgment as Precedent.

A judgment in which ~~is fully concurred in by~~ all judges of the Division fully concur is a binding precedent; if there is a special concurrence without a statement of agreement with all that is said in the opinion or a concurrence in the judgment only, the opinion is a physical precedent only. If the appeal is decided by a seven or twelve judge Court, a full concurrence by a majority of judges is a binding precedent, but if the judgment is made only by special concurrences without a statement of agreement with all that is said in the opinion or by concurrence in the judgment only, there being general concurrence by less than a majority of the Judges, it is a physical precedent only.

(b) Unreported Opinion.

An unreported opinion is neither a physical nor binding precedent but establishes the law of the case as provided by OCGA § 9-11-60 (h).

Purpose of change: Style change.

Rule 34. Reporting of Opinions.

Opinions are reported except as otherwise designated by the Court.

The official reports shall list the cases in which opinions were written but not officially reported and shall indicate the authors and participants in the opinions.

Rule 35. Copies of Opinions.

As soon as practicable after judgment, the Clerk shall furnish, without charge, a copy of the opinion to counsel for each party and to the trial judge.

XIII. RECONSIDERATION

Rule 37. Motions for Reconsideration.

(a) **Physical Preparation.**

Motions for reconsideration shall be prepared in accordance with Rule 23.

(b) **Time of Filing.**

Motions for reconsideration must be filed within 10 days from the rendition of the judgment or dismissal. Motions for reconsideration must be physically received in the Court for filing within 10 days of the order or judgment for which reconsideration is sought. The certified mail and commercial overnight delivery rule does not apply to motions for reconsideration. See Rule 4. No extension of time shall be granted except for providential cause on written application made before the expiration of 10 days. No response to a motion for reconsideration is required, but any party wishing to respond must do so expeditiously.

Purpose of change: Clarify that the commercial overnight delivery rule does not apply (just like the certified mail rule) to filing a motion for reconsideration.

(c) **Time May be Limited.**

The Court may by special order in any case direct that the remittitur be transmitted to the clerk of the trial court immediately after the rendition of the decision and judgment, or at any other time, without awaiting the expiration of 10 days, and may by special order limit the time within which a motion for reconsideration may be filed to any period less than 10 days.

(d) **Second Motion.**

No party shall file a second motion for reconsideration unless permitted by order of the Court. The filing of a motion for permission to file a second motion for reconsideration does not toll the 10 days for filing a notice of intent to apply for certiorari with the Supreme Court of Georgia.

XVII. MOTIONS

Rule 41. Preparation and Filing.

(a) Filing in Triplicate.

Motions shall be filed in triplicate as set out in Rule 6. Motions, not letters, should be filed whenever counsel wish the Court to take any action.

(b) Form and Physical Preparation.

All motions shall be filed as separate documents, and shall not be filed as compound motions or alternative motions. No motions shall be filed in the body of briefs, applications or responses. Motions shall be prepared in accordance with Rule 23. Failure to comply with this rule may result in non-consideration of such motions.

(c) Motions to Dismiss.

Notice of a motion to dismiss and of the grounds thereof shall be given in writing to counsel for the appellant by service made and shown as required in Rule 1 (a). If such notice cannot be given, the motion will be entertained and the Court in its discretion will give such direction as may seem proper. Whenever it appears the Court has no jurisdiction of a pending appeal, it will be dismissed or transferred to the Supreme Court, as the facts and/or law require.

(d) Response Time to Motions.

Responses to motions should be made as soon as possible since the Court generally acts on motions quickly. There is no 10 day rule for time to respond to motions.

(e) Reconsideration.

See Rule 37.

(f) Motion to Withdraw Appeal.

(1) Whenever appellant decides not to pursue an appeal, such party shall promptly file a motion for permission to withdraw the appeal.

(2) In a criminal case, unless the state is the appellant, the motion shall include an affidavit from defendant agreeing to the withdrawal of the appeal. Should the defendant refuse to provide

such affidavit, that fact shall be made known to the Court and the grounds for the withdrawal of the appeal shall be stated in the motion.

Purpose of change: Clarify that a motion to withdraw requires permission.



Court of Appeals

Memorandum

To: Chief Judge J.D. Smith
From: 
William L. Martin, III
Subject: Defibrillator Training
Date: April 19, 2004

The CPR and defibrillator training will be conducted on Tuesday, May 25, 2004 in the Supreme Court Conference Room. The following are participants:

Thank you.

6 th Floor			3 rd Floor		
Dirk Christiansen	7:00 a. - 4:00 p.	PJ Blackburn	Keri Avera	7:30 a. - 4:30 p.	Bill Martin's Office
Christina Smith	9:00 a. - 5:00 p.	J Barnes	Holly Sparrow	8:30 a. - 4:30 p.	Bill Martin's Office
4 th Floor			Health Building		
Kristy Weathers	8:30 a. - 5:00 p.	PJ Ruffin	Linda Floyd	8:30a. - 4:30 p.	J Mikell
Simon Weinstein	8:30 a. - 5:00 p.	J Phipps	Mary Hines	8:30 a. - 4:30 p.	J Ellington
Kevin Wilson	9:00 a - 5:00 p.	J Miller			

/ld



COPY

Court of Appeals

Memorandum

To: Chief Judge J.D. Smith
From: William L. Martin, III *WLM*
Subject: Official Visitors of the Judicial Branch of Ghana
Date: April 14, 2004

Attached please find a scheduled I received from Rich Reaves regarding the judges from Ghana who will be visiting the Court on May 27th. If you will notice on Page 3 of the Itinerary, the highlighted portion, the judges are scheduled to attend a Mass Swearing-In and then meet with the Court of Appeals around 11:00 a.m.

While the judges from Ghana will still be here on the 27th, it is undetermined if the Mass Swearing-In will be held on the 27th. I have been informed by Sherie Welch that four of the justices have conflicts on that date. Right now, she, Rich Reaves and Nathan Wheat of the Younger Lawyers Section are discussing the afternoon of May 17th.

As soon as I get more definite information, I shall advise you.

Thank you.

/ld
Attachment

**International Judicial Training Program:
For Improving Judicial Administration,
Especially Designed For Officials from the
Judicial Branch of Ghana**

May 17, 2004 - May 28, 2004

[* = confirmed speaker; # = speaker or activity to be arranged]

Day 1 - Sunday, May 16, 2004

Arrive in Georgia, and rest in Athens: receive **Course Overview** and handout materials
{space and materials distribution arrangements by Dean Rusk Center *}

Day 2 - Monday, May 17, 2004

Morning (9 - 12) - in Athens, GA, for **Introductory Session**: welcome (by Lumpkin Law School, by UGA, by Dean Rusk Center), with focus of commentary upon: (i) American legal education, (ii) admission to the bar, and (iii) law practice supervision, as well as (iv) continuing lawyer education. Tour of Law School, including courtrooms, law library, classrooms, and electronic reference databases {addressing: appropriate teaching tools and techniques, including technology and clinical trial as well as moot court training}

{arrangements: space by ICJE * and speaker by Dean Rusk Center *}

Afternoon (12 - 1) - in Athens, GA, with lunch at UGA Student Center

{food service arrangements by ICJE *}

Afternoon (1 - 3) - in Athens, GA, for guided **Tour of UGA**, the University of Georgia

{tour arrangements by Dean Rusk Center *}

Afternoon (3 - 5) - in Athens, GA, for presentation and discussion on modern American **Judicial Administration**, including Court Administration, Judicial Councils, Judicial Education, Procedural Rules of Court, and the State Supreme Court's Supervisory Role, {addressing: managing workload delay, resource allocation, system technology, personnel training} presented by Atty. Rich Reaves *

{space and speaker arrangements by ICJE *}

Evening (7 - ???) - in Athens, GA, watch the movie "Civil Action"

Day 3 - Tuesday, May 18, 2004

Morning (9 - 12) - in Athens, GA, for presentation and discussion of **Georgia's Courts & the American Court System**, an overview and comparison of subject matter jurisdiction, administrative structure, and functional inter-relationships, presented by Retired Chief Magistrate Michael Coleman *

{space and speaker arrangements by ICJE *}

Afternoon (12 - 1) - in Athens, GA, lunch "on your own" at UGA Student Center

Afternoon (1 - 4) - in Athens, GA, for presentation and discussion of the economics of litigation and **Access to Justice**, using as context the popular book and movie CIVIL ACTION, {addressing: access to justice as an aspect of judicial reform and of the economics of social class} presented by Prof. Alex Scherr *

{space and speaker arrangements by ICJE *}

Day 4 - Wednesday, May 19, 2004

All Day (must leave Athens no later than 8:00 a.m.) - to Gwinnett County, GA, for **Observation of an Integrated Justice Center** and interviews with pertinent court officials and personnel, covering: appropriate dispute resolution; trial courts (municipal, magistrate, probate, juvenile, state, superior), addressing: alternative dispute resolution, managing trial delay, technology impacting trial methods, courthouse security, jury and trial records management

*{arrangements: space, speaker and food service by ICJE * and transport by Dean Rusk Center}*

Day 5 - Thursday, May 20, 2004

Morning (9 - 12) - in Athens, GA, for presentation and discussion on **Judicial Education in the USA**, the administrative structures and norms of practice for basic and continuing education of judges and court personnel, presented by Atty. Rich Reaves *

*{space and speaker arrangements by ICJE *}*

Afternoon (12 - 1) - in Athens, GA, lunch "on your own" at UGA Student Center

Afternoon (1 - 5) - in Athens, GA, for site visit and presentation, demonstration and discussion on **"DUI - Drug Court, in Clarke County State Court"**, by Atty. Rich Reaves, focusing on "problem-solving" courts, & Judge Kent Lawrence, focusing on the Clarke County experience

*{space and speaker arrangements by ICJE *}*

Day 6 - Friday, May 21, 2004

All Day (must leave Athens no later than 7:00 a.m.) - to Atlanta, GA, to observe proceedings in **Specialized Trial Courts** (e.g., drug court, family court including appropriate dispute resolution, community court, environmental court, mass tort litigation court, or administrative law court)

{arrangements: space and speakers by ICJE # and transport by Rusk Center; lunch "on your own" at the Underground Atlanta Food Court}

Day 7 & Day 8 - Saturday, May 22, 2004, & Sunday, May 23, 2004

All Day - in Athens, GA, or Atlanta, GA, rest, relaxation, and travel to local or regional, historical, commercial and cultural sites

*{arrangements by Dean Rusk Center *}*

Day 9 - Monday, May 24, 2004

Morning (8 - 12) - in Athens, GA, for observation (must be on site by 8:15 a.m.) of **Jury Selection and Trial Presentation** in State Court of Clarke County, with aid from Retired Chief Magistrate Michael Coleman *

All Afternoon (must leave Athens no later than 11:30 a.m.) - to Atlanta, GA, to observe GA Court Information Sharing Collaborative #2, in process (1:00 - 8:00 p.m., including dinner)

*{arrangements: space, speaker and food services by ICJE * transport by Dean Rusk Center *}*

Morning (9 - 12) - in Athens, GA, recess for rest from late return on Monday night

Afternoon (12 - 1) - in Athens, GA, lunch "on your own"

Afternoon (1 - 5) - in Athens, GA, for observation of other local courts (e.g., juvenile court, magistrate court, municipal court and superior court) followed by Q&A sessions with available judges, including Retired Chief Magistrate Michael Coleman *

{arrangements by ICJE #}

Day 11 - Wednesday, May 26, 2004

Morning (9 - 12) - in Athens, GA, for presentation on **Dispute Resolution Techniques and The Economy**, the relationship between rule of law and economic growth, including the impact of litigation and arbitration on dispute resolution and economic activity, presented by Associate Dean Gabriel Wilner *

*{space and speaker arrangements by ICJE *}*

Afternoon (12 - 1) - in Athens, GA, lunch "on your own" at the UGA Student Center

*{food service arrangements by ICJE *}*

Afternoon (1 - 4) - in Athens, GA, for presentation on **Judicial Ethics, Demeanor and Professionalism**, utilizing the GA Code of Judicial Conduct and training materials and exercises used with GA judicial branch officers, addressing: anti-corruption and judicial comportment, presented by Atty. Rich Reaves *

{space and speaker arrangements by ICJE}*

Day 12 - Thursday, May 27, 2004

All Day (must leave Athens no later than 7:30 a.m.) - in Atlanta, GA, for tour and visit with judges of Georgia Supreme Court [9:00 a.m.], swearing in of Younger Lawyers [10:00 a.m.], Georgia Court of Appeals [11:00 a.m.], with lunch "on your own" at Twin Towers Cafeteria [noon], followed by guided tour of the State Capitol Building [1:00 p.m.], completed by tour of Martin Luther King, Jr., National Historical Monument [2:30 p.m.]

*{arrangements: space, speakers and tour by ICJE * and transport by Dean Rusk Center *}*

Day 13 - Friday, May 28, 2004

Morning (9 - 12) - in Athens, GA, for presentation on (topics of choice to participants) #

*{space and speaker arrangements by ICJE *}*

Afternoon (12 - 6) - recess for personal pursuits

Evening, 6:30 p.m. - Graduation & Dinner

*{space, speaker and food service arrangements by Dean Rusk Center *}*

Day 14 - Saturday, May 29, 2004

Prepare for departure and depart



STATE OF GEORGIA
OFFICE OF THE GOVERNOR
ATLANTA 30334-0900

Sonny Perdue
Governor

MEMORANDUM

TO: Agency Heads

FROM: Governor Sonny Perdue 

RE: **Public Employee Recognition Week: "A Salute to Service"**

DATE: April 15, 2004

May 2-8, 2004 is National Public Employee Recognition Week. This occasion gives us the opportunity to recognize, celebrate and show appreciation to state employees for the work they do for the citizens of this great state.

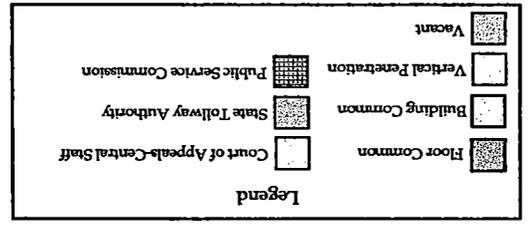
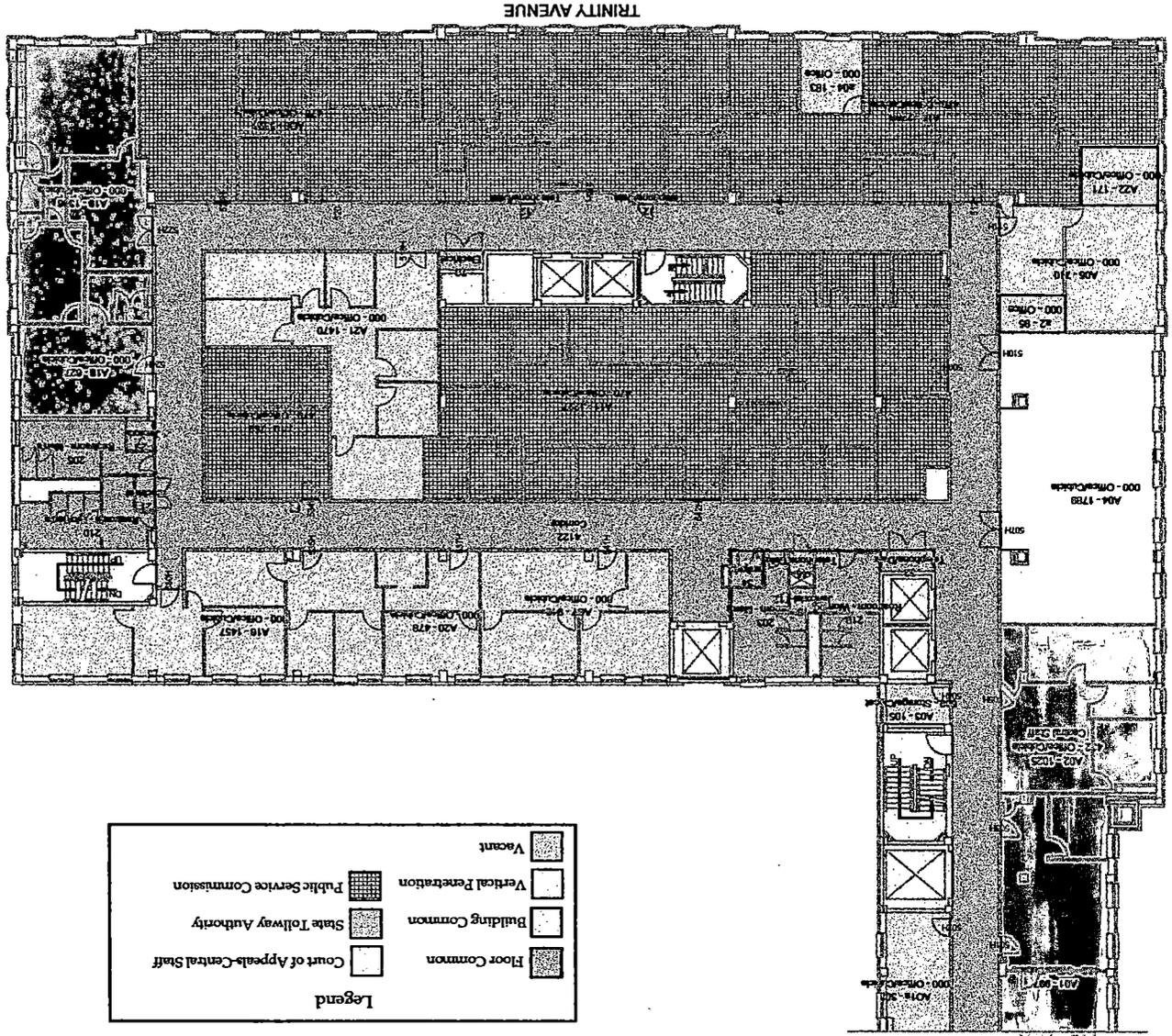
On May 5, there will be a luncheon and ceremony to honor state employees who have recently met milestones of 40 years of service, those who have made award-winning suggestions through the statewide Employee Suggestion Program, and those who have been selected to receive the "Governor's Award of Excellence" for outstanding performance in one of the following award categories: customer service, leadership, community service, teamwork, innovations, safety and heroism. The ceremony will be held at 12:00 p.m. in the Floyd Room, James H. "Sloppy" Floyd Building, 20th Floor West Tower, 2 Martin Luther King Jr. Drive, Atlanta, Georgia.

In keeping with the spirit of the occasion, I am encouraging all state agencies to observe this week by sponsoring recognition activities that will honor and pay tribute to our exemplary workforce. These celebrations will not only afford us the opportunity to acknowledge state employees, but also offer an ideal opportunity to heighten the public's awareness of state government workers and the quality of services they provide.

Thank you for taking the time to express your appreciation for our state government's most valuable resource and greatest asset, its employees.

SP:lh

(L.O.B.) (244 WASHINGTON BLDG.)



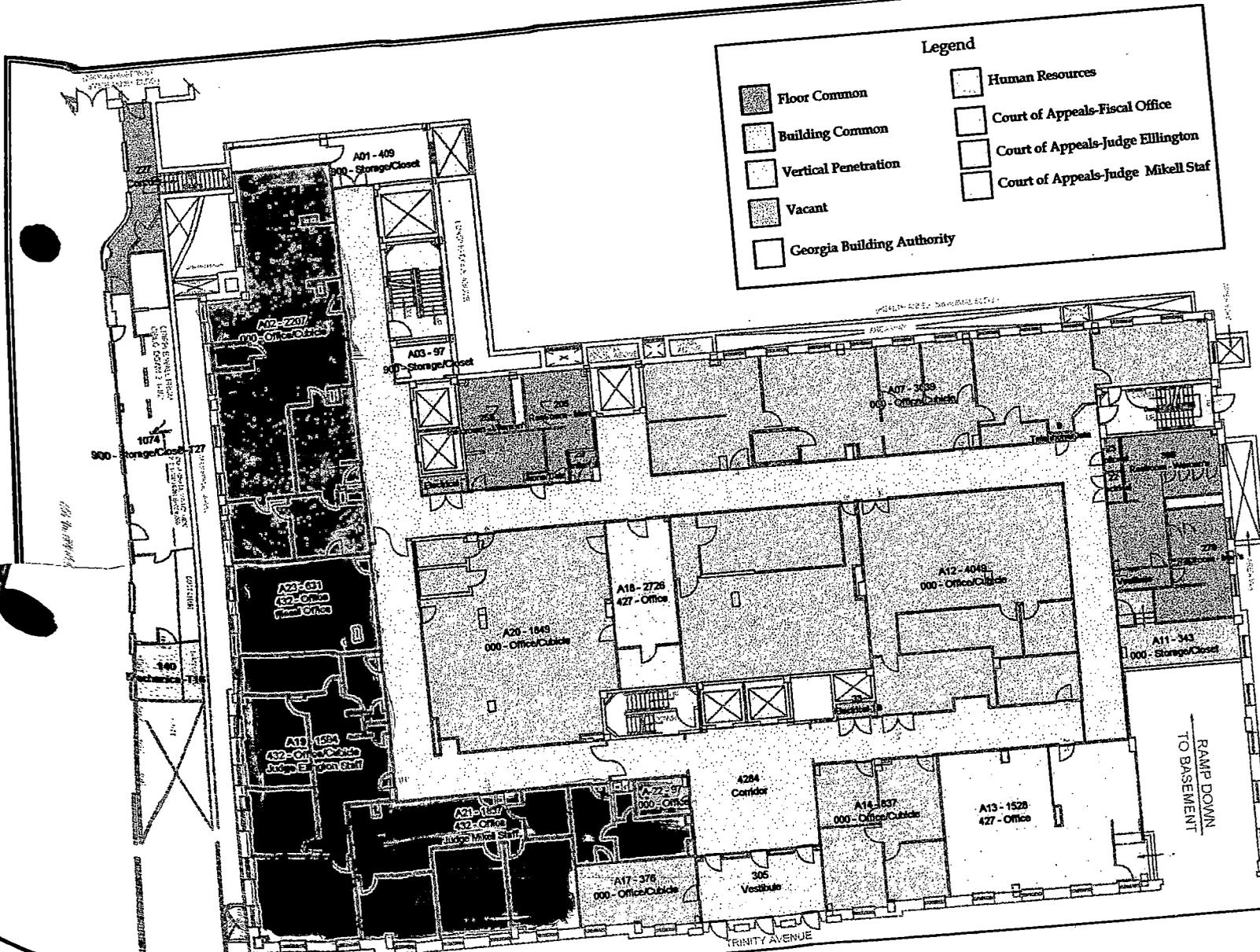
Space Totals

Cross Penetrations:
 R/R Renewable
 Bldg Common
 Flr Common
 Renewable
 Usable
 Assignable

Assigned Space

Agency #	RSF
000	9,637
432-02	1,025
432-04	997
470	11,102

Health Building
 Building # 202
 Floor # 005
 DATE UPDATED: 12/9/2003



Legend

 Floor Common	 Human Resources
 Building Common	 Court of Appeals-Fiscal Office
 Vertical Penetration	 Court of Appeals-Judge Ellington
 Vacant	 Court of Appeals-Judge Mikell Staf
 Georgia Building Authority	



FACILITY DATABASE

GEORGIA BUILDING AUTHORITY

Facilities Management

Space Totals

- Gross
- Penetrations
- Fir Rentable
- Bldg Common
- Fir Common
- Rentable
- Usable
- Assignable

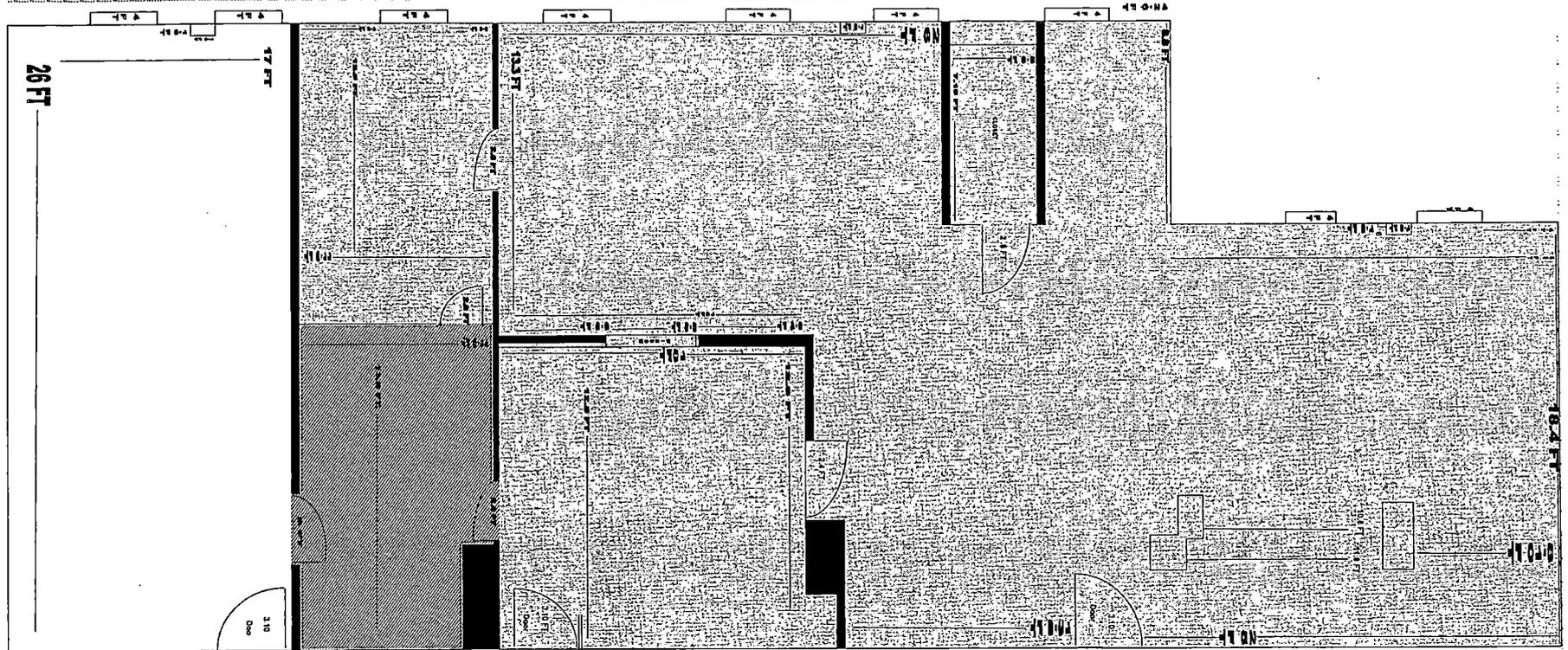
Assigned Space

Agency #	RSP
000	11,794
427	1,836
432-01	630
432-10	1,590
432-12	1,858
900	1,524

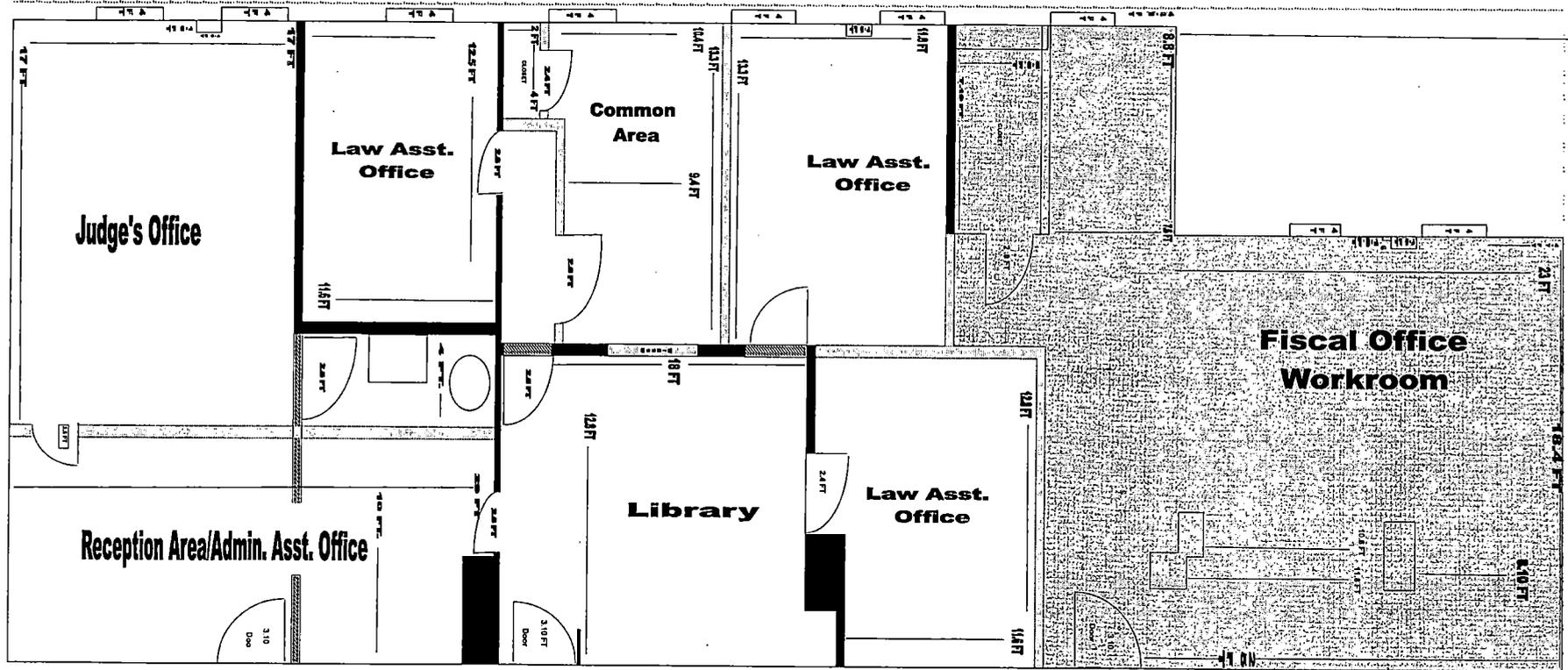
DATE UPDATED: 3/4/02

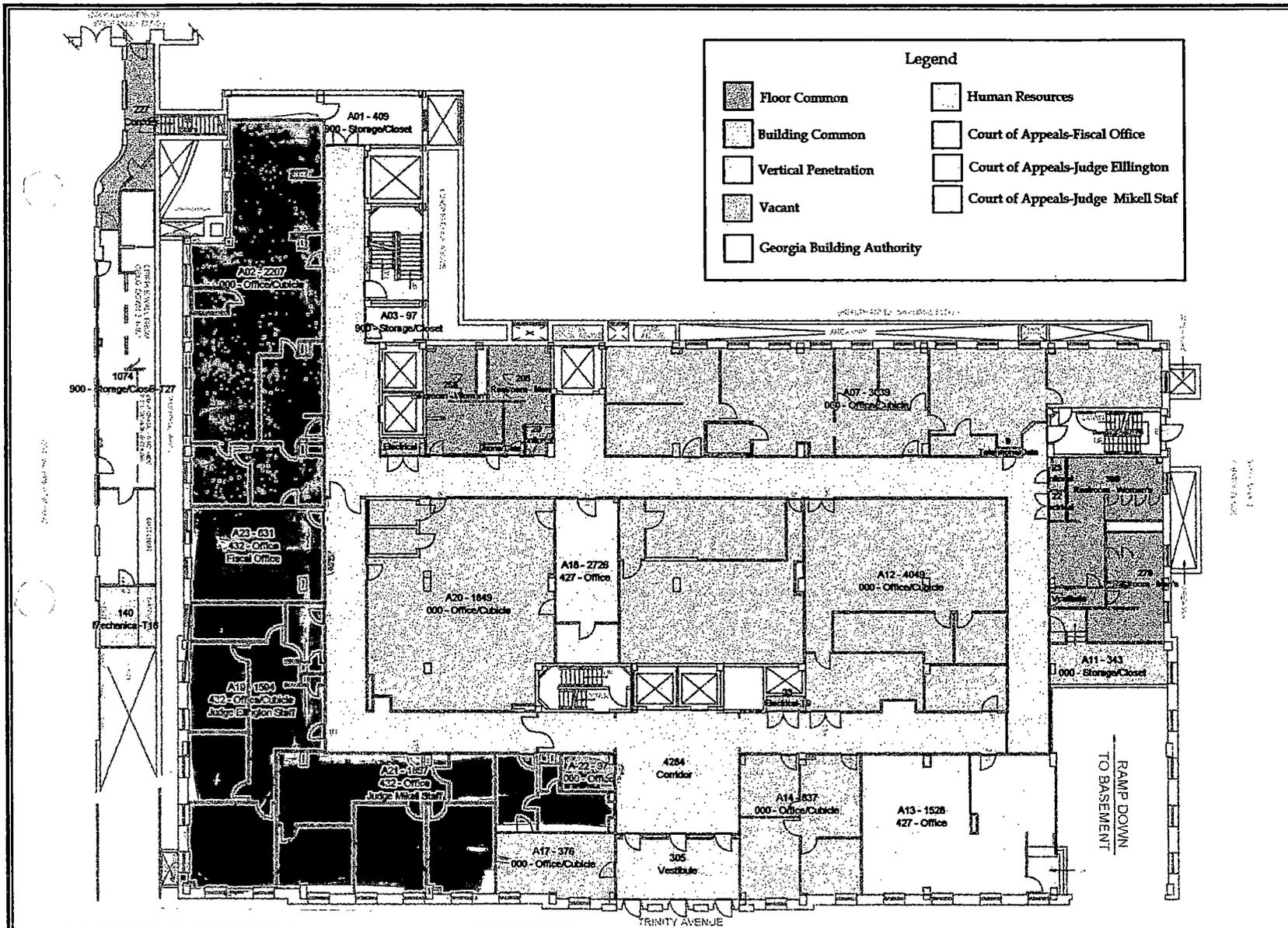
Health Building
Building # 202
Floor # DGR

8 H - CURRENT



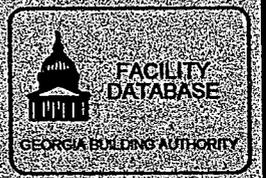
8 H - PROPOSED REVISION





Legend

	Floor Common		Human Resources
	Building Common		Court of Appeals-Fiscal Office
	Vertical Penetration		Court of Appeals-Judge Ellington
	Vacant		Court of Appeals-Judge Mikell Staff
	Georgia Building Authority		



Facilities Management

Space Totals

- Gross
- Penetrations
- Fir Rentable
- Bldg Common
- Fir Common
- Rentable
- Usable
- Assignable

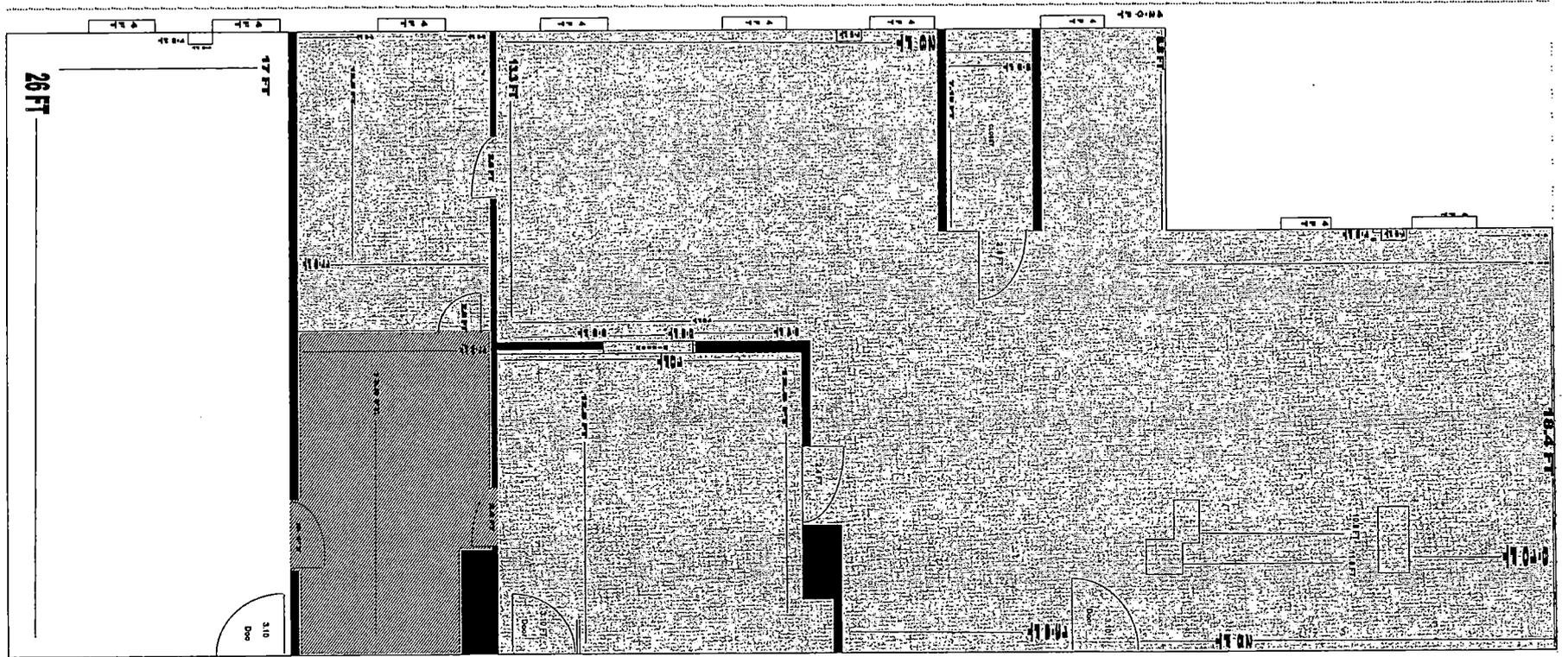
Assigned Space

Agency #	RSF
000	11,794
427	1,836
432-01	630
432-10	1,593
432-12	1,858
900	1,524

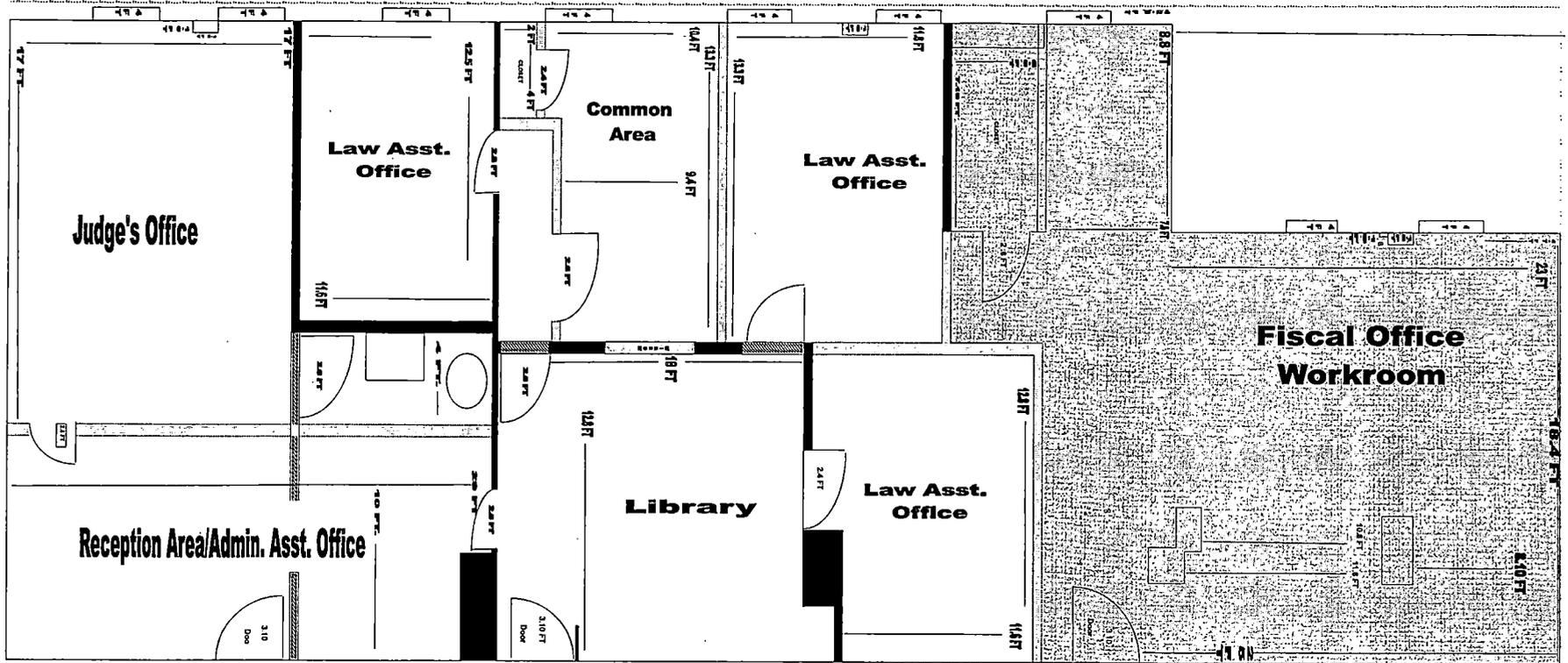
DATE UPDATED: 3/4/02

Health Building
 Building # 202
 Floor # 0GR

8 H - CURRENT



8 H - PROPOSED REVISION



COURT OF APPEALS OF GEORGIA
APRIL ADMINISTRATIVE BANC MEETING

Tuesday, April 20, 2004
10:00 a.m.
Third Floor Conference Room

A G E N D A

- | | | |
|-------|--|---|
| I. | Call Meeting to Order | Chief Judge J.D. Smith |
| II. | Approval of November 18, 2003
Administrative Banc Meeting Minutes | Chief Judge J.D. Smith |
| III. | Renovation/Computerization of the Courtroom | Chief Judge J.D. Smith
Jan Kelley, Fiscal Officer |
| IV. | Additional Space | Jan Kelley |
| V. | 2004 Legislation | Chief Judge J.D. Smith
Bill Martin, Clerk/Court
Administrator |
| VI. | Certified Questions | Bill Martin |
| VII. | Transfers to the Supreme Court | Bill Martin |
| VIII. | Request of Non-Participating Judge to have
a case go to Twelve Judges | Bill Martin |
| IX. | IOM/Updates | Bill Martin |
| X. | Rules Update | Bill Martin |
| XI. | Emergency Procedures Manual Orientation | Bill Martin |
| XII. | Old Business | |
| XIII. | New Business | |
| IVX. | Adjournment | |

**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.



Court of Appeals

Memorandum

To: Self

From: William L. Martin, III

Subject: Tentative Banc Meeting Agenda Items

Date: March 19, 2004

These are tentative Banc Meeting Agenda Items:

- [1] The cost of Admission Fees, Certificates of Good Standings, copies from microfilm, Index, History and Certifications
- [2] Cases going to 12 judges
- [3] Certified questions to the Supreme Court and transfers to the Supreme Court
- [4] Sell copies of our Briefs to Thomson West Group
- [5] Discuss possibility of selling the unpublished opinions



Court of Appeals

Memorandum

To: Self

From: William L. Martin, III

Subject: Tentative Banc Meeting Agenda Items

Date: March 18, 2004

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- [2] Cases going to 12 judges
- [3] Certified questions to the Supreme Court and transfers to the Supreme Court