



# Court of Appeals

## Memorandum

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**To:** Commission on the Appellate Courts

**From:** Presiding Judge Pope

**Subject:** Proposals to Alleviate Case Load of Court of Appeals

**Date:** September 27, 1996

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In late 1995 Governor Miller contacted the Court of Appeals regarding his concern over the onerous case load of the Court. Following that inquiry, the Court of Appeals requested the 1996 session of the General Assembly to increase the Court from nine to thirteen judges. Virtually every judicial body in the state endorsed that request. In recognition of the need to relieve the Court of Appeals's case load, the General Assembly added one judge to the Court of Appeals and established this Commission to study the problem.

This memorandum discusses various proposals that may alleviate the Court's case load. These proposals and those prepared by other members of the Commission should be submitted to the General Assembly for its consideration.

### I. Expansion of the Court of Appeals

The Commission has considered several proposed jurisdictional and procedural changes that would slightly reduce the case load of the Court of Appeals. After much study and deliberation, the consensus

remains that expansion of the Court of Appeals represents the optimal permanent solution to reduce the case load of the Court of Appeals.

Currently, the judges on the Court of Appeals each handle almost 300 direct appeals and approximately 100 discretionary and interlocutory applications per year. Although some scholars have estimated that an appellate judge should not be called upon to handle more than 100 cases on the merits per year, the desired goal of the Court of Appeals is to achieve a modest case load reduction to 200 direct appeals per judge per year, which still far exceeds the ratio of any other appellate court in the nation. (For example, in 1993 the Georgia Court of Appeals issued 278 signed opinions per judge, compared to California's 137 signed opinions per judge, which was the next highest ratio.)

The addition of another panel of three judges alone would not bring the annual case-per-judge ratio down to that goal, but such an expansion would greatly relieve the Court's immediate burden which now is at a crisis level. In order to achieve the desired reduction in case load and to be able to manage future increases in case load, it will be necessary to add two panels to the Court of Appeals. The General Assembly may decide to add one panel in 1997, and then another panel in the following year. The attached "Chart A" illustrates the effect on case load by adding judges to the Court of Appeals.

The Supreme Court has expressed a long-term goal of becoming an all certiorari appellate court. That issue is outside the scope of this Commission, and the Supreme Court must address this issue to the General Assembly in light of the constitutional issues involved.

The attached "Chart B" provides the start-up and annual continuation

costs of one additional panel of judges on the Court of Appeals.

However, in the event the General Assembly rejects such a solution, proposals of various other jurisdictional and procedural changes are discussed below.

## **II. Appellate Division of the Superior Courts**

One concept that has attracted some attention is the creation of an appellate division of the superior courts to hear various appeals in place of the Court of Appeals. Appeals in workers' compensation cases would be well-served by appellate superior courts, and further study of the concept may identify other types of appeals that could be determined by an appellate division of the superior courts. (Four to six hundred appeals are filed from the final administrative decision in workers' compensation cases each year.) Certainly, an appellate division would be an appropriate forum to determine appeals from other administrative agencies and lower tribunals and various other subject matters that currently require the discretionary appeal procedures as set forth in OCGA § 5-6-35. Perhaps appeals from misdemeanor convictions could also be directed to such an appellate division. (The Court of Appeals currently decides almost 200 misdemeanor cases per year.)

The appellate division of the superior court would hear direct appeals from the final administrative decision in workers' compensation cases. Any review of the appellate division's judgment would be by certiorari to the Supreme Court. The first appellate review by a single superior court judge and the discretionary appeal to the Court of Appeals would be eliminated, thereby bringing about finality in such cases more

expeditiously than the present appeal process.

Various models of an appellate division of the superior courts can be fashioned, but one functional and cost-effective model would consist of four panels composed of three judges, with the panels headquartered in four districts. The districts could be drawn so as to distribute the appellate case load among the four districts evenly. (See Exhibits "A" through "F"). The judges sitting on the appellate divisions would not review cases from their own districts, and publication of appellate division opinions would follow the current practice of the Court of Appeals.

The attached "Chart C" provides the projected first year start-up costs and annual continuation costs of an appellate division of the Superior courts, based on the above model.

Certainly, other models for an appellate division of the superior courts may be considered. Other models may include a centralized "clearinghouse" for appeals directed to a three-judge appellate division of the superior court, perhaps as an adjunct to the Council of Superior Courts Executive Office. The cost of that model would be less than a Four-Panel appellate division, but, depending upon the jurisdiction of and the number of cases assigned to the appellate division, the centralized model may not be capable of handling as many cases as the former. Other models may consist of appellate superior court panels in each of the state's 10 judicial districts. But the costs of staffing and administering that model, utilizing a total of 30 judges, would be even greater. Considering cost estimates of \$250,000 per judge's office, the annual cost for that model would be \$7,500,000. It is inconceivable

that the General Assembly would appropriate the funds for that model.

### III. Proposed jurisdictional and procedural changes.

A. **Domestic Relations.** All domestic relations cases should be appealed to one appellate court. The most recent legislative pronouncement on this issue was the enactment of the 1983 Georgia Constitution in which appellate jurisdiction over divorce and alimony cases was continued in the Supreme Court. Because of the historical importance placed on family values and family structure, and particularly today when so many societal problems are attributed to the breakdown of the family, all domestic relations cases should be appealed to the Supreme Court rather than the Court of Appeals. Currently, most of such matters require the discretionary appeal procedures, not because of their lack of importance, but because decisions in such cases largely involve the exercise of discretion and the trial court has the benefit of hearing the parties and the evidence first hand.

In 1995 there were 52 applications for discretionary appeal filed with the Court of Appeals concerning domestic relation matters. As of September 19, 1996, there have been 48 such applications filed this year. Further, some domestic relations cases are directly appealable (such as adoption, termination of parental rights, deprivation) and as of September 19, 1996, there have been 91 direct appeals filed. (Some of those no doubt followed the grant of a discretionary application.) Thus, if domestic relations cases were all appealable to the Supreme Court, a conservative estimate of the annual case load reduction for the Court of Appeals would be approximately 50 applications and 100 direct appeals.

**B. Expansion of the discretionary appeal statute, OCGA § 5-6-35.**

1. Some relief for the Court of Appeals could be accomplished by making appeals from misdemeanor criminal convictions subject to the discretionary appeal statute. While applications for discretionary appeal receive a thorough review by the Court, such a review usually is not as time-consuming as direct appeals, if for no other reason than the size of the record in the latter.

Currently, an estimated 192 direct appeals in misdemeanor cases are docketed with the Court of Appeals annually. Requiring the discretionary appeal procedures for that type of case would result in some time-savings.

2. The jurisdictional threshold amount for appeals in actions for damages contained in OCGA § 5-6-35 (a) (6) should be increased from \$10,000 to at least \$25,000. One measure of the importance of a case is the amount of money involved, and just as the time came for increasing the threshold amount from \$2500 to \$10,000, the time may have come for increasing the threshold to \$25,000. The number of such cases is unknown at this time.

**C. Repeal of OCGA § 9-11-56 (h).** Under OCGA § 9-11-56 (h), a party may directly appeal from the grant of a partial summary judgment, even though the cases remains pending before the trial court. This exception to the interlocutory appeal procedures results in approximately 144 additional direct appeals per year. Repeal of that subsection would then require compliance with the interlocutory appeal procedures to obtain review of such rulings.

**D. Estimated results of the above changes.** As a conservative

estimate, shifting all domestic relations cases to the Supreme Court would eliminate approximately 100 direct appeals from the Court of Appeals's case load. Making appeals from misdemeanor criminal convictions subject to the discretionary appeal procedures would eliminate approximately another 192 direct appeals, although the net time-savings would not be that great because the number of discretionary applications presumably would increase commensurately. Lastly, the repeal of OCGA § 9-11-56 (h) would eliminate approximately 144 direct appeals. The above three measures would thus eliminate a total of 436 direct appeals from the Court of Appeals's docket, which would be 43 fewer cases per judge per year.

**E. Reduction of transfer of cases from Supreme Court.** In recent years litigants and the appellate courts, in particular the Court of Appeals, have had to devote too much time determining issues of appellate subject matter jurisdiction. Appellate practitioners routinely complain about the confusion and uncertainty associated with such determinations, and the Court of Appeals is frustrated by the time consumed in dealing with these jurisdictional matters. The problem arises from the need for more precise definition of the subject matters delineated in Georgia Constitution 1983, Art. VI, Sec. VI, Par. III, particularly the terms "title to land," "equity," "extraordinary remedies," and "divorce and alimony."

As shown in Chart "D" the Supreme Court currently transfers about 17 percent of its direct appeals to the Court of Appeals, and many of these transfers result from the uncertainty in the definition of the above terms for purposes of appellate subject matter jurisdiction. Recently,

an informal committee was empaneled by the Supreme Court and the Court of Appeals to discuss such transfer issues in **specific cases**, but such determination by committee on a case-by-case basis is not the optimal solution to this problem. It certainly eliminates none of the confusion and uncertainty for litigants. It may be that some legislative definition of these terms has become necessary.

CHART "A"

CASELOAD REDUCTION BY INCREASING JUDGES

| <u>YEAR</u> | <u>DIRECT APPEALS</u> | <u>NUMBER OF JUDGES</u> |           |           |           |           |           |           |           |           |           |
|-------------|-----------------------|-------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
|             |                       | <u>9</u>                | <u>10</u> | <u>11</u> | <u>12</u> | <u>13</u> | <u>14</u> | <u>15</u> | <u>16</u> | <u>17</u> | <u>18</u> |
| 1995        | 2884                  | 320                     | 288       | 262       | 240       | 222       | 206       | 192       | 180       | 170       | 160       |
| 1994        | 2842                  | 316                     | 284       | 258       | 237       | 219       | 203       | 189       | 178       | 167       | 158       |
| 1993        | 2601                  | 289                     | 260       | 236       | 217       | 200       | 186       | 173       | 163       | 153       | 145       |
| 1992        | 2455                  | 273                     | 246       | 223       | 205       | 189       | 175       | 164       | 153       | 144       | 136       |
| 1991        | 2265                  | 252                     | 227       | 206       | 189       | 174       | 162       | 151       | 142       | 133       | 126       |

| <u>YEAR</u> | <u>DIRECT APPEALS</u> | <u>NUMBER OF JUDGES</u> |           |           |           |           |           |           |           |           |           |           |
|-------------|-----------------------|-------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
|             |                       | <u>19</u>               | <u>20</u> | <u>21</u> | <u>22</u> | <u>23</u> | <u>24</u> | <u>25</u> | <u>26</u> | <u>27</u> | <u>28</u> | <u>29</u> |
| 1995        | 2884                  | 152                     | 144       | 137       | 131       | 125       | 120       | 115       | 111       | 107       | 103       | 99        |
| 1994        | 2842                  | 149                     | 142       | 135       | 129       | 123       | 118       | 113       | 109       | 105       | 101       | 98        |
| 1993        | 2601                  | 137                     | 130       | 124       | 118       | 113       | 108       | 104       | 100       | 96        | -         | -         |
| 1992        | 2455                  | 129                     | 123       | 117       | 112       | 107       | 102       | 98        | -         | -         | -         | -         |
| 1991        | 2265                  | 119                     | 113       | 108       | 103       | 98        | -         | -         | -         | -         | -         | -         |

CHART "B"

COSTS OF ONE PANEL OF JUDGES: COURT OF APPEALS

**Personal Services**

|   |           |
|---|-----------|
| 3 Judges @ \$118,771 plus fringes               | \$484,739 |
| 4 Administrative Assts. @ \$42,924 plus fringes | 233,146   |
| 7 Staff Attys. @ \$74,573 plus fringes          | 703,686   |
| 3 Staff Attys. @ \$70,618 plus fringes          | 286,204   |
| 3 Summer Interns @ 3000 plus fringes            | 10,257    |
| File Clerk @ \$15,000 plus fringes              | 20,369    |
| Jr. Programmer @ \$33,000 plus fringes          | 44,811    |

**TOTAL PERSONAL SERVICES** \$1,783,212

**Operating Costs**

|                               |          |
|-------------------------------|----------|
| Telecommunications            | \$ 5,576 |
| Rent (based on \$11/sq. ft.)  | 45,267   |
| Supplies and materials        | 8,000    |
| Registration fees, dues, etc. | 6,500    |
| Travel                        | 6,900    |
| Lexis/Westlaw                 | 7,200    |
| Law books updates             | 3,600    |

**TOTAL OPERATING COSTS** 83,043

**Initial Setup of Office**

|   |           |
|---|-----------|
| Furniture and computers for Judges          | \$ 31,845 |
| Furniture and computers for Adm. Assts.     | 16,845    |
| Furniture and computers for 10 Staff Attys. | 37,420    |
| Furniture and computers for 3 Libraries     | 11,100    |
| Furniture and computer for Jr. Programmer   | 4,833     |
| Law books                                   | 66,180    |
| Phone equipment and installation            | 9,385     |
| Stationery                                  | 6,200     |
| Furniture and terminal for File Clerk       | 1,000     |

**TOTAL SETUP COSTS** 184,375

**Total First Year Costs for One new Panel** \$2,050,630

**Annual Continuation Costs of One New Panel** \$1,866,255

**CHART "C"**  
**COSTS OF APPELLATE DIVISION OF SUPERIOR COURTS**

**I. COSTS TO SET UP ONE PANEL OF APPELLATE SUPERIOR COURT JUDGES**

|   |                    |
|---|--------------------|
| <b>Personal Services</b>                        |                    |
| 3 Judges @ \$106,893 plus fringes               | \$ 432,916         |
| 3 Administrative Assts. @ \$30,000 plus fringes | 122,400            |
| 3 Staff Attys. @ 28,638 plus fringes            | 116,844            |
| <b>TOTAL PERSONAL SERVICES (One Panel)</b>      | <b>\$ 672,160</b>  |
| <b>Operating Costs</b>                          |                    |
| Telecommunications                              | \$ 4,875           |
| Rent (\$11/sq. ft.)                             | 43,617             |
| Supplies and Materials                          | 6,000              |
| Registration fees, dues, etc.                   | 6,000              |
| Travel  | 12,000             |
| Lexis/Westlaw                                   | 7,200              |
| Law books updates                               | 3,600              |
| <b>TOTAL OPERATING COSTS</b>                    | <b>\$ 83,292</b>   |
| <b>Initial Setup Costs</b>                      |                    |
| Furniture and computers for Judges (one panel)  | \$ 30,495          |
| Furniture and computers for Adm. Assts.         | 12,309             |
| Furniture and computers for Staff Attys.        | 11,250             |
| Law books                                       | 66,180             |
| Phone equipment                                 | 4,500              |
| Stationery                                      | 6,600              |
| <b>Total First Year Start-up Costs</b>          |                    |
| One Panel                                       | \$131,334          |
| Four Panels                                     | \$525,336          |
| <b>Total First Year Costs for One Panel</b>     | <b>\$882,510</b>   |
| <b>Total First Year Costs for Four Panels</b>   | <b>\$3,530,040</b> |
| <b>Annual Continuation Costs of One Panel</b>   | <b>\$751,176</b>   |
| <b>Annual Continuation Costs of Four Panels</b> | <b>\$3,004,704</b> |

CHART "D"

REPORT OF CASES TRANSFERRED FROM SUPREME COURT TO COURT OF APPEALS: DIRECT, DISCRETIONARY, AND INTERLOCUTORY.

DIRECT AND CROSS APPEALS

| <u>Year</u> | <u>Appeals</u> | <u>Transfers</u> | <u>Percentage</u> |
|-------------|----------------|------------------|-------------------|
| 1996*       | 529            | 90               | 17 %              |
| 1995        | 525            | 90               | 17.1 %            |
| 1994        | 559            | 120              | 21.4 %            |
| 1993        | 621            | 94               | 15.1 %            |
| 1992        | 513            | 59               | 11.5 %            |

\*Current as of 9-10-96.

DISCRETIONARY APPLICATIONS

| <u>Year</u> | <u>Applications</u> | <u>Transfers</u> | <u>Percentage</u> |
|-------------|---------------------|------------------|-------------------|
| 1996        | 197                 | 18               | 9.1 %             |
| 1995        | 220                 | 30               | 13.6 %            |
| 1994        | 216                 | 20               | 9.2 %             |
| 1993        | 260                 | 17               | 6.5 %             |
| 1992        | 208                 | 12               | 5.7 %             |

INTERLOCUTORY APPLICATIONS

| <u>Year</u> | <u>Applications</u> | <u>Transfers</u> | <u>Percentage</u> |
|-------------|---------------------|------------------|-------------------|
| 1996        | 52                  | 4                | 7.6 %             |
| 1995        | 55                  | 10               | 18.1 %            |
| 1994        | 46                  | 8                | 17.3 %            |
| 1993        | 49                  | 9                | 18.3 %            |
| 1992        | 52                  | 4                | 7.6 %             |

TOTAL APPEALS AND APPLICATIONS

FILED BY DISTRICT

1991 - 1995

|                   | <u>Direct</u> | <u>Disc</u> | <u>Interl</u> |
|-------------------|---------------|-------------|---------------|
| Northern District | 3255          | 632         | 491           |
| Eastern District  | 3321          | 588         | 545           |
| Southern District | 3242          | 610         | 482           |
| Middle District   | 3221          | 571         | 654           |

EXHIBIT "A"

TOTAL APPEALS AND APPLICATIONS

FILED BY CIRCUIT

1991 - 1995

| <u>Northern District</u> | <u>Direct</u> | <u>Disc</u> | <u>Interl</u> |
|--------------------------|---------------|-------------|---------------|
| Lookout Mtn.             | 198           | 30          | 34            |
| Conasauga                | 194           | 45          | 8             |
| Cherokee                 | 206           | 48          | 17            |
| Rome                     | 189           | 52          | 23            |
| Tallapoosa               | 153           | 38          | 22            |
| Cobb                     | 753           | 138         | 170           |
| Douglas                  | 135           | 26          | 23            |
| Appalachian              | 90            | 16          | 12            |
| Blue Ridge               | 215           | 49          | 37            |
| Gwinnett                 | 747           | 127         | 114           |
| Northeastern             | 219           | 21          | 12            |
| Mountain                 | 90            | 28          | 12            |
| Enotah                   | 66            | 14          | 7             |
|                          | <hr/>         | <hr/>       | <hr/>         |
|                          | 3255          | 632         | 491           |

EXHIBIT "B"

TOTAL APPEALS AND APPLICATIONS

FILED BY CIRCUIT

1991 - 1995

| <u>Middle District</u> | <u>Direct</u> | <u>Disc</u> | <u>Interl</u> |
|------------------------|---------------|-------------|---------------|
| Atlanta                | 2626          | 496         | 611           |
| Clayton                | <u>595</u>    | <u>75</u>   | <u>43</u>     |
|                        | 3221          | 571         | 654           |

EXHIBIT "C"

TOTAL APPEALS AND APPLICATIONS

FILED BY CIRCUIT

1991 - 1995

| <u>Eastern District</u> | <u>Direct</u> | <u>Disc</u> | <u>Interl</u> |
|-------------------------|---------------|-------------|---------------|
| Stone Mtn.              | 1272          | 195         | 205           |
| Rockdale                | 141           | 18          | 13            |
| Alcovy                  | 113           | 26          | 14            |
| Piedmont                | 104           | 18          | 15            |
| Northern                | 92            | 32          | 18            |
| Western                 | 265           | 59          | 23            |
| Toombs                  | 54            | 6           | 5             |
| Augusta                 | 339           | 44          | 21            |
| Middle                  | 105           | 22          | 11            |
| Ogeechee                | 72            | 15          | 36            |
| Dublin                  | 82            | 4           | 10            |
| Ocmulgee                | 185           | 34          | 25            |
| Eastern                 | <u>497</u>    | <u>115</u>  | <u>149</u>    |
|                         | 3321          | 588         | 545           |

EXHIBIT "D"

TOTAL APPEALS AND APPLICATIONS

FILED BY CIRCUIT

1991 - 1995

| <u>Southern District</u> | <u>Direct</u> | <u>Disc</u> | <u>Interl</u> |
|--------------------------|---------------|-------------|---------------|
| Coweta                   | 288           | 75          | 51            |
| Griffin                  | 259           | 56          | 31            |
| Flint                    | 189           | 37          | 24            |
| Chattahoochee            | 236           | 51          | 36            |
| Macon                    | 358           | 85          | 27            |
| Houston                  | 100           | 27          | 10            |
| Southwestern             | 78            | 19          | 10            |
| Pataula                  | 33            | 11          | 7             |
| Cordele                  | 93            | 14          | 12            |
| Dougherty                | 210           | 37          | 30            |
| South Georgia            | 98            | 8           | 7             |
| Southern                 | 323           | 32          | 47            |
| Tifton                   | 125           | 14          | 21            |
| Alapaha                  | 71            | 16          | 31            |
| Waycross                 | 208           | 59          | 49            |
| Brunswick                | 286           | 43          | 57            |
| Oconee                   | 84            | 12          | 9             |
| Atlantic                 | <u>203</u>    | <u>14</u>   | <u>23</u>     |
|                          | 3242          | 610         | 482           |

EXHIBIT "E"

# PROPOSED DISTRICT COURTS OF APPEAL

Blue--Northern District  
 White--Middle District  
 Green--Eastern District  
 Yellow--Southern District

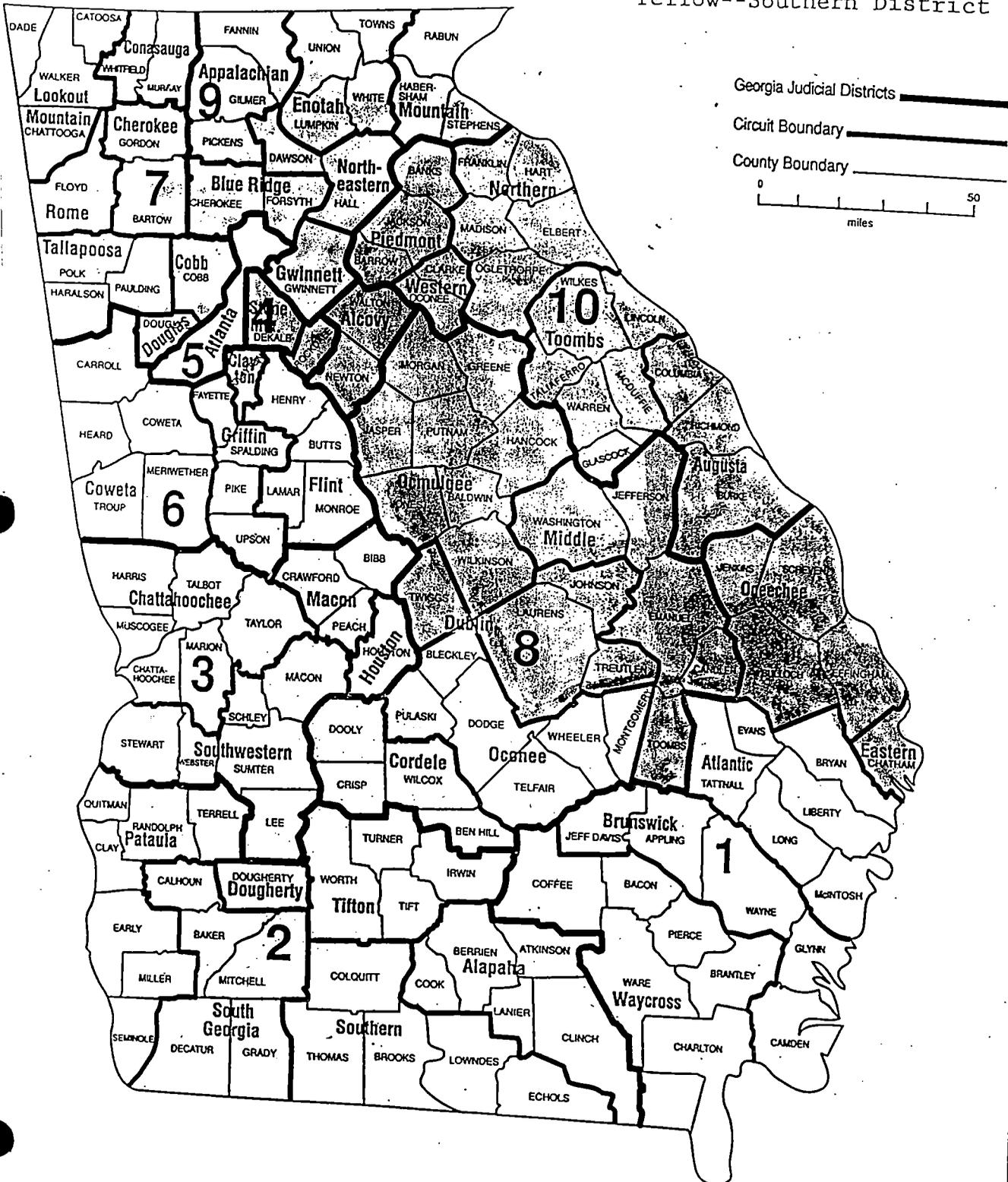


Exhibit F