



# THE STATE OF GEORGIA

## EXECUTIVE ORDER

---

BY THE GOVERNOR:

The Honorable Charles B. Mikell is hereby appointed Senior Appellate Court Judge for the State of Georgia, effective August 31, 2012.

This 30 day of August, 2012.

*Nathan Deal*

---

GOVERNOR



*The Court of Appeals  
of the  
State of Georgia  
Atlanta, Georgia 30334*

CHAMBERS OF  
JUDGE CHARLES B. MIKELL

(404) 656-3459

July 10, 2012

The Hon. Nathan Deal  
Governor of Georgia  
201 State Capitol  
Atlanta, Georgia 30334

Dear Governor Deal:

I intend to retire from the Georgia Court of Appeals on August 31, 2012. I am very grateful to the people of Georgia for allowing me to serve them as a judge for twenty-six years, twelve years of which were on the Court of Appeals. The work has been gratifying, but my declining health makes retirement advisable at this time.

My present term of office would normally expire December 31, 2014.

Thank you for your service to our state and for your considering my request to retire August 31st.

Very truly yours,

A handwritten signature in black ink that reads "C. B. Mikell".

CHARLES B. MIKELL  
PRESIDING JUDGE

P.S. I would be very grateful if you would appoint me as a "Senior Appellate Judge," as of August 31st.

CBM:lk

cc: Ryan Teague, Esq.



STATE OF GEORGIA  
OFFICE OF THE GOVERNOR  
ATLANTA 30334-0900

Nathan Deal  
GOVERNOR

July 13, 2012

The Honorable Charles B. Mikell  
Presiding Judge  
The Court of Appeals of the State of Georgia  
State Judicial Building  
47 Trinity Avenue, Suite 501  
Atlanta, Georgia 30334

Dear Judge Mikell:

Thank you for the service you have rendered as Judge of the Court of Appeals of the State of Georgia. I appreciate you apprising me of your resignation, effective August 31, 2012. Your resignation is hereby accepted, and I pray for your improved health and wish you all the best.

Your dedicated service to our judicial system is to be commended and the void left in the Court of Appeals of Georgia by your departure will be difficult to fill. Pursuant to your request, I will grant you Senior Appellate Judge status effective August 31, 2012.

Thank you again for your service to the Court of Appeals and the State of Georgia. Please know that I greatly appreciate your contributions to ensuring justice for all of Georgia's citizens.

Sincerely,

A handwritten signature in cursive script that reads "Nathan Deal".

Nathan Deal

ND:rg

cc: The Honorable John J. Ellington, Chief Judge, Georgia Court of Appeals

# Court of Appeals of the State of Georgia

ATLAN

*The Court of Appeals hereby passes the follow*

**A06A0087. IN THE INTEREST OF M. N.**

Appellee, the Georgia Department of Juvenile Justice, acting by and through the Chatham County Juvenile Court Services, filed a motion to remand this appeal to the Juvenile Court of Chatham County because several orders instrumental to the disposition of the appeal have not been included in the record. It is hereby ordered that this case be remanded to the juvenile court and that the entire record be transmitted on appeal, including, but not limited to, all records generated since the Department initially obtained emergency custody of M. N. R. in 2003. It is further ordered that the clerk of the Juvenile Court of Chatham County shall re-transmit the record and the transcript to this Court for re-docketing in this Court.

In light of this decision, appellant's request for an extension to file her brief is rendered moot as the parties will be required to re-submit briefs after the entire record has been transmitted to this Court, and the appeal has been re-docketed.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta      FEB 16 2006*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*William Z. Matlock, Clerk.*

# Court of Appeals of the State of Georgia

ATLANTA, February 7, 2006

*The Court of Appeals hereby passes the following order:*

## **A06A0924. PRESLEY v. THE STATE.**

Eric Presley filed this motion to remand his case to the DeKalb County Superior Court for determination of his motion for new trial. By signature on the motion to remand, the assistant district attorney consents to the remand of the case to the trial court.

In his motion, Presley states that he filed his notice of appeal pro se before filing a motion for new trial. Subsequently thereto, however, he retained counsel, who has since filed a motion for new trial, which includes the issue of the effectiveness of trial counsel. Such a claim must be asserted at the earliest practicable moment, which in this case, would be in a motion for new trial filed in the trial court. See *Carter v. State*, 275 Ga. App. 846 (2) (622 SE2d 60) (2005).

We find that this case should be remanded to the trial court for a ruling on Presley's motion for new trial. Accordingly, the motion for remand is hereby GRANTED.

Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta

**FEB -7 2006**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*William Z. Martin* Clerk.



COPY

Court of Appeals  
Memorandum

---

To: Judge Charles B. Mikell  
From: *William L. Martin, III*  
Subject: City of Savannah Zoning Board of Appeals  
Date: May 12, 2008

---

Enclosed please find a notice that was delivered to my office addressed to the State of Georgia, 47 Trinity Avenue, S.W., Atlanta, Georgia 30334 9006. I have no idea why this was delivered to me. However, I thought it might be something that is important to you since it deals with a re-zoning in Savannah.

If this does not belong to you or you are not concerned with this, please send it back to me.

Thank you.

/ld

Enclosure

CITY OF SAVANNAH ZONING BOARD OF APPEALS

P O BOX 8246 - 110 EAST STATE STREET - SAVANNAH, GA

Phone: 651-1440 / Facsimile: 651-1480

May 9, 2008

ZBA File No: B-080428-32035-2

**PUBLIC HEARING NOTICE**  
**(TO ALL ADJACENT PROPERTY OWNERS)**

A public hearing regarding the property described below will be held by the City of Savannah Zoning Board of Appeals on **Tuesday, May 27, 2008 at 2:30 p.m.** in the **Arthur A. Mendonsa Hearing Room, 112 East State Street**. The hearing room is in the MPC office, located at the State Street Parking Garage.

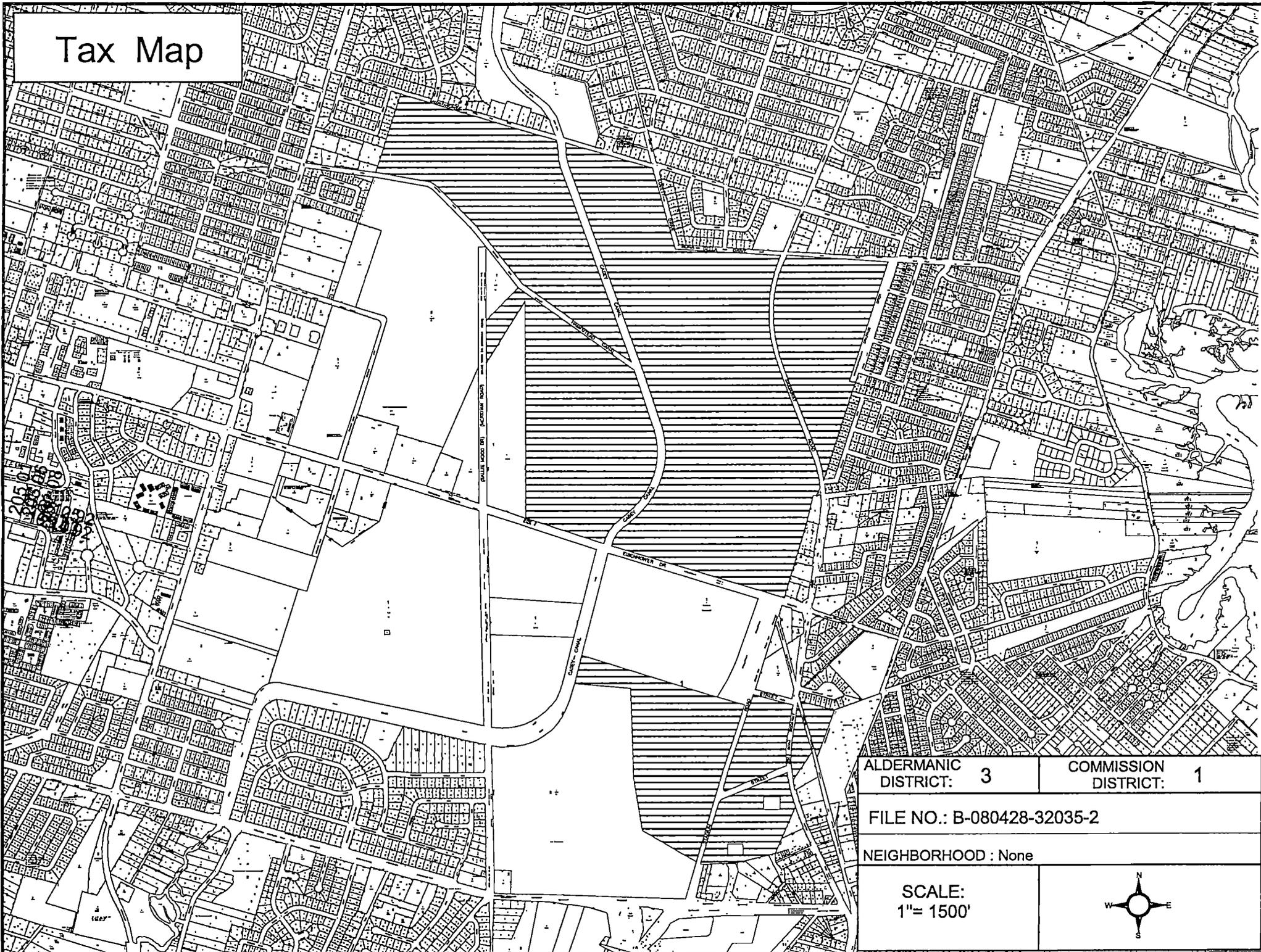
**Request:** The petitioner, City of Savannah-Sanitation Bureau, is requesting approval of a public use under the provisions of Code Section 8-3025A (23) in order to establish a Recycling Collection and Education Center adjacent to an existing municipal waste transfer station in the vicinity of Bacon Park.

**Location of Property:** The subject property is located at 6161 Skidaway Road. The property is zoned R-6 (one-family residential). A tax parcel map showing the property is attached.

The file regarding this request is available for public review at the MPC office between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. A MPC staff report regarding the request will be available prior to the hearing.

Adjacent property owners and other interested individuals may appear at the ZBA hearing to speak about the request. **If you have questions or comments, please contact Jack Butler, Secretary to the ZBA, at 651-1489 prior to the May 27 hearing.** If you cannot attend the hearing but would like to have comments made part of the record, please provide a letter to the ZBA before the hearing. The letter can be sent to the above address or fax number. Please reference the ZBA file number located in the upper right corner of this notice. Written comments become public record.

# Tax Map

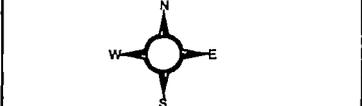


ALDERMANIC DISTRICT: 3      COMMISSION DISTRICT: 1

FILE NO.: B-080428-32035-2

NEIGHBORHOOD : None

SCALE:  
1" = 1500'





# ZONING BOARD OF APPEALS

110 EAST STATE STREET, P.O. BOX 8246, SAVANNAH, GEORGIA 31412 - 8246

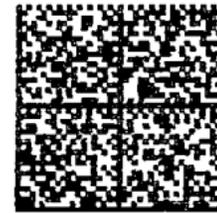
RECEIVED IN OFFICE

2008 MAY -8 AM 10:50

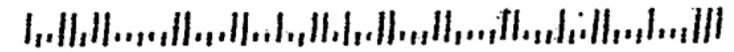
*William H. ...*  
CLERK/COUNTY ADMINISTRATOR  
OFFICE OF APPEALS

2-0157 -01-001  
STATE OF GEORGIA  
47 TRINITY AVE SW  
ATLANTA, GA 30334 9006

30334+9006-47 0001



02 1M  
0004242747 MAY 06 2008  
MAILED FROM ZIP CODE 31401  
**\$ 00.41<sup>0</sup>**



**From:** Jessica Wright  
**To:** Bill Martin  
**Date:** 12/18/2008 1:15 PM  
**Subject:** A09A0051

Bill,

Can someone explain to me what happened with ANT's Motion for Extension of Time in this case so that I can explain to Judge Mikell. On Friday, December 5, 2008, the docket reflected that the motion had been filed on December 4, 2008. I called Edwin that day and asked for someone to deliver the motion to chambers (I was getting ready to issue an order on two pending motions -- a motion to dismiss and a MFR -- and wanted to be sure I had dealt with all pending motions before giving the order of dismissal to Judge Mikell for approval). I did not hear from Edwin until Thursday, December 11, 2008, when he advised that the Clerk's Office had incorrectly filed the motion for extension of time and could not find any record of it (according to Edwin, no such motion existed). Accordingly, I went ahead and gave the proposed Order to Judge Mikell. The Order was issued on December 12, 2008. On that same day, the Clerk's office delivered to me the Motion for Extension of Time, file stamped December 9, 2008. Judge Mikell would not have approved the dismissal order had he known a motion for extension of time was pending. The motion likely will not change our decision, but it should have been dealt with at the same time, or prior to the case being dismissed.

I would like to be able to explain to Judge Mikell what happened since it appears that I must vacate the Order of December 12, 2008, and issue a new order dealing with all three pending motions (if there is alternative way to deal with it, I am open to suggestions).

Thank you.

Jessica



# Court of Appeals

## Memorandum

---

**To:** Jessica Wright  
**From:** H. Sparrow *HS*  
**Subject:** A09A0051 Appellant's Motion for Extension of Time  
**Date:** December 19, 2008

---

Bill Martin asked me to investigate the circumstances stated in your email today concerning the above appeal. The pro se appellant attempted to file this motion three times. Once on November 24th, when it was returned November 25th by Mr. Martin's letter (see an attached letter) because it was a compound motion in conflict with our Rule 41 (b). On December 3rd, the motion was received again and sent back with Mr. Martin's letter of December 4th ( see an attached letter) for failure to include a proper certificate of service. On December 10th, the motion was received for the third time and docketed for December 9th, the postmark date. (see motion front page attached).

Usually Mr. Martin sends a blind copy to the judge's office to which a pending appeal is assigned when we return documents. There is no indication on the copy in Mr. Martin's correspondence file that a copy was sent to your office, but I cannot be absolutely sure it was

not sent up.

I do not know why the motion did not arrive in Judge Mikell's office until the 12th. It would seem that it should have been received by your office on the 11th because it should have been entered on the docket at least sometime on December 10th or the 11th and also sent up on one of those two days. Perhaps the motions clerk held the motion to make sure that Mr. Martin wanted her to accept it.

At the time, Edwin spoke with you he may not have yet received the re-filed motion from the briefs and motions clerk which had been received in the office on December 10th. He probably only knew that the prior defective filing had been sent back to the appellant.

Although the orders clerk does look for other pending motions before she sends out orders, we do not have a rule that she should not send out a dismissal if another motion is pending.

I hope I have provided a sufficient response to your inquiry. If you would like to discuss this further with me or Mr. Martin, please do not hesitate to contact one of us.

~~cc: Bill Martin~~

*The Court of Appeals  
Office of the Clerk  
47 Trinity Avenue  
Suite 501  
Atlanta, Georgia 30334*

WILLIAM L. MARTIN, III  
CLERK AND COURT ADMINISTRATOR

(404) 656-3450  
martinw@gaappeals.us

November 25, 2008

Ms. Clareth Ross  
GDC176413  
Pulaski State Prison  
Post Office Box 839  
Hawkinsville, Georgia 31036-0839

RE: A09A0051. Clareth Ross v. The State

Dear Ms. Ross:

I am in receipt of your communication dated November 17, 2008 regarding the above appeal. Please be advised that pursuant to the rules of this Court, parties are not permitted to file compound motions.

If you wish to re-file the motions, each motion must be filed as a separate document. The reasons for this is some motions go to one judge and some motions go to three judges. Also, our rules require that all pleadings be filed as an original and two copies because the Court operates in panels of three judges.

I am returning your documents to you along with a copy of the Rules of this Court.

Sincerely,



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

WLM, III/ld  
Enclosures

*The Court of Appeals*  
*Office of the Clerk*  
*47 Trinity Avenue*  
*Suite 501*  
*Atlanta, Georgia 30334*

WILLIAM L. MARTIN, III  
CLERK AND COURT ADMINISTRATOR

(404) 656-3450  
martinw@gaappeals.us

December 4, 2008

Ms. Clareth Ross  
GDC176413  
Pulaski State Prison  
Post Office Box 839  
Hawkinsville, Georgia 31036-0839

RE: A09A0051. Clareth Ross v. The State

Dear Ms. Ross:

I am in receipt of your communication of postmark December 2, 2008 regarding the above appeal. Please be advised that pursuant to the rules of the Court of Appeals of Georgia, the clerk can receive no pleadings that do not show a Certificate of Service to opposing counsel.

It is not sufficient to serve the clerk of the Court of Appeals of Georgia. You must serve the state's representative. In this instance, you must serve Mr. Nicholas E. Deeb, Assistant District Attorney, 225 Pine Avenue, Room 231, Post Office Box 1827, Albany, Georgia 31702.

I am returning your documents to you along with another copy of the Rules of this Court.

Sincerely,



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

WLM, III/ld  
Enclosures

42

FILED IN OFFICE  
NOV 24 2008  
COURT CLERK  
CLERK COURT OF APPEALS OF GA

IN THE COURT OF APPEALS OF GEORGIA  
FILED IN OFFICE

CLARETHA ROSS,  
Appellant,

DEC 09 2008  
CLERK COURT OF  
APPEALS OF GEORGIA  
APPEALS CASE NO: AD9A0051

STATE OF GEORGIA,  
Appellee.

FILED IN OFFICE  
DEC 09 2008  
COURT CLERK  
CLERK COURT OF APPEALS OF GA

RECEIVED IN OFFICE  
NOV 24 AM 11:49  
CLERK COURT OF APPEALS OF GA

MOTION FOR EXTENSION OF TIME

~~MOTION TO RECONSIDER MOTION TO STAY APPEAL~~

~~MOTION TO SUPPLEMENT THE RECORD~~

~~MOTION FOR SUPERSEDES BOND~~

NOW COMES CLARETHA ROSS and moves this Honorable Court, by and through, Pro Se, to grant an Order on Appellant motion for extension of time, ~~motion to reconsider motion to stay appeal, motion to supplement the record, and motion for supersedeas bond~~. Appellant shows good cause for the above named motions and respectfully shows, in support, of her motions the following grounds:

- 1) Appellant shows that on October 14, 2008, this Honorable Court passed an Order exercising their discretion and granted appellant an extension of time to file her enumeration of errors and brief, in the above referenced docket number.
- 2) Appellant shows that sometime between the dates of October 14 and October 31, 2008, said Order was mailed via United States Postal Service to the Rockdale County Jail located in Rockdale County, Georgia, denoted "Out of jail."

**From:** Jessica Wright  
**To:** Bill Martin  
**Date:** 12/18/2008 1:15 PM  
**Subject:** A09A0051

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I would like to be able to explain to Judge Mikell what happened since it appears that I must vacate the Order of December 12, 2008, and issue a new order dealing with all three pending motions (if there is alternative way to deal with it, I am open to suggestions).

Thank you.

Jessica



OATH OF JUDGE OF THE COURT OF APPEALS OF GEORGIA

STATE OF GEORGIA )
COUNTY OF FULTON )

I, Charles B. Mikell, a citizen of Chatham County, Georgia and being an employee of The Court of Appeals of Georgia and the recipient of public funds for services rendered as such employee, do hereby solemnly swear and affirm that I will support the Constitution of the United States and the Constitution of Georgia.

I do further swear that I will discharge all the duties lawfully required of me as Judge of the Court of Appeals of Georgia, according to the best of my ability and understanding.

I do further swear and affirm that I am not the holder of any unaccounted for public money due this State, or any political subdivision or authority thereof; that I am not the holder of any office of trust under the government of the United States, nor of either of the several states, nor of any foreign state; and that I am otherwise qualified to hold said office, according to the Constitution and Laws of Georgia; and that I will support the Constitutions of the United States and of this State.

I do further swear that I will administer justice without respect to person, and do equal rights to the poor and the rich, and that I will faithfully and impartially discharge and perform all of the duties incumbent on me as Judge of the Court of Appeals of this State, according to the best of my ability and understanding, and agreeably to the laws of the Constitution of this State, and the Constitution of the United States.

SO HELP ME GOD!

Handwritten signature of C. B. Mikell

Signature

Sworn to and subscribed before me, this )

11th day of December, 2008 )

Handwritten signature of Sonny Perdue )
GOVERNOR

(O.C.G.A. § 15-2-5)
(O.C.G.A. § 45-3-1)
(O.C.G.A. § 45-3-12)



**LOYALTY OATH**

STATE OF GEORGIA  
COUNTY OF FULTON

I, *Charles B. Mikell* a citizen of *Chatham County, Georgia* and being an employee of *The Court of Appeals of Georgia* and the recipient of public funds for services rendered as such employee, do hereby solemnly swear and affirm that I will support the Constitution of the United States and the Constitution of Georgia.

SO HELP ME GOD!

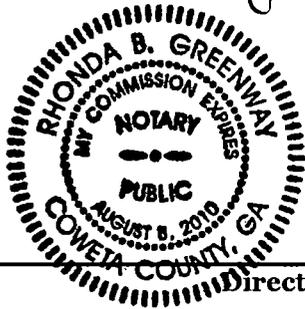
Sworn to and subscribed before me, this the )  
...*11<sup>th</sup>*...day of *December* 20...*08*.....)

*Charles B. Mikell*

*Rhonda B. Greenway*)  
.....)  
Notary

Signature

- (O.C.G.A. 45-3-11)
- (O.C.G.A. 45-3-12)
- (O.C.G.A. 45-3-13)



**Directions**

The oath, when taken, must be attached to the oath of office and filed therewith as required by law.

The loyalty oath required by Code Sections 45-3-11 through 45-3-15 shall apply to all elected officers of this state, including the Governor, constitutional officers, elected officials or any political subdivision of the government of Georgia, and local school board officials (O.C.G.A. 45-3-12).



# Court of Appeals

## Memorandum

---

**To:** Judges Barnes, Smith, Miller, Bernes; Mr Bill Martin, Ms. Jan Kelley

**From:**  Judge Mikell

**Subject:** 2008 Supplemental; 2009 Budget

**Date:** August 9, 2007

---

There will be a Budget Committee meeting at 3 PM, Tuesday, August 14th, 2007, in the banc/robing room, 6th floor, Judicial Building. Please come.



*The Court of Appeals  
of the  
State of Georgia  
Atlanta, Georgia 30334*

CHAMBERS OF  
JUDGE CHARLES B. MIKELL

(404) 656-3459

July 10, 2012

The Hon. Nathan Deal  
Governor of Georgia  
201 State Capitol  
Atlanta, Georgia 30334

Dear Governor Deal:

I intend to retire from the Georgia Court of Appeals on August 31, 2012. I am very grateful to the people of Georgia for allowing me to serve them as a judge for twenty-six years, twelve years of which were on the Court of Appeals. The work has been gratifying, but my declining health makes retirement advisable at this time.

My present term of office would normally expire December 31, 2014.

Thank you for your service to our state and for your considering my request to retire August 31st.

Very truly yours,

A handwritten signature in black ink that reads "C. B. Mikell".

CHARLES B. MIKELL  
PRESIDING JUDGE

P.S. I would be very grateful if you would appoint me as a "Senior Appellate Judge," as of August 31st.

CBM:lk

cc: Ryan Teague, Esq.



STATE OF GEORGIA  
OFFICE OF THE GOVERNOR  
ATLANTA 30334-0900

Nathan Deal  
GOVERNOR

July 13, 2012

The Honorable Charles B. Mikell  
Presiding Judge  
The Court of Appeals of the State of Georgia  
State Judicial Building  
47 Trinity Avenue, Suite 501  
Atlanta, Georgia 30334

Dear Judge Mikell:

Thank you for the service you have rendered as Judge of the Court of Appeals of the State of Georgia. I appreciate you apprising me of your resignation, effective August 31, 2012. Your resignation is hereby accepted, and I pray for your improved health and wish you all the best.

Your dedicated service to our judicial system is to be commended and the void left in the Court of Appeals of Georgia by your departure will be difficult to fill. Pursuant to your request, I will grant you Senior Appellate Judge status effective August 31, 2012.

Thank you again for your service to the Court of Appeals and the State of Georgia. Please know that I greatly appreciate your contributions to ensuring justice for all of Georgia's citizens.

Sincerely,

A handwritten signature in cursive script that reads "Nathan Deal".

Nathan Deal

ND:rg

cc: The Honorable John J. Ellington, Chief Judge, Georgia Court of Appeals

THE HIGHLAND GROUP

July 2, 2004

Judge Charles B. Mikell  
Court of Appeals of Georgia  
334 State Judicial Bldg.  
40 Capitol Square  
Atlanta, GA 30334

file  
~~AO3A~~

Dear Judge Mikell,

You chose to concur with Judge Johnson's Order, AO3A1657 Marquis Towers, Inc. et al v. The Highland Group. Unstudied agreement was reasonable given that it was a small and unimportant case (to anyone but the defendants).

Unfortunately, Judge Johnson's staff members who apparently wrote the opinion also considered the case small and unimportant and did not take care to study the briefs or facts of the case. The overturn of Judge Baxter's considered opinion, developed through over three years of testimony, was hasty and careless.

If you are going to rubber stamp, you should assure yourself that there are reasonable standards set and competent supervision of staff in place in the lead judge's office. In this case, I do not believe that they are.

Your carelessness hurt innocent people.

Sincerely,

Peggy Berg  
President

1111 Rosedale Drive  
Atlanta, Georgia 30306  
(404) 872-4631  
FAX (404) 872-4103

Judge Mubel

Judge: 404-657-2007

H-912-921-0425

C-912-507-1502

F-404-463-3027

F/Sav 912-921-1989

P-404-382-6040

Linda: 404-656-3459

H- 404-367-8088

C- 404-550-8088

Mom- 912-754-6584

Daughter 912-754-~~6584~~ 1978

Pearl: 404-657-9469

H- 770-671-8788

C- 770-842-8788

Sally: 404-656-4724

H- 404-876-4975

C- 404-784-6838

LaSean 404-657-0397

H- 404-753-8004

C- 404-~~893-5824~~

217-5820

Bill,  
Nos ~~where~~ where we  
can be reached.

Linda



# Court of Appeals

## Memorandum

---

To: Judge Charles B. Mikell, Jr.  
From: *WL* William L. Martin, III  
Subject: Newspaper Articles  
Date: June 2, 2000

---

Attached please find two articles of the Fulton County Daily Report dealing with your being named as a judge with the Court of Appeals of Georgia and your swearing-in. I thought you might like these extra copies for your personal record.

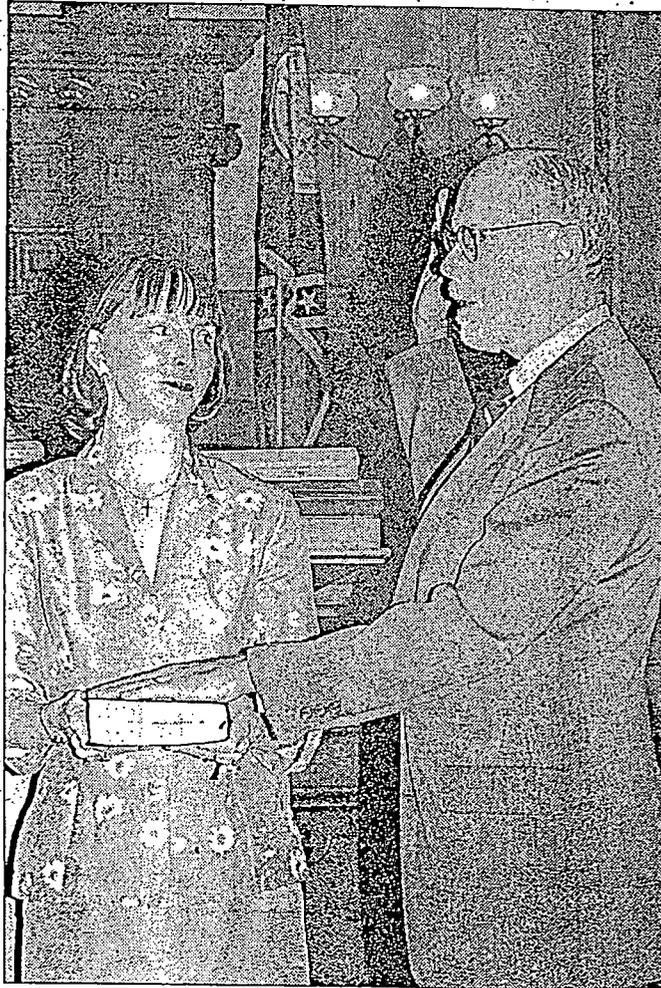
Thank you.

/ld

Attachments

# Mikell Joins Court of Appeals

Dr. Julia LeCraw-Mikell, left, holds Bible as her husband, Charles B. Mikell Jr., 58, takes the oath of office to become the newest member of Georgia's Court of Appeals. Gov. Roy E. Barnes administered the oath Wednesday. Mikell, a former Chatham Superior Court judge, replaces Presiding Judge William L. McMurray Jr. who retired earlier this year.



# Savannah Judge Mikell Picked by Barnes for Court of Appeals Slot

LINDA DANIELS  
*Staff Reporter*

The latest appointment to the Georgia Court of Appeals shows Gov. Roy E. Barnes again promoting from the bench and embracing geographic diversity.

Barnes Monday picked Chatham Superior Court Judge Charles B. Mikell Jr., 58, from five candidates to fill the vacancy created by the recent retirement of Presiding Judge William L. McMurray Jr.

The other finalists were Cobb State Court Chief Judge A. Harris Adams; Charles R. Adams III, a Fort Valley litigator of the firm Adams & Adams LLP; John J. Barrow, an Athens litigator with Winburn, Lewis & Barrow; and DeKalb Superior Court Judge

Anne Workman.

Mikell, a native of Savannah, has served as a Superior Court Judge in the Eastern Judicial Circuit since his election in 1992.

Mikell has presided over more than 500 jury trials and thousands of non-jury matters, according to information distributed by Mikell's office. Mikell did not return calls for comment as of press time Monday.

## Court Experience Cited

Mikell's appointment "... brings significant judicial experience, No. 1," says Decatur attorney and Georgia Trial Lawyers Association representative Mark F. Dehler. "I think he's a good choice, a good judge. He's well-



Chatham Superior Court Judge Charles B. Mikell Jr. was praised by Gov. Roy E. Barnes for his experience on the state and superior court bench.

See MIKELL, Page 2

# Barnes to Pick Mikell Successor on Chatham Superior Bench

MIKELL, from Page 1.

respected, has great trial experience and geographic diversity."

Barnes wasn't available for comment. But in a statement issued Monday, he said, "I am proud to be able to add someone of Charles Mikell's caliber to the Court of Appeals. He brings a wealth of experience and a true commitment to public service to the bench."

After graduating from Princeton University in 1963, Mikell entered the Army as an intelligence officer. He served five years and was awarded the Bronze Star for meritorious service in Vietnam.

Mikell later pursued graduate studies in history at the University of North Carolina at Chapel Hill and as a Fulbright Scholar in Prague, Czechoslovakia, and London. He's a graduate of the University of Georgia law school.

He was a trial attorney in Savannah from 1976 to 1984, for the firm then known as Brannen, Wessels & Searcy.

## Became Judge in '85

In 1985, Gov. Joe Frank Harris appointed Mikell to the Chatham State Court. He was re-elected in 1986 and 1990. He became chief judge of that court in 1989.

Mikell was elected to the Superior Court in 1992 and re-elected in 1996. He was unopposed for re-election following qualifying in April so Barnes will appoint Mikell's replacement to the Chatham court.

Barnes interviewed the finalists Thursday for this fourth vacancy on the Court of Appeals since his term began in January 1999, says Nominating Commission Chairman George "Buddy" Darden, a partner at Long, Aldridge & Norman. (Darden is counsel for the *Daily Report*).

All five finalists were nominees last



Based on his appointments to the Court of Appeals, Gov. Roy E. Barnes seems likely to select judges with bench experience and geographical diversity.

year when Barnes filled the three other Court of Appeals vacancies by appointing Fulton State Court Judge M. Yvette Miller, Dougherty Superior Court Judge Herbert E. Phipps and State Court Judge John J. Ellington of the Dublin Judicial Circuit.

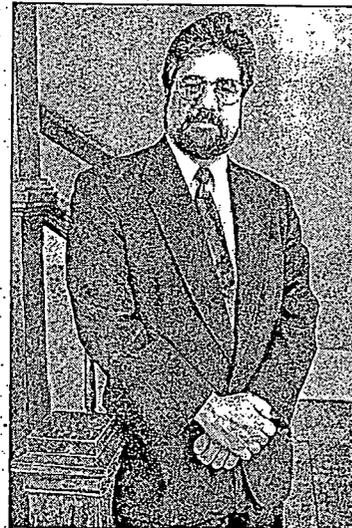
Those vacancies were created by the resignation of former Presiding Judge Dorothy T. Beasley and by legislation creating two new seats.

In the 1999 round of appointments, Barnes selected two black judges, Phipps and Miller. With Mikell's appointments, the 12-member appellate court has three black and two female judges.

## Geographic Diversity

Barnes also has made geographic diversity a factor.

Mikell—whose wife, Dr. Julia L. Mikell, contributed \$1,200 to Barnes'



FILE PHOTO

Christopher J. McFadden, author of a book of Georgia's appeals courts, says there are benefits to appointing either sitting judges or litigators.

campaign in 1998 and another \$1,000 in 1999—comes from the southern coastal part of the state. Phipps is from Albany, Ellington from Soperton and Miller originally is from Macon and practiced law in South Georgia, although she later sat on the Fulton bench.

Last year, speculation turned on whether Barnes would appoint from the bench or pick a litigator, like himself.

Christopher J. McFadden, a Decatur lawyer who has co-authored a book on the state's appellate courts, "Georgia Appellate Practice," says there are benefits to both approaches.

"There's something to be said for someone who's overruling a trial judge to have some sense for what it's like to sit in front of a trial bench," McFadden says.

On the other hand, a former litigator who can sympathize with clients and the attorney in the trenches also has merit, he says. "From my perspective, with a collegial bench, you benefit from having both perspectives," McFadden says.

Currently on the Court of Appeals, only Judge Anne E. Barnes practiced law immediately before taking her seat in 1999 while Judge G. Alan Blackburn spent 21 years in general practice and two years as a part-time Administrative Law Judge for the state Department of Medical Assistance.

Judge Gary B. Andrews was a Georgia Public Service commissioner immediately before joining the court in 1991, although he had served as a Lookout Mountain Superior Court judge for five years. □



# Court of Appeals

## Memorandum

---

**To:** Judge Charles B. Mikell, Jr.  
**From:** *W. L. Martin, III*  
**Subject:** Oath of Office  
**Date:** June 6, 2000

---

Attached please find a copy of the Executive Order signed by Governor Roy E. Barnes appointing you as Judge of the Court of Appeals of Georgia along with a copy of the Oath signed by you and the Governor. I would imagine that you already have copies of these documents, but I want to make sure that you receive them. I also had a copy of the Oath and the Executive Order in your file in my office.

If you have any questions or if I can be of any assistance to you, please do not hesitate to contact me.

Thank you.

/ld.

Attachments



# THE STATE OF GEORGIA

## EXECUTIVE ORDER

---

BY THE GOVERNOR:

ORDERED:

That Charles B. Mikell, Jr., of Chatham County, Georgia be and he is hereby appointed as Judge of the Court of Appeals of Georgia, to serve a term of office beginning this date and continuing as provided by law, to succeed the Honorable William L. McMurray, who retired.

This 31<sup>st</sup> day of May, 2000.

GOVERNOR

ATTEST:

EXECUTIVE SECRETARY

OATH OF JUDGE OF THE COURT OF APPEALS OF GEORGIA

STATE OF GEORGIA )
COUNTY OF FULTON )

I, Charles Bazemore Mikell, Jr., (name)

a citizen of Chatham County

and being an employee of the State of Georgia

and the recipient of public funds for services rendered as such employee, do hereby solemnly swear and affirm that I will support the Constitution of the United States and the Constitution of Georgia.

I do further swear that I will discharge all the duties lawfully required of me as Judge of the Court of Appeals of Georgia, according to the best of my ability and understanding.

I do further swear and affirm that I am not the holder of any unaccounted for public money due this State; that I am not the holder of any office of trust under the government of the United States, nor of either of the several states, nor of any foreign state; and that I am otherwise qualified to hold said office, according to the Constitution and Laws of Georgia; and that I will support the Constitutions of the United States and of this State.

I do further swear that I will administer justice without respect to person, and do equal rights to the poor and the rich, and that I will faithfully and impartially discharge and perform all of the duties incumbent on me as Judge of the Court of Appeals of Georgia, according to the best of my ability and understanding, and agreeably to the Laws and Constitution of this State and the Constitution of the United States.

SO HELP ME GOD!

Handwritten signature of Charles Bazemore Mikell, Jr.

Signature.

Sworn to and subscribed before me

this 31st day of May, 2000

Handwritten signature of the Governor

Governor

(O.C.G.A. 15-3-5)
(O.C.G.A. 45-3-1)
(O.C.G.A. 45-3-12)



STATE OF GEORGIA  
SUPERIOR COURT OF THE EASTERN JUDICIAL CIRCUIT

ROOM 203 COURTHOUSE  
133 MONTGOMERY STREET  
SAVANNAH, GEORGIA 31401-3239

CHAMBERS OF  
JUDGE CHARLES B. MIKELL

May 30, 2000

TELEPHONE (912) 652-7162  
FACSIMILE (912) 652-7164

The Hon. Roy E. Barnes  
Governor of Georgia  
201 State Capitol  
Atlanta, Georgia 30334

Dear Governor Barnes:

I resign as judge of the Superior Court, Eastern Judicial Circuit of Georgia.

Thank you very much for giving me the opportunity to serve as a judge of the Court of Appeals. I greatly appreciate the trust and confidence you have shown in me by making this appointment. Julia and I are both very grateful to you.

Very truly yours,

*Charlie*  
CHARLES B. MIKELL

cc. The Hon. Perry Brown Reynolds



STATE OF GEORGIA  
OFFICE OF THE GOVERNOR  
ATLANTA 30334-0900

Roy E. Barnes  
GOVERNOR

Penny Brown Reynolds  
EXECUTIVE COUNSEL

MEMORANDUM

To: Administrative Office of the Courts, Attn: Nancy Pevey  
✓ Court of Appeals, William L. Martin, III, Administrative Clerk  
Secretary of State, Elections Division, Attn: Axiver Harris  
Department of Administrative Services – Payroll Office, Attn: Beverly Cooper  
Council of Superior Court Judges of GA, Attn: Molly Perry, Executive Director

From: Penny Brown Reynolds *PBR*  
Executive Counsel

Date: June 1, 2000

Re: Newly Sworn In Judge

---

Please find enclosed a copy of the Executive Order, Oath and letter of resignation for:

Judge Charles Bazemore Mikell, Jr.  
Court of Appeals of Georgia

PBR:lbw

Enclosures



# Court of Appeals

## Memorandum

---

**To:** Clerk's Office Personnel  
**From:** Sheila Collins *sc*  
**Subject:** Conversion of Senior Judge McMurray's Judge number  
**Date:** June 8, 2000

---

Bud Tirey advised that, as of this morning he has converted all cases decided by Senior Judge McMurray to show a judge code of 79. All cases on the computer that were decided by Judge McMurray will now show him as having been Judge 79.

All cases assigned to 92 which have not been decided will continue to be 92 and assigned to Judge Mikell. As of this date, Judge Mikell has not put out any opinions.

If you have any question, please see Bud or Sheila.



*The Court of Appeals*  
*of the*  
*State of Georgia*  
*Atlanta, Georgia 30334*

CHAMBERS OF  
CHARLES B. MIKELL  
JUDGE

(404) 656-3459

August 6, 2002

Dear Friends,

There is glorious news. The deadline for candidates to qualify to run in the August primary election has come and gone. No one signed up to run against me. To be sure, there remains the unlikely, unprecedented, theoretical possibility of a "write in" candidacy. But no write-in candidate has ever been successful in a statewide race in Georgia. Really, the passage of the qualifying deadline means that I will be elected in August to a full six year term on the Court of Appeals of Georgia.

My family and I are very grateful to you for your encouragement and help with my election campaign. Thanks to your generosity, we were able to raise a significant sum of money. Having this "war chest" on hand deterred opposition. During the months before qualifying, I was able to make many new friends at gatherings around the state. I will keep in touch with them over the next six years. As you know, the most important election is always the next election.

Keeping my campaign organization intact is important. But more important over the next six years will be my working hard to do a good job on the Court of Appeals. I want to continue our traditions of deciding appeals promptly, adhering to precedent, and doing justice impartially. I am grateful for this opportunity to serve the people of Georgia.

Thank you very, very much for your support and your friendship.

Sincerely,

*Charlie*

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NOT PRINTED OR MAILED AT PUBLIC EXPENSE

PAID FOR BY COMMITTEE TO ELECT JUDGE MIKELL  
BILL DANIEL, CHAIRMAN; DON KOLE, TREASURER



STATE OF GEORGIA  
OFFICE OF THE GOVERNOR  
ATLANTA 30334-0900

Roy E. Barnes  
GOVERNOR

Penny Brown Reynolds  
EXECUTIVE COUNSEL

MEMORANDUM

**TO:** ALL INTERESTED PARTIES  
**FROM:** Penny Brown Reynolds *PBR*  
Executive Counsel  
**SUBJECT:** JUDICIAL SWEARING-IN  
**DATE:** May 25, 2000

---

On behalf of Governor Roy E. Barnes, you are cordially invited to attend the Swearing-in ceremony of **The Honorable Charles B. Mikell, Jr.**, to the Georgia Court of Appeals.

This ceremony will be held in the House Chambers of the State Capitol on the third floor, on **Wednesday, May 31, 2000, at 3:30 p.m.**

PBR:lbw

Bill,  
Gerda wants  
to talk to  
you. Shall  
we here  
until 5pm



## Court of Appeals

### Memorandum

---

To: All Judges, Georgia Court of Appeals

From: Judge Mikell

Subject: A00A1491. Ga. Dept. Human Resources v. Coley.

Date: October 27, 2000

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Dear Colleagues,

I recently received a full court (12 judge) decision in a distress case, Dept. of Human Resources v. Coley. Many of you have seen this important case more than once.

As a novice, I do not pretend to have mastered the Internal Operations Manual. But I think that § XV, ¶ W at p. 43, says that the case should now circulate to the active judges who authored or sat on cases sought to be overruled or disapproved. Please forgive me for any mistakes in etiquette, but I think the order of circulation should be Pope, Andrews, Johnson, Blackburn, Smith, Ruffin, Barnes (as the author of the majority opinion in this case), and then to Eldridge, Miller, Ellington and Phipps. I would be flabbergasted if I didn't get some of this wrong.

Because it is a distress case and time is so short, I am sending a courtesy copy of my dissent at this time to each judge.

Charlie

Courtesy Copy

10/26/00

CBM Oct. 27, 2000

In the Court of Appeals of Georgia

A00A1491. GEORGIA DEPARTMENT OF HUMAN RESOURCES v. BA-066C  
COLEY et al.

MIKELL, Judge, dissenting.

I agree with the majority that the public duty doctrine does not apply. However, I respectfully dissent because the loss in this tragic case did not result from an "assault" or a "battery" as those terms are used in OCGA § 50-21-24 (7). I would disapprove Dept. of Human Resources v. Hutchinson,<sup>1</sup> Christensen v. State of Ga.,<sup>2</sup> Sherin v. Dept. of Human Resources,<sup>3</sup> and Georgia Military College v. Santamarena<sup>4</sup> to the extent that those decisions interpret assault and battery expansively. Instead, the statute should be read narrowly to limit sovereign immunity to losses arising from acts of simple assault and simple battery.

In OCGA § 50-21-24 (7), the legislature listed nine specific torts which it wished to exclude from the waiver of immunity: assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, and interference with contractual rights. Had the General Assembly intended to

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<sup>1</sup> 217 Ga. App. 70 (456 SE2d 642) (1995).

<sup>2</sup> 219 Ga. App. 10 (464 SE2d 14) (1995).

<sup>3</sup> 229 Ga. App. 621 (494 SE2d 518) (1997).

<sup>4</sup> 237 Ga. App. 58 (514 SE2d 82) (1999).

immunize broadly the state from liability, it would have specified "all intentional torts." Instead, it seems to have chosen certain civil wrongs which, monumental though they may seem to the victims, do not involve grievous bodily injury or bloodshed. Significantly, the legislature did not refer specifically to our tort statutes, OCGA §§ 51-1-13 and 51-1-14, which codified the common law at the time of the 1863 code, and which are broader than simple assault and simple battery.<sup>5</sup>

Our duty is, of course, to discern the intent of the legislature when it enacted § 50-21-24 (7) and to give the terms it used their "common and ordinary meaning."<sup>6</sup> The members of the General Assembly, who crafted the statute pursuant to constitutional authorization, would likely be surprised to learn that their list of nine torts has been expanded to include exemptions from liability for aggravated assault,<sup>7</sup> child molestation,<sup>8</sup> rape,<sup>9</sup> and, by the majority here, murder.

Past decisions of this court have imbued the words "assault and battery" in § 50-21-24 (7) with the meanings they have in the criminal law and have expanded them to include every crime of which

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<sup>5</sup> Compare OCGA §§ 51-1-13 and 51-1-14 with OCGA §§ 16-5-20, 16-5-23 and 16-5-23.1. See generally C. Adams and C. Adams, Georgia Law of Torts § 2-2 (1999).

<sup>6</sup> See, e.g., Ray M. Wright, Inc. v. Jones, 239 Ga. App. 521, 523 (521 SE2d 456) (1999).

<sup>7</sup> Hutchinson, supra.

<sup>8</sup> Sherin, supra.

<sup>9</sup> Christensen, supra; Santamorena, supra.

assault and battery are lesser included offenses. Thus, in Christensen, the court without discussion assumed that the exemption from liability for assault included an exemption from liability for rape, and here the majority expands the definition of assault and battery to include murder. As interpreted by this court, OCGA § 50-21-24 (7) now immunizes the state from liability for losses resulting from "[all violent crimes], false imprisonment, false arrest . . ."

This court's previous interpretations of the statute may be technically correct, but the statutory language does not demand so harsh a result. We could just as legitimately apply the principle of noscitur a sociis to interpret "assault and battery" narrowly.<sup>10</sup> As explained by the late Georgia Supreme Court Justice Charles Weltner, "Words, like people, are judged by the company they keep."<sup>11</sup> The doctrine of noscitur a sociis often restricts general words to less general meanings by analogy to neighboring words.<sup>12</sup> Applied to the statute at issue, the doctrine requires us to note that the words "assault and battery" immediately precede words which name specific, discrete torts, such as abuse of process, libel, and slander. Thus, the General Assembly likely meant "assault and

---

<sup>10</sup> See Mott v. Central Railroad, 70 Ga. 680 (1883); See generally Sutherland Statutory Construction § 47.16, at 271-2 (6th ed. 2000).

<sup>11</sup> Anderson v. Southeastern Fidelity Ins. Co., 251 Ga. 556 (307 SE2d 499) (1983), citing 73 AmJur2d 406, Statutes, § 213.

<sup>12</sup> Dunham v. State, 140 Fla. 754 (192 So. 324-326) (1939).

battery" to connote specific torts -- simple assault and simple battery -- rather than to include every conceivable violent crime.<sup>13</sup>

If we continue to broaden our interpretation of § 50-21-24 (7), we will ultimately ravage the waiver of sovereign immunity. Will we one day uphold the dismissal of a lawsuit arising from a kidnapping with bodily injury on the ground that kidnapping is just a form of false imprisonment, and hence expressly exempted from the waiver? I do not believe that the General Assembly intended the state's immunity to stretch so far.

We may have narrowed the waiver of sovereign immunity by inadvertence. For example, in Hutchinson, a lawsuit arising from an aggravated assault, the parties inexplicably did not dispute that the shooting was a "tortious battery, or assault and battery."<sup>14</sup> The decision neither discussed the scope of the exemption nor expressly ruled upon it.<sup>15</sup> Instead, the decision turned on whether the state was liable if the tort was committed by a third person.

The next case, Christensen, cites Hutchinson as it concludes, without discussion or an express holding, that assault and battery encompass rape, for which the state enjoyed immunity. Sherin subsequently reached the same conclusion about the molestation of

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<sup>13</sup> See Undercofler v. VFW Post 4625, 110 Ga. App. 711 (139 SE2d 776) (1964) ("general expressions may sometimes be restrained so as to make the statute bear reasonable construction.")

<sup>14</sup> Id. at 71.

<sup>15</sup> As authority the court in Hutchinson cited the tort statute and Hendricks v. Southern Bell Tel. & Tel., 193 Ga. App. 264 (387 SE2d 593) (1989), which held that a battery could be committed without an intent to injure.

a young child by an older one. In addition to Christensen and Hutchinson, Sherin relied on two decisions where the gravamen of the complaint was simple battery and the exception truly applied.<sup>16</sup> Santamorena, our most recent decision, also involved rape and simply relied on Hutchinson, Christensen, and Sherin to conclude that the suit was barred by sovereign immunity.

Thus, in whole or in part, the decisions which I would reconsider all depend on Hutchinson, a case in which the parties did not dispute, and presumably did not argue, whether the words "assault and battery" should be read narrowly or expansively. We should apply well-established rules of statutory construction to define "assault" and "battery" as simple assault and simple battery. I believe that we deviated from the legislative intent when we expanded those words to encompass every violent crime of which assault or battery is a lesser included offense.

A restrained interpretation of § 50-21-24 (7) would not expose the state to greatly increased liability. The assault and battery exemption would still, as intended by the General Assembly, ban many lawsuits less compelling than the one we review today.<sup>17</sup> And the state would still have immunity from many suits involving grievous

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<sup>16</sup> Sherin, supra citing Mattox v. Bailey, 221 Ga. App. 546 (472 SE2d 130) (1996); Miller v. Dept. of Public Safety, 221 Ga. App. 280 (470 SE2d 773) (1996).

<sup>17</sup> See, e.g., Rhoden v. Dept. of Public Safety, 221 Ga. App. 844 (473 SE2d 537) (1996) (rowdy fans at Falcons game arrested after throwing paper airplanes and cups of beer onto field); Miller, supra (excessive force by arresting officer "amounting to an assault and battery"); Mattox, supra (corrections officer "slammed" plaintiff's head into a door and thereafter beat him).

injuries or wrongful death because of the discretionary act exemption, for example.<sup>18</sup> Moreover, in this case, other defenses can be considered at a later time. But this case is before us now on appeal from the trial court's denial of a motion to dismiss for failure to state a claim upon which relief can be granted. I would affirm the decision of the trial court.

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<sup>18</sup> See, e.g., Edwards v. Department of Children & Youth Services, 271 Ga. 890 (525 SE2d 83) (2000).



# Court of Appeals

## Memorandum

Bill

To: All Judges  
From: *WLM*  
William L. Martin, III  
Subject: Court of Appeals Tags  
Date: November 23, 2004

I have spoken to Alva Lovette of the Georgia Motor Vehicle Department regarding new tags for the judges of the Court of Appeals. It is not mandatory that you get a new tag, but if you do want one, I will need to order it very soon. Please let me know your thoughts by marking this memo and initialing same and returning it to me.

Thank you.

/ld

Judge Initials

I would like a new Court of Appeals tag	
I would not like a new Court of Appeals tag	CBY

Bill:

Judge Mikell

Beeper - 404.382-0753

Home - 912-~~65~~921-0425

Cell - 912-655-4840

Linda

Home - Springfield 912-754-~~65~~<sup>6584</sup> (My Mom's)

Cell - 404-550-8088

Pearl

Cell 770-842-8788

Pearl is to cover office Wed, Thurs, Fri & Mon.  
(26) (27) (28) (31)

The office phone is being forwarded to Pearl's cell phone when she is away from office day & night for emergencies.

12/17/97  
rule 37  
IOM change

4. IOM REVISIONS: Chief Judge Andrews referred the Judges to the IOM revisions under Tab 2 of the Banc notebook. Chief Judge Andrews stated those revisions had been adopted in principle and he asked for a motion to approve the actual language. Presiding Judge Pope made such motion, seconded by Presiding Judge Birdsong, to adopt the IOM language. (The language of the IOM changes is attached hereto as Exhibit B.) The motion was passed unanimously. Presiding Judge Birdsong made a motion to amend IOM, Personnel IX (B) (3) by striking the first sentence in that subparagraph. Judge Eldridge seconded the motion. The effect of deleting that language would be to remove the court-imposed cap on the number of days of annual leave a court employee could take. After a thorough discussion of the motion, it passed with all Judges present voting in favor of it except Presiding Judge Pope who abstained.

Chief Judge Andrews directed Mr. Martin to make the appropriate change in the IOM and to meet with Ms. Carter of the Fiscal Office to reconcile the Court's leave policy regarding the Family Medical Leave Act, maternity leave, sick leave and annual leave.

5. RULE 37 (G) CHANGE: Chief Judge Andrews brought to the Banc's attention a memo from Scott Henwood of the Reporter's Office to request deleting Rule 37 (g) from the Court Rules and adding language to the Court's IOM to create an absolute deadline, or a

point in time, beyond which cases may not be recalled from the Reporter's Office, except to make editorial changes. After a thorough discussion of this issue, Presiding Judge Birdsong made a motion to strike Rule 37 (g) and add the appropriate language to the IOM. The motion was seconded by Presiding Judge Pope and all Judges present voted in favor except Judge Blackburn who abstained. (The language of the IOM changes is attached hereto as Exhibit C.) Chief Judge Andrews directed Mr. Martin to make the appropriate change in the rules and the IOM and said the Banc could always revisit the matter.

6. CLE/BAR DUES FOR JOB SHARING EMPLOYEES: Presiding Judge Pope asked the Banc to consider paying full Bar dues and 12 hours CLE for staff attorneys who job share. Presiding Judge Pope reported that presently four attorneys were in this category, and while the proposal would cost about \$1000 per year, the Court realizes over \$19,000 per year in savings on retirement and health costs that the Court does not pay for these employees. Additionally, he said, the Supreme Court pays all Bar dues and CLE requirements for its three part-time employees.

Judge Johnson moved for the passage of the proposal, which was seconded by Presiding Judge Pope and was passed unanimously.

Strike:

In the *Court of Appeals Rule Book*, Section XII, *Reconsideration*, Rule 37 (g) *Sua Sponte Revision*. (p.19)

"The Court may at any time reconsider and revise its opinions prior to the printing thereof in the official reports."

Add:

To the *Court of Appeals Internal Operations Manual*, Rule XV, *Case Management*, Section AA, (p.41)

"After the time for the motion for reconsideration has expired in any case, or an order denying the motion has been entered, the opinion may not be recalled from the Reporter's office except to make editorial changes therein."

**EXHIBIT C**

(b) **Time of Filing.**

Motions for reconsideration must be filed during the term at which the judgment or dismissal sought to be reviewed was rendered and before the remittitur has been forwarded to the clerk of the trial court and, in any event, must be filed within ten days from the rendition of the judgment or dismissal. No extension of time shall be granted except for providential cause on written application made before the expiration of ten days. See Rule 4.

(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 ten days, and may by special order limit the time within which a motion for reconsideration may be filed to any period less than ten days.

(d) **Second Motion.**

No party shall file a second motion for reconsideration unless permitted by order of the Court.

(e) **Basis for Granting.**

A reconsideration will be granted on motion of the requesting party, only when it appears that the Court overlooked a material fact in the record, a statute or a decision which is controlling as authority and which would require a different judgment from that rendered, or has erroneously construed or misapplied a provision of law or a controlling authority.

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

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

(g) **Sua Sponte Revision.**

The Court may at any time reconsider and revise its opinions prior to the printing thereof in the official reports.

Court of Appeals  
of the State of Georgia

ATLANTA,

IOM  
5/27/99

*The Court of Appeals hereby passes the following order:*

Upon consideration of the motion of appellant/appellee's attorney to withdraw as counsel, the Court has no objection, subject to counsel's compliance with all applicable provisions of the Code of Professional Responsibility. The Court neither approves nor disapproves counsel's withdrawal as attorney for appellant/appellee, but the records of this Court will reflect such withdrawal and, until further notice, all notices will be sent directly to appellant/appellee.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk*

~~aa. After the time for the motion for reconsideration has expired in any case, or an order denying the motion has been entered, the opinion may not be recalled from the Reporter's office except to make editorial changes therein.~~

**COMMENT: Move to K(8).**

**Z. WITHDRAWAL OF APPEAL**

An order granting permission to withdraw an appeal will not be issued unless all motions are ruled on, are withdrawn or are moot.

IOM  
2/10/98

- aa. After the time for the motion for reconsideration has expired in any case, or an order denying the motion has been entered, the opinion may not be recalled from the Reporter's office except to make editorial changes therein.

Z. WITHDRAWAL OF APPEAL

An order granting permission to withdraw an appeal will not be issued unless all motions are ruled on, are withdrawn or are moot.

4. In certain cases involving security risks, judgment lines may disseminate as "Division Per Curiam, All Judges Concur." (Source: Minutes, January 1996 Banc meeting).
5. If the original opinion is published and the Supreme Court reverses the opinion, the rewritten opinion shall be published. (Source: January 1996 Banc meeting).

#### K. MOTIONS FOR RECONSIDERATION

1. If the case returns, the assigned judge will review and initial it and circulate it to the judges who originally voted on it. When all reconsideration work has been done, the case shall then be taken back to the clerk/administrator's office to be disseminated.
2. If the motion for reconsideration is granted and if the judgment changes, an order granting the motion for reconsideration shall go out and the new opinion shall issue. (Source: September 1999 Banc Meeting.)
3. The clerk/court administrator shall not refuse to accept tardy motions for reconsideration. Generally, untimely motions for reconsideration will be dismissed, however, the judge to whom the case is assigned may take into consideration the reasons for the untimeliness, such things as problems with mail delivery.
4. Whenever there is a disagreement on the Division on a motion for reconsideration as to whether the motion for reconsideration should be denied or dismissed, a majority of the Division will control and the motion for reconsideration will not circulate to seven judges, unless the judgment changes. (Source: September 1999 Banc Meeting.)
5. Second motions for reconsideration will be dismissed if they are not accompanied by a motion for permission to file second motion for reconsideration.
6. If there is a dissent on reconsideration, the case goes to a seven judge court, or, if the Court deems it appropriate, whole court. In addition to the "blue slip," the circulating judge should provide the usual place for judges to initial "concur" or "dissent." (Source: September 1996 Banc meeting).
7. When an opinion is changed by substitute pages or other revisions on reconsideration or for other reasons, the office of the judge to whom the case is assigned is responsible for putting the revised opinion together and submitting it to the clerk/court administrator's office. (Source: September 1999 Banc Meeting.)
8. After the time for the motion for reconsideration has expired in any case, or an order denying the motion has been entered, the opinion may not be recalled from the Reporter's Office except to make editorial changes therein. (Source: September 1999 Banc Meeting.)

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

WILLIAM L. MARTIN, III  
CLERK AND COURT ADMINISTRATOR

(404) 656-3450  
MartinW@gaappeals.us

April 15, 2005

Lieutenant Mike Griswell  
Capitol Police  
214 Capitol Avenue  
Atlanta, Georgia 30334

RE: Threat Assessment

Dear Lieutenant Griswell:

Attached please find a copy of a facsimile transmission which was received by Judge Charles B. Mikell, Jr. on this Court. Judge Mikell asked that I pass it on to you.

If you have any questions or if I can be of assistance to you, please do not hesitate to contact me.

Thank you.

Sincerely,



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

WLM, III/ld  
Enclosure

cc: Judge Charles B. Mikell, Jr.

NEW EVIDENCE SIDEWALKS  
IN 2003

Robert D. Jenkins, Sr.

Attorney at Law  
408 N. Selvidge Street  
P.O. Box 6124

Dalton, Georgia 30722-6124

Tony Leon Baugh  
108 Greenville Drive  
Rossville, GA 30741  
Have a Great Day

(706) 259-4656 Facsimile

July 11, 2002

at INSIDE POLITICS @ CNN

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED and VIA REGULAR MAIL

Mr. Tony Baugh  
108 Greenville Drive  
Rossville, GA 30741

REOPEN CASE  
00-CR-00592

Dear Mr. Baugh:

I received your letter dated July 6, 2002 via facsimile this week and have today received copies of three additional facsimiles in which you have apparently contacted Senator Max Cleland's Office, the Chattanooga Times Free Press and other third parties in which you have made false allegations and misrepresentations about me and my representation of you in your criminal defense case involving two misdemeanor traffic offenses in the Catoosa County Superior Court in 2000. As you know, you retained me to represent you in the defense of two misdemeanor traffic violations which successfully defended in which we obtained an Order Granting Defendant's Motion to Dismiss Indictment, or quash the indictment, on April 21, 2000 in Case No: 00-CR-00475 in the Superior Court for Catoosa County, State of Georgia. Enclosed please find a copy of that Order dismissing the first set of charges against you.

Subsequently, the District Attorney's Office refiled its case against you in Case No: 00-CR-00592 in the Superior Court for Catoosa County, Georgia. As you recall, in that matter, I agreed to represent you for no additional fee and the matter was hotly contested resulting in the Court's entering and Order initially denying our Motion to Dismiss, but at the call of the case for trial, the District Attorney's Office decided to dismiss the charges against you.

Admitted Did Not finish case

That was the extent of my representation of you. I have never promised or agreed to represent you concerning any civil claim against any person, entity, or third party, including any government agency. I have three times written you and informed you that I do not handle this type of law suit and I have given you the names and contacts of a number of other attorneys who do handle and have experience in such cases. Enclosed please find a copy of my previous letters to you dated May 9, 2000, July 18, 2000 and September 5, 2000.

I very much sympathize with you and with your condition. I also hope and pray the best for you and I sincerely hope and pray the best for you in your pursuit of obtaining sidewalks on streets in Fort Oglethorpe. However, I do not handle these types of cases and I have told you that each time that you have asked me. Also I have told you that the proper way to pursue this claim is to either retain an attorney or proceed on your own to file a civil action against the proper entity or entities that you believe has wronged you and not by filing an appeal of a dismissal of criminal charges against you. It appears that you have pursued certain remedies with the federal agencies as they relate to civil rights and

Subj: Re: Auto-Acknowledgement from FirstGov.gov [T20050411008T]  
 Date: 4/13/2005 5:55:37 PM Eastern Standard Time  
 From: Btonywally  
 To: Firstgov1@mail.fedinfo.gov  
 CC: Georgia.Governor@gov.state.ga.us, president@whitehouse.gov.state.ga.us,  
 judgepeppers@courts.state.ga.us, tgriscom@timesfreepress.com, customerseverice@pcisi.com,  
 wolf@cnn.com, v3bmaster@uctv3.com, mgalifia@gfsc.state.ga.us, jolleyh@signaldata.net,  
 oreilly@foxnews.com, martin@wrcbtv.com, bjohnson@newschannel9.com,  
 loudobbbstonight@turner.com, Btonywally

Our gracious father in Heaven Who spared my life after being in a coma almost 4 months in 1981. I, Tony Baugh will not disappoint my Lord like others did in 2000. And terror is still place upon my freedom to roll on Cross Street to get to Battlefield Parkway in the City of Fort Oglethrope, GA. 30742. As I, Tony has to roll my electric wheelchair on the same route as car's and trucks. Because the police broke my Civil Rights of my freedom. Which Governor Sonny Perdue as you know videos don't lie? And the 06-10-02 City of Fort Oglethrope, Georgia City Council meeting was recorded by a staff member at uctv3. Who always records the council meetings. To show it back on Judy O'neal's TV station. Where councilman Ronnie Cobb said, the council told the police to give Tony tickets. So as I went before state judge Georgia, Donald Peppers, sr. Three different times in 2000. After the second time he said, Tony I cannot decide. I asked the attorney to appeal He said, know. As I went back with the attorney Robert D. Jenkins, sr. bar Number 390932. At 408 North Selvidge Street, Dalton, GA. 30722. Who a non reliable Legal team from Prepaid legal services out of ADA, Oklahoma assigned him to represent my Civil Rights in court. At Catoosa County Superior court April 21, 2000 case No: 00-CR-00475. Which was dismissed? But, as I asked him to appeal the dismissal, he said, know Tony I do not handle that type of law suit. So just let it be dismissed and then hire another lawyer to finish your case. So I did and could not get another lawyer. But, the state of Georgia called it back up. So I ask him again to appeal the dismissal. As I went back on August 28th, 2000. The state of Georgia dropped the case all together. Governor Sonny Perdue you even said, this is a legal I cannot intervene because of man. Hope you understand. But, then in 2003 the state placed sidewalks, right where the F.O. police was told to set me up on 02-05-00. And terror on Cross Street to them sidewalks. Which the was senator Max Cleland said: Tony them sidewalks will always prove your attorney did not finish your case? And a hardship still happens just keeping on, keeping on. So ask God? Hope you understand me ignoring Tony Baugh legal matter. As my freedom of my Civil Rights were broken 02-05-00. And proof is in place on Battlefield parkway as my Civil Rights here in 2005 is still being broke. So Governor that's between you and Jesus Christ.

**Subj:** I, Tony Baugh with a electric wheelchair, people greeter at Super Walmart in F.O.  
**Date:** 4/7/2005 8:22:04 PM Eastern Standard Time  
**From:** Btonywally  
**To:** CMikelljr@aol.com  
**CC:** Georgia.Governor@gov.state.ga.us, saxby\_chambliss@chambliss.senate.gov, jmullis@comcast.net, jmullis@legis.state.ga.us, rforster@legis.state.ga.us, gacriminalhistory@gbi.state.ga.us, president@whitehouse.gov, bjohnson@newschannel9.com, loudobbbstonight@turner.com, customerservice@episi.com, wolf@cnn.com, oreilly@foxnews.com, rmoore@timesfreepress.com, info@USAFreedomcorps.gov, letters@ajc.com, letters@nytimes.com, Btonywally

Georgia 30742. President Bush my chain of command in northwest Georgia, ignores God. And says they cannot intervene, as I, Tony was set up with 2 tickets from the Fort Oglethorpe, GA. police. As I rolled sitting down in my electric wheelchair to keep on. Keeping on. As the police was told to set me with tickets on 02-05-00 by the Fort Oglethorpe City to give me tickets. Which can view on video of the 06-10-02 city council meeting? Recorded by a staff member at U.C.TV 3 on first street, Fort Oglethorpe, GA. 30742. Which was told to write me tickets officer Stooksbury, quit soon after that? Also the City council demoted the police chief David Wyrick. Even the City attorney in 2000, Steve Farrow quit. And the was senator Max Cleland said, Tony sidewalks came to Battlefield Parkway, right where the police broke your freedom of your Civil Rights. As here in 2005 terror is still force on my freedom, As I roll my electric wheelchair on the same route as vehicles, to get to them sidewalks where police set me up in 2000. Even Governor Sonny Perdue of Georgia ignores this saying its a legal matter. Because he puts his trust in other men. Thinks it will be all right to forsake God, as he abandon my Civil Rights and ignores the proof of sidewalks on Battlefield Parkway. God, he thinks it al right to let terror be force on this child of yours. Know body in the news media you can depend on or trust. God, most of these good people don't how to do there job, report this foul play. As there will always be proof. God, I dispute's state judge of Georgia's dismissal August 28-2000. As proof came in 2003 that he did wrong dropping the case. And Governor Sonny Perdue of Georgia. Let God be forsake. As terror is still force upon me, in my electric wheelchair. I ask Jesus Christ to change the faces in my local and federal Government. Unless they open there eyes, before its eternal to late. Because the disable people are humans also. And concerned for the safety of all. Don't forget proof according to the was Senator Max Cleland them sidewalks came where the police set me up with tickets. God, you can see how honest and faithful owner Judy O'neal of uctv 3 in Fort Oglethorpe, GA. 30742 really is. As I, Tony L. Baugh personally has a video of the 06-10-02 Fort Oglethorpe, GA. God I, Tony Baugh approves this message.

Friday, April 08, 2005 Wal-Mart Connect: Btonywally

Court of Appeals Employee Handbook

Acknowledgment Form

COPY

I JESSICA WRIGHT do by my signature

below state and affirm that I have read a copy of the Court of Appeals Employee Handbook, and I understand my rights and obligations thereunder.

I further understand that my failure to comply with the requirements of the handbook and abide by the rules and policies of the Court of Appeals of Georgia set out therein may subject me to discipline, up to and including, dismissal.

This the 9<sup>th</sup> day of DECEMBER 2009

Jessica M. Wright

Court of Appeals Employee Handbook

Acknowledgment Form

COPY

I Clyde H. Feij do by my signature

below state and affirm that I have read a copy of the Court of Appeals Employee Handbook, and I understand my rights and obligations thereunder.

I further understand that my failure to comply with the requirements of the handbook and abide by the rules and policies of the Court of Appeals of Georgia set out therein may subject me to discipline, up to and including, dismissal.

This the 7th day of December 2009

Clyde H. Feij

Court of Appeals Employee Handbook

Acknowledgment Form

COPY

I Pearl Schawtkewitz do by my signature below state and affirm that I have read a copy of the Court of Appeals Employee Handbook, and I understand my rights and obligations thereunder.

I further understand that my failure to comply with the requirements of the handbook and abide by the rules and policies of the Court of Appeals of Georgia set out therein may subject me to discipline, up to and including, dismissal.

This the 7<sup>th</sup> day of Dec. 2009

Pearl Schawtkewitz

*The Court of Appeals*  
*Office of the Clerk*  
*47 Trinity Avenue, S.W.*  
*Suite 501*  
*Atlanta, Georgia 30334*

WILLIAM L. MARTIN, III  
CLERK AND COURT ADMINISTRATOR

(404) 656-3450  
martinw@gaappeals.us

October 5, 2009

**TO:** Judge Charles B. Mikell  
47 Trinity Avenue, S.E.  
Suite 501  
Atlanta, Georgia 30334

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**THIRD NOTICE**

**DESCRIPTION:**

Flower Fund Dues  
Court of Appeals of Georgia  
for 2009-2010

**AMOUNT DUE:**

\$20.00

**PLEASE REMIT CHECK TO THE CLERK'S OFFICE.  
CHECK SHOULD BE MADE PAYABLE TO  
THE COURT OF APPEALS FLOWER FUND.**



February 29, 2008

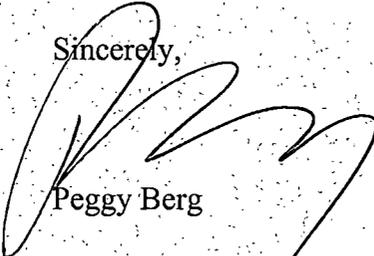
Judge Charles B. Mikell  
Court of Appeals of Georgia  
334 State Judicial Bldg.  
40 Capitol Square  
Atlanta, GA 30334

Bill,  
I thought you  
might want to  
keep this on file.  
It is actually a  
Johnson case.  
Thanks, Linda

Dear Judge Mikell,

You chose to concur with Judge Johnson's Order, AO3A1657 Marquis Towers, Inc. et al v. The Highland Group. Judge Johnson's Order was based on a cursory review of lies provided by the plaintiff. We then settled the case because of the cost of continuing litigation. In your court, dishonesty paid off for the plaintiff, a Farbod Zohouri. I want to know the kind of person you carelessly enabled to extort money from us.

Sincerely,

  
Peggy Berg

Friday, February 29, 2008

## FDIC now investigating Zohouri

Atlanta Business Chronicle - by Joe Rauch Staff Writer

A one-time high-flying Atlanta real estate developer who borrowed hundreds of millions from banks nationwide is under investigation by federal authorities for alleged mortgage fraud.

The ongoing, multi-year federal probe is the latest twist in the rapid rise and even quicker fall of Farbod "Fred" Zohouri, whom some bankers, analysts and brokers that worked with Zohouri are calling the poster child for the lax lending standards and cheap credit of the now imploding housing boom.

**Bill Martin - Judge Mikell**

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**From:** Linda Floyd  
**To:** Court of Appeals; Supreme Court  
**Date:** 2/5/2008 12:38 PM  
**Subject:** Judge Mikell

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Judge Mikell is now out of the hospital and in an apartment. He makes daily trips back to the hospital for fluids and follow-up treatments. I spoke with him this morning and he says his doctor told him he is doing great; that he has "beaten the old tiger" and he is "a tiger with new skin".

The apartment Address is

6301 Almeda Rd. Unit 1228  
Houston, TX 77021  
Phone NO. 713-842-6646  
cell No. 912-507-1502

Clyde Feil, one of our staff attys., is driving tomorrow to go to Texas. I am getting things together for her to take to him. If anyone would like to stick anything in the box - a note; a picture of your staff waving, etc., get it to me by the end of the day.

Thanks for your continued support and prayers.  
Linda

Linda Floyd  
Administrative Assistant  
Judge Charles Mikell  
Georgia Court of Appeals  
Atlanta, GA  
404-656-3459  
floyd@gaappeals.us

**News Release**

FOR IMMEDIATE RELEASE

Contact: Judge Charlie

Mikell

January 4, 2008

912.507.1502

Joel

McElhannon

770.617.7216

[joel@southllc.com](mailto:joel@southllc.com)

**Judge Mikell to Receive Additional Cancer  
Treatments in Texas, Will Continue Court Duties &  
Campaign**

(Atlanta) - Judge Charlie Mikell of the Georgia Court of Appeals will travel on Sunday, January 6<sup>th</sup> to the MD Anderson Clinic in Houston, Texas for additional cancer treatments. He will maintain his duties as a Judge on Georgia's Court of Appeals through email and teleconferences while undergoing treatment.

Judge Charlie Mikell will also continue his re-election campaign that he announced two months ago.

Said Mikell, "Through the wonders of modern communications and the support of my colleagues, I will be able to maintain my regular judicial responsibilities from Texas. I have also assembled an outstanding campaign team of advisors and supporters who will continue to build our grassroots campaign efforts while I am away. While I cannot maintain my full campaign schedule while away, I look forward to returning stronger than ever to continue our re-election efforts and win in 2008."

Mikell was diagnosed with a form of cancer known as multiple myeloma which has been in remission after initial

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treatments. Recent tests show a need for additional treatments over the next few months.

MD Anderson is widely regarded as the top cancer treatment facility in the world. Mikell's oncologist, Dr. O. George Negrea of Savannah, said, "Judge Mikell will be receiving world class care and treatment. He will be able to continue his normal work even while in Texas and we're all optimistic for a successful treatment and his quick return home."

###

## News Release

FOR IMMEDIATE RELEASE  
Mikell

January 4, 2008  
912.507.1502

Contact: Judge Charlie

Joel

McElhannon

770.617.7216

[joel@southllc.com](mailto:joel@southllc.com)

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###

*Court of Appeals of the State of Georgia*

*Special Session Honoring*

*Judge Charles B. Mikell, Jr.*

*Chief Judge December 2011 - January 2012*

*Presiding Judge 2011 - 2012*

*Judge 2000 - 2011*



*Thursday, August 2, 2012*

*3:00 p.m.*

*Courtroom*

Exit Judicial Building  
Walk to Washington  
Turn right crossing  
Walk in front of State  
you reach Martin Luther  
Cross MLK Drive and turn Left  
Proceed down the right side of  
the entrance to the parking  
the block. The Freight Depot  
back of the parking lot near  
Underground Atlanta.

Georgia  
Railroad Depot  
Parking

Martin Luther

**Court of Appeals of  
the State of Georgia  
Special Session Honoring**

**INTRODUCTION OF THE ARTIST  
Elsie Taliaferro Hill  
Judge Mikell**

**JUDGE CHARLES B. ...**

**Chief Judge**

**RECOGNITION  
and  
INTRODUCTION  
Presiding Judge Herb**

**REMARKS  
William T. Daniel, Jr., E  
Chief Judge Ellington**

