



Court of Appeals

Memorandum

To: All Judges

From: Chief Judge Miller *mym*

Subject: Banc Meeting September 16, 2009

Date: September 8, 2009

Enclosed you will find a copy of the Banc Meeting agenda and associated materials. Subjects on the agenda include three items for the employees' handbook that were reserved from our June 16, 2009 meeting and an amendment to the Internal Operating Manual. In addition, the issue of judicial furloughs will be on the agenda for a vote at this meeting.

Although the furlough issue was discussed at the last banc meeting in my absence, I understand that no formal vote was taken specifically with respect to the judges furlough. I believe it is my duty as Chief, including the recent actions of the Supreme Court, and the reputation of our Court to bring this issue back to the Banc for a formal vote. In order to provide you with the appropriate information to make a decision on this issue, I have asked Mr. Martin and Ms. Kelley to prepare the enclosed charts in advance of the meeting. I want you to have plenty of time to consider the full ramifications of this issue. Chart I shows the salary value for a judge of 1, 2 and 3 days of furlough. The second chart shows the savings 1, 2 and 3 days of furlough are worth to the budget if a judicial furlough is made by a payroll deduction. This figure is the salary figure plus the fringe benefits the state pays. I hope you will carefully consider this information and vote as your conscience dictates.

As a cost saving measure for the Court, please bring these materials with you to the Banc Meeting so we will not have to recopy them.

Thank you.

Attachments

**COURT OF APPEALS OF GEORGIA
ADMINISTRATIVE BANC MEETING**

Wednesday, September 16, 2009

10:30 A.M.

Court Banc Room • Suite 501 • 47 Trinity Avenue, S.W.
Atlanta, Georgia 30334

AGENDA

- | | | |
|-------|---|--|
| I. | Call Meeting to Order - Ascertainment of Quorum | Chief Judge Miller |
| II. | Approval of Special Banc Meeting Minutes of August 18, 2009 and August 25, 2009 | Chief Judge Miller/
Judge Ellington |
| III. | Budgets - FY2010 - FY2011 | Chief Judge Miller/Jan Kelley |
| IV. | IT Report | Judge Phipps, John Ruggeri |
| V. | Report of Personnel Policy Committee | Judge Doyle |
| | A. Hiring Retired State Employees | |
| | B. Code of Conduct for Staff Attorneys | |
| | C. Staff Attorneys Moving from one Judge's Office to Another | |
| VI. | Utilization of Floating Administrative Assistants | Chief Judge Miller/Bill Martin |
| VII. | Utilization of Floating Central Staff Attorneys | Chief Judge Miller/Judge Phipps |
| VIII. | Judges' Furloughs | Chief Judge Miller/Jan Kelley |
| IX. | Old Business | Chief Judge Miller |
| X. | New Business | Chief Judge Miller |
| XI. | Announcements | Chief Judge Miller |
| XII. | Adjournment | Chief Judge Miller |



Court of Appeals

Memorandum

To: All Judges

From: *wlm*
William L. Martin, III

Subject: Banc Meeting Minutes, August 18, 2009

Date: September 9, 2009

Enclosed please find the Special Banc Meeting Minutes for the August 18, 2009 meeting.

Thank you.

/ld

Enclosures

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

**Tuesday, August 18, 2009 1:30 p.m.
Suite 501 • 47 Trinity Avenue, S.W.
Atlanta, Georgia 30334**

The Special Banc Meeting of the Court of Appeals of Georgia was held in the Court of Appeals Banc Room, Suite 501, 47 Trinity Avenue, S.W., Atlanta, Georgia at 1:30 p.m. on Tuesday, August 18, 2009. Those present were:

Chief Judge M. Yvette Miller
Presiding Judge Gary B. Andrews
Presiding Judge Edward H. Johnson
Presiding Judge G. Alan Blackburn
Presiding Judge J.D. Smith
Judge John J. Ellington
Judge Herbert E. Phipps
Judge Charles B. Mikell
Judge A. Harris Adams
Judge Debra Bernes
Judge Sara L. Doyle
Mr. William L. Martin, III, Clerk/Court Administrator
Ms. Holly Sparrow, Deputy Court Administrator
Ms. Jan Kelley, Fiscal Officer
Mr. John Ruggeri, Technical Services

Not in attendance was:

Judge Anne Elizabeth Barnes

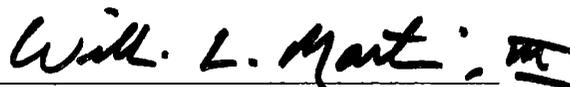
Chief Judge Miller called the meeting to order at 1:30 p.m. Chief Judge Miller ascertained there was a quorum and made a brief statement that she and staff had been working for the past three weeks to address the five percent withhold and the three days of furlough as requested by the Governor. Chief Judge Miller said she and the staff had visited several options which they would present today, but it was her belief and the recommendation of staff furloughs that are the most vital option.

Chief Judge Miller then turned the presentation over to Mr. Martin. Mr. Martin gave the judges an overview of where the Court is financially, and where it must get to address the withholds as communicated to the Court by the Governor, the Office of Planning Budget and the House and Senate Budget Offices. Thereafter, five options were presented to the Court by Mr. Martin, Ms. Kelley and Ms. Sparrow.

After the options were presented, Mr. Martin went back and began discussions of the first option, which was furloughs. At that time, Chief Judge Miller said the Banc would meet in Executive Session and Mr. Martin, Ms. Kelley, Ms. Sparrow and Mr. Ruggeri left the room at 2:00 p.m.

At 3:15 p.m., Mr. Martin was called back to the meeting room at which time Chief Judge Miller stated the Court would have another meeting at 2:00 p.m. on Tuesday, August 25, 2009, to decide on which option or combination of options the Court would employ to deal with the budget crisis.

Respectfully submitted,



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

Minutes approved by the Court
En Banc on the _____ day of
_____, 2009

BANC MEETING – MAY 20

RETIREMENT BILL/POLICIES

As you may be aware new legislation regarding the hiring of retirees was signed by the Governor on May 11, 2009 and is now in effect. HB 202 amends Section 17 of Code Section 46-2-110 relating to the continued employment of a retired state employee:

1. Section 17, Page 15, Line 495-497 requires each employer to “certify to the board of trustees the date on which the employee’s employment is or will be severed and **that no agreement exists to allow the employee to return to service, including service as or for an independent contractor.**”
2. Line 497-501 states that “**Any return to employment or rendering of any paid service, including service as or for an independent contractor, for any employer within two consecutive months of the effective date of retirement shall render the severance invalid, nullifying the application for retirement.**”
3. Section 17, Page 16, Line 547 states that “**Except as provided, if a member accepts paid employment with or renders services for pay to any employer, including without limitation, service directly or indirectly as or for an independent contractor, after his or her retirement, payment**”

of his or her retirement allowance shall be suspended and no contributions to the retirement system shall be made on account of such service either by that member or his or her employer, provided that, upon termination of such service, all rights shall vest in that member as if he or she had continued his or her option to retire.”

4. Section 17, Page 167 Line 554-560 states that “The retirement allowance of a retired member who accepts employment with or renders services to any employer after his or her retirement **shall not be suspended if the employee has attained normal retirement age and has not been employed by or rendered service for any employer for at least two consecutive months** and performs no more than **1,040 hours of paid employment or paid service, including, without limitation, service as or for independent contractor, for the employer in any**

5. Section 17, Page 17, Line 579-590 states **employer that employs a retired plan member shall provide, within 30 days of the employee’s accepting employment, a written statement of trustees in writing stating the name of the employer, the number of hours the employee is expected to work for the employer, and shall provide such other information as the board may request. If the retired plan member performs more than 1,040 hours in any calendar year, the employer shall notify the board**

of trustees as required by this subsection shall reimburse the retirement system for any benefits wrongfully paid. It shall be the duty of the retired plan member seeking employment by the employer to notify the employer of his or her retirement status prior to accepting such position. If a retired plan member fails to notify the employer and the employer becomes liable to the retirement system, the plan member shall hold the employer harmless for all such liability.

6. As you can see in Section 17, Page 17, Lines 560-564: Prior to this legislation this code section stated “**that no such employee shall be eligible for employee health benefits other than those available to the member as a part of his or her retirement benefits or for any annual leave, any sick leave, or any other employee benefit available to a state employee in the classified service of the State Merit System of Personnel Administration.**” *HB 202, however, has eliminated this section.* However, in accordance with State Personnel Administration policy, part-time employees under 35 hours per week are not eligible for flexible benefits. According to SPA, most state agencies do not give leave to part-time employees. I spoke with Frank Heiney, Assistant Commissioner of Programs, Policy and Legislative Affairs with the State Personnel Administration

regarding whether or not a rehired annuitant could receive any benefits. I was informed that a retired employee may work full-time for six (6) months up to 1,040 hours but they would be deemed temporary employees because they could work less than a 9 months at full-time . They, therefore, would not receive any state benefits except those through their retirement.

In accordance with this legislation it appears that we will have to notify the retirement system in writing regarding every retired state employee that we have on staff. Prior to this legislation, we only had to notify the retirement system should an retired employee's hours exceed the 1,040 hours. Because of the way the legislation is written, I believe it would also pertain to use of Bud Tiery as a retiree contractor.

CURRENT PROCESS:

Currently our retired employees work only part-time. Because we do not lag the part-time employees' pay and it is important for us to retain the position as a full-time benefit eligible position (should it later convert back to full-time), our employees' are set up at 1/2 the regular salaried position without benefits. They are required to complete semi-monthly timesheets and turn

them in to the Fiscal Office. I keep account of their hours on a calendar year basis and make sure that by December 31st each year no employee works or is paid for more than 1,040 hours and that their hours as recorded on their submitted timesheets match the hours paid. Particularly at the end of the year, adjustments often have to be made in employees' schedules to make sure they meet both of these requirements.

Our part-time retirees are not given sick or annual leave. They do, however, receive holiday pay if the holiday is during their regularly scheduled time.

I believe a policy should be included in our employees' handbook regarding the hiring of state retirees to protect the court from employment liabilities which could arise if such a policy is not consistently applied. Also, if the court does not have a policy and apply it uniformly, we may be subject to negative publicity should an investigative reporter come snooping around the Court. We have had at least one employee's hours investigated in the past but were able to show that we were paying the employee properly and could justify the hiring by showing that it was actually cost the state less for the two retirees sharing the position than it would for a new full-time hire. With our new hire scale, this may no longer be the case unless the Court decides to adopt the policy of rehiring the retiree on the new hire scale as recommended by the Personnel

Committee. I believe all of these facts should be considered in setting a policy for hiring retirees. Such a policy is particularly important when so many Georgians are out of work and the Court, itself, has laid off employees.



COPY

Court of Appeals
Memorandum

To: All Judges

From: Chief Judge M. Yvette Miller

Subject: Utilization of Floating Administrative Assistants and
Floating and Central Staff Attorneys

Date: August 26, 2009

Since the 2008 reduction in force which affected the number of floating administrative assistants and floating staff attorneys available to us, several concerns about the use of these precious resources have been expressed to me. Because of these concerns, I would like you to consider the policy outlined below and be ready to discuss this issue at the September Banc Meeting. We may or may not want to add some more specific language in the IOM addressing the utilization of floating administrative assistants and floating staff attorneys.

Floating Administrative Assistants

We have established an informal policy during my tenure as Chief Judge to rotate our floating administrative assistants so that they will be available to the judges who need them in a fair and efficient manner. We agreed to a monthly rotation of Crystal and Tracey in the Chief Judge's office. While assigned to the Chief Judge's office the floater will sit at the reception desk, greet visitors and assist with calls from security, in addition to doing the work of the Court at that desk. On occasion, the floater may need to assist inside the Chambers of the Chief Judge at the discretion of the Chief Judge.

The second floating administrative assistant is always available for the judges in need of assistance or the clerk's office, as needed. This policy has worked well so far, but it does not take into account that the floaters will be utilized for repeated efforts to train new administrative assistants or problems with certain personnel in offices. This type of conduct is unfair to the judges and the entire Court.

At this time, the budgetary restrictions are such that we need to fill all full-time positions with full-time staff or face the elevated scrutiny over at the Legislature during the session. This could result in the Legislature cutting much needed positions.

Memo to: All Judges
From: Chief Judge M. Yvette Miller
Subject: Utilization of Floating Administrative Assistants and
Floating and Central Staff Attorneys
Page: = 2

Floating and Central Staff Attorneys

The Chief Judge's office should receive a courtesy copy from the judge in charge of the floating and central staff attorneys of all assignments of a floating or central staff attorney to another judge's office. If the assignment will last longer than two weeks, all of the judges on the Court should also receive a courtesy copy of the assignment memo.

/ld

2. The clerk/court administrator's office will be open to the public from 8:30 a.m. to 4:30 p.m.

P. MAIL CLERK/FILE CLERK

The mail clerk/file clerk will perform those duties assigned to him/her by the clerk/court administrator of the Court of Appeals. The mail clerk/file clerk is not available to perform personal errands, and/or banking for any court personnel, including judges. Any court personnel desiring to use the mail clerk/file clerk for any duties or tasks not assigned to the mail clerk/file clerk shall clear such requests through the clerk/court administrator of the Court.

Q. FLOATING STAFF ATTORNEYS/CENTRAL STAFF ATTORNEYS

1. Requests for leave shall be made in writing to the Judge in charge of the Floating Staff Attorneys/Central Staff Attorneys, which Judge shall keep the leave record and send it to the fiscal officer. The judge to whom the floating staff attorney is assigned shall determine the time of the daily arrival and departure.
2. The judge in charge of the Floating Staff Attorneys/Central Staff Attorneys shall schedule the assignments of the Floating Staff Attorneys to the judges' offices on this court.
3. The judge in charge of the Floating Staff Attorneys/Central Staff Attorneys shall make no assignment of a Floating Staff Attorney/Central Staff Attorney to a judge's office for a period of more than two (2) weeks without approval of the Court. Any assignment for more than two (2) weeks shall be based on a need occurring in a judge's office because of a catastrophic event, extended sick leave, maternity leave or providential cause.
4. Any assignment of a Floating Staff Attorney/Central Staff Attorney to a judge's office shall be communicated to the chief judge and the clerk/court administrator.

R. NEW EMPLOYEE ORIENTATION GUIDELINE

The judge hiring the employee, the fiscal officer and/or the clerk/court administrator where appropriate, should direct new employees to the Internal Operations Manual and the Rules of the Court of Appeals for specifics about the court and the court's fiscal policies. Also, new employees should be oriented on the role of the judiciary;

- b. On days when the Chief Judge does not utilize the services of the Floating Administrative Assistant assigned to his/her office, said Floating Administrative Assistant shall report to the Clerk for assignment in the floater pool or as otherwise directed by the Clerk.
- c. Should the Floating Administrative Assistant assigned to the Chief Judge complete all tasks and duties assigned by the Chief Judge to the Floating Administrative Assistant before the end of the day, then the Floating Administrative Assistant assigned to the Chief Judge shall report to the Clerk's Office for assignment by the Clerk.

(Source: September 1996 Banc meeting).

2. Floating Administrative Assistants shall be assigned to the individual offices on the following priority basis:
 - a. A judge's office that will be without an administrative assistant takes precedent over a judge's office who wants a floater to assist an administrative assistant.
 - b. If two or more judges' offices seek the assistance of a floater and each judge's office will be without that office's administrative assistant, then the office which requests first will have priority over those offices requesting later. Requests received concurrently will be assigned based on seniority.
 - c. If two or more judges' offices seek the assistance of a floater to assist the administrative assistant, then the office which requests first will have priority over those offices requesting later.
 - d. If a judge's office has an emergency situation which will require the use of the judge's administrative assistant as well as a floater, that judge may request of the judge who has requested a floater and who is without an administrative assistant that the judge release the floater to the judge whose administrative assistant is present but has a dire emergency. (Source: Minutes, March 1994 Banc meeting).
 - e. If any floating administrative assistant is not assigned to a particular judge's office on any day, the clerk/court administrator shall assign the floater in accordance with written requests received in the Clerk's office on that day. If any floating administrative assistant remains unassigned after all written requests have been filled, said

administrative assistant shall be assigned by the clerk/court administrator to a task in the clerk's office. (Source: Minutes, May 1996 Banc meeting).

- f. A floating administrative assistant may be assigned to a judge's office for purposes of training a judge's new administrative assistant. Such assignment for the purpose of training a new administrative assistant shall not exceed ten (10) days.
- g. If a judge is without a floating administrative assistant, because of the resignation, or termination of that judge's administrative assistant, a floating administrative assistant may be assigned to that judge's office. However, that assignment shall not exceed ten (10) working days, unless authorized by the Court.
- h. If a judge is without an administrative assistant because of that administrative assistant's extended sick leave, maternity leave, a catastrophic event or providential cause, a floating administrative assistant may be assigned to that judge's office for a period of twenty (20) days, and such assignment may be renewed for twenty (20) day increments should the majority of the Court approve the incremental assignments.
- i. A judge may have a floating administrative assistant assigned to his or her office for a period of ten (10) days when that judge is without an administrative assistant and then have that administrative assistant assigned to that judge's office for ten (10) additional days to train the new administrative assistant. In no event shall a floating administrative assistant be assigned to a judge's office for more than twenty (20) consecutive business days unless a majority of the Court approves of such action.

U. COURT FLOWER FUND.

The court shall create a flower fund to provide funds for an appropriate expression of sympathy, joy, congratulations or recognition of achievement on certain occasions involving court personnel. The fund shall be administered through the flower fund guidelines. These guidelines are set out in Appendix 10. (Source: June 1995 Banc minutes). (Guidelines amended Source: May 1996, Banc minutes).

**APPELLATE JUDGE'S ANNUAL
SALARY W/O FRINGES**

\$166,186

SALARY ONLY

\$639

(RETIREMENT NOT INCLUDED)

EQUIVALENT

FURLOUGH DAYS

INDIVIDUALLY

12 JUDGES

1 DAY	\$639	\$7,668	0.25
2 DAYS	\$1,278	\$15,336	0.49
3 DAYS	\$1,917	\$23,004	0.74
10 DAYS	\$6,390	\$76,680	2.46

*Although each Judge's tax rate varies, Judges could anticipate seeing a reduction of approximately 60% of the furlough reduction in each paycheck in which they authorize a furlough day to be taken. This is based on a furlough day being deduction from payroll. If 8 hours were deducted from payroll (same as staff) then taxable wages for the paycheck would be reduced by the furlough amount (\$639).

**APPELLATE JUDGE'S ANNUAL SALARY
W/FRINGES**

\$166,186

SALARY & BENEFITS P/DAY

\$830

(RETIREMENT NOT INCLUDED)

EQUIVALENT

FURLOUGH DAYS

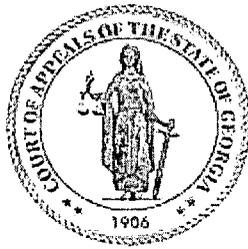
INDIVIDUALLY

12 JUDGES

1 DAY	\$830	0.03	\$9,960	0.32
2 DAYS	\$1,660	0.05	\$19,920	0.64
3 DAYS	\$2,490	0.08	\$29,880	0.96

If Judge contributed a furlough amount after receiving his/her wages instead of having it deducted from payroll, then the following questions would need to be answered:

Policy to tell superior and
fiscal officer of property loss -



Court of Appeals

Memorandum

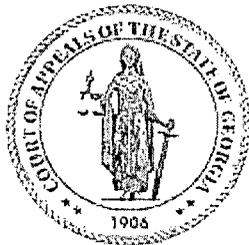
To: Presiding Judge Edward H. Johnson

From: William L. Martin, III

Subject: Agenda Items

Date: July 2, 2009

To discuss the acceptance of electronic briefs in a CD format prior to the time we are in a position to have electronic filings from everyone.



Court of Appeals

Memorandum

To: Self

From: William L. Martin, III

Subject: Reminder

Date: July 10, 2009

Check with Chief Judge Miller about a Banc item in September that the interns and hourly employees are only paid after they turn in their time sheets. They are not paid for what they are going to work.

Hiring of retired State Employees

Transfer of staff attorneys from one judge's office to the other

Use of floating AAs

Use of Central Staff and floating staff attorneys

Standards of Conduct for Attorneys

Meeting of CJ Miller

- ① Retired ^{State} employs - hire under statute do not hire
- ② Code of Conduct for Staff attys
- ③ moving of Staff attys from one

Office to another -

- 2 (4) Utilization of Floating AAs
- (5) Utilization of Floating Central Staff Attys
- 6) Check Minutes ✓
- 7) Judges Furloughing ✓ ①
- 8) 2010 & 2011 budgets

SPECIAL BANC MEETING
OF THE
COURT OF APPEALS OF GEORGIA

Tuesday, August 18, 2009
1:30 p.m.
Court of Appeals Banc Room • Suite 501 • 47 Trinity Avenue, S.W.
Atlanta, Georgia 30334

A G E N D A

- | | | |
|------|---------------------------|--|
| I. | Call Meeting to Order | Chief Judge Miller |
| II. | Ascertainment of Quorum | Chief Judge Miller |
| III. | FY2010 and FY2011 Budgets | Chief Judge Miller
Bill Martin
Jan Kelley
Holly Sparrow |
| IV. | Old Business | Chief Judge Miller |
| V. | New Business | Chief Judge Miller |
| VI. | Announcements | Chief Judge Miller |
| VII. | Adjournment | Chief Judge Miller |