

**COMMISSION ON THE APPELLATE COURTS
PUBLIC HEARING
SEPTEMBER 5, 1996**

A public hearing on the issue of the structure and jurisdiction of the appellate courts of Georgia was held on Thursday, September 5, 1996 in Room 506 of the Legislative Office Building, Atlanta, Georgia. Notice of the hearing was published in the Legislative Calendar and in the Fulton County Daily Report, and was provided by mail to the president of each judges' council, committees and each Section of the State Bar, all local and circuit Bar associations, and many other individuals and groups perceived to have an interest in the operations of the state appellate courts. A sign in sheet indicating those present at the hearing is attached. All those present were invited to address the commission, and ten (10) individuals asked to speak. In addition to their comments and recommendations summarized below, several of the speakers emphasized the growth in size of trial bar membership and the bench, and the increase in population and caseload from the time the Court of Appeals was established in 1907.

Mr. Hank Fellows, Co-Chairman of the Atlanta Bar Association Courts Committee _____

On behalf of the Atlanta Bar Association, Mr. Fellows thanked the appellate courts for the outstanding work they have done and expressed Bar support of the Commission's work.

Honorable Willis B. Hunt, Jr., U.S. District Court, Northern District, and former Chief Justice, Supreme Court of Georgia _____

Judge Hunt, drawing on 25 years of service in the state courts, said that legislative reform of the appellate courts is needed and that the recommendations of Justice 2000 remain valid. He suggested the creation of appellate divisions of trial courts, or a separate criminal court of appeals that might be located outside of Atlanta. A master plan for appellate reform should recognize the different characters of the two appellate courts even if as a practical matter changes must occur incrementally. Transferring caseload from the Court of Appeals to the Supreme Court would merely create two parallel courts for correction of errors and would be inconsistent with the dual role of the Supreme Court.

In response to questions from the Commission, Judge Hunt said that in his opinion it would be better to provide a one time review of trial court decisions regionally with discretionary appeal to the state Court of Appeals than to increase the monetary threshold. In response to the idea of ending workers' compensation appeals at the superior court level, he said he supports ending cases at the lowest possible level of court. He pointed out that the Sentence Review Commission has successfully used sitting judges to review decisions rendered at their own level of court. He would support the immediate addition of a three judge panel to the Court of Appeals and said that the addition of three more judges would not be inconsistent with the blueprint for the future. Judge Hunt does not agree with the notion that the Supreme Court has a light caseload while the Court of Appeals has a heavy one, and feels the dual roles of the Supreme Court to reconcile different interpretations of the law by deciding cases which have a greater impact on society than the individual case disposition, and

administration of the court system, are proper and should be respected. Regarding reducing the number of appeals, Judge Hunt explained that there is no discretion regarding criminal appeals. He feels that a money threshold beneath which no one may appeal is an arbitrary delineation, and that discretionary appeal affords a greater opportunity for review of cases where issues other than money may be important. Although it may be more costly than expansion of the discretionary appeal process, relief may be achieved through summary review at a lower court level. If the alternative is no review, Judge Hunt supports the brief review offered by an appellate fast track.

Judge Hunt agreed to submit his ideas in writing to the Commission.

Mr. Irwin Stolz, Jr., Former Judge, Court of Appeals ---

Mr. Stolz, who served on the Carter Commission and helped develop the Justice 2000 Plan, said that there must be a clear delineation between functions of the Supreme Court and those of the Court of Appeals. The Supreme Court should be a certiorari court and the final authority or last source of legal wisdom. The Court of Appeals should be the working appellate court, disposing of the largest volume of cases and providing a "beacon of light", not confusion, to trial courts and trial Bar.

Mr. Stolz suggested expanding the size of the Court of Appeals by creating one or two new divisions, configured by court rules to handle specialized cases such as criminal cases. Judges should be rotated between panels by court rule and the court should be given flexibility in determining how to shift its workload among panels.

He also suggested limiting the right of appeal by broadening the types of cases heard by discretionary appeal, so that fewer opinions would need to be written. Greater use of Rule 36 Affirmances would also result in saving the time consumed by writing opinions.

Mr. Stolz recommended that the legislature not get mired down in issues of cost until the judicial branch's share of the state budget reaches one percent. Growth of the state is far out of proportion to growth of the judicial branch.

In response to questions from the Commission, Mr. Stolz said that he is opposed to geographical divisions of the Court of Appeals because they would result in a fragmentation of the body of law, but said that it does not matter where oral arguments are heard. He agreed that assessment of the prevailing attorney's fees to the losing attorney might cut down on appeals filed, but described that approach as a philosophical bridge that has not yet been crossed. Such a move might limit access to the courts by the people, a fundamental concept in American justice, and is probably not necessary as the courts can exercise their prerogatives to punish frivolous appeals. Mr. Stolz prefers expansion of discretionary appeals to raising monetary thresholds to reduce the filing of appeals because many cases with profound principles may involve a small amount of money. Mr. Stolz favors a single court hearing arguments around the state to the creation of district courts. He feels that technology will permit the transfer of case information by electronic means, but cannot provide the collegiality of a common workplace for judges. Regarding mediation, Mr. Stolz has found it most effective when mandatory.

Mr. J. Douglas Stewart, Former President, State Bar of Georgia _____

Mr. Stewart spoke for himself as a private lawyer with 34 years litigation experience. He had served as State Bar President in the early 1980's when the current state constitution was redrafted. He noted that at that time the State Bar recommended five judges be added to the Court of Appeals, a criminal division established, and divorce cases be transferred to the Court of Appeals. Mr. Stewart suggested that penalties for frivolous appeals should be used more often. Mediation may also help but the presence of the client should be required to help foster acceptance of the court's final ruling. Internal court rules specifying which cases will/will not be dismissed should be made clear to attorneys. However, technical rules such as those regarding filing procedures do not need to be tightened.

Mr. Stewart recommended increasing the size of the Court of Appeals. He recommended creating a criminal division through which all judges rotate. If it is constitutionally permissible, appeals of DUI and similar cases should be heard on a discretionary basis. Increased monetary thresholds may be acceptable, particularly in cases such as personal injury.

In response to questions from the Commission, Mr. Stewart advised that he is opposed to limiting the right to appeal. He feels that an appellate court is more dispassionate, and opposes review by a trial level court. He does not oppose increasing the filing fee so long as a realistic standard for determining those granted in forma pauperis status is in place, particularly in light of the high cost of litigation. Mr. Stewart agrees that any further definition of the jurisdictions of the two courts should be understandable to a first year attorney.

Honorable Harold G. Clarke, Former Chief Justice, Supreme Court of Georgia _____

Justice Clarke described three ideal components of a court system as (1) a trial court engaged in resolving disputes; (2) an appeals court for the correction of errors; and (3) a court serving as guardian of the law and of the court system, providing a focussed system of oversight. He believes the Court of Appeals must have more judges, but that the basic system of justice should not be disrupted in the process of change.

Justice Clarke commented that mediation should occur prior to the first trial, before parties' positions have hardened, so that it can reduce trials as well as future appeals.

In response to questions from the Commission, Justice Clarke said that although there may be some confusion in the law regarding jurisdiction, both courts have always acted in good faith in resolving jurisdictional issues. He asked that the Commission look at the reasons behind division of the two courts when defining jurisdiction. In that regard, the rules of equity are harder to interpret in our time than when the Court of Appeals was created, and perhaps equity matters are not now all that different from matters of law. For instance, although divorce cases have always been assigned to the Supreme Court, since the creation of the Court of Appeals the social view of marriage dissolution and its importance has changed.

Justice Clarke would rather not see fragmentation of the court, including the loss of collegiality and consistency, by the creation of districts. However, although the intellectual and social collegiality

of a centralized court have served to protect the rights of the people, they may have to be sacrificed to growth. The district concept may be more acceptable to attorneys throughout the state as it would lessen the need for travel. In addition, a district appellate bench might be more attractive to attorneys from outside metropolitan Atlanta who consider seeking judicial office.

Mr. Mike Raffauf, Attorney _____

Mr. Raffauf, who has practiced law since 1978, has provided lengthy written comments to the Commission. He suggested a three tier appellate court including district appellate courts, a court of appeals hearing direct de novo appeals from the district courts as well as some discretionary appeals, and a supreme court which is entirely discretionary in its review. Mr. Raffauf's comments included the following four points:

1. Oral arguments should be allowed on demand of any party or counsel.
2. All decisions should be in written form, with transcript cites for facts.
3. All appeals court meetings and records should be subject to sunshine and open records laws.
4. Supreme Court Rules should allow for writs of certiorari based on factual error in addition to errors of law.

In response to questions from the Commission, Mr. Raffauf explained that his third point, regarding opening *en banc* and panel meetings of the Court of Appeals and Supreme Court to the public, is based on the rationale that appeals court judges are making law when deciding cases, and that laws should not be made behind closed doors.

Honorable Harold Hill, Former Chief Justice, Supreme Court of Georgia _____

Justice Hill said that the answer to the problems of the appeals courts is simple - more judges, or fewer cases, or both.

Mediation of cases before trial may help the trial judge, but loses effectiveness after trial. Requiring an application to appeal in more cases might offer some relief, especially to the Court of Appeals, but is not a final solution, because deciding whether to grant or deny the appeal also takes time. He suggested expanding discretionary appeal for both criminal and civil cases and said that an application should not be granted unless all three members of the panel agree.

In response to questions from the Commission, Justice Hill said he favors the creation of separate districts for the Court of Appeals rather than a central court sitting throughout the state. He suggested beginning with a six judge court in the southeastern region of the state. In the event the Court of Appeals is divided into districts, the Supreme Court would resolve any conflicts in decision making between the districts, and should hear cases only by certiorari. In order to create districts with equivalent caseloads, careful consideration of case filings would be needed when establishing district lines. Justice Hill believes that raising the monetary threshold on appeals cases might create a problem. He does not oppose making misdemeanors subject to discretionary appeal. He is unsure how to resolve the question of jurisdiction between the courts, and pointed out there are two types of jurisdiction, subject matter and issues (such as an evidentiary or procedural issues.) He feels that

no matter how the lines are drawn lawyers will always interpret the guidelines in the light most favorable to filing in the court of their preference. Justice Hill believes that family law issues should all be determined by one court, the Court of Appeals, but does not know whether this belief is shared by most lawyers or judges.

Justice Hill will provide his hand-written remarks to the Commission.

Mr. Jule Felton, Jr., Past President, State Bar of Georgia

Mr. Felton expressed his interest as a “son of the court”, as his father served on the Court of Appeals for 29 years. Mr. Felton said the Court of Appeals should have at least two more judges, so that each judge has time to study and confer, and so that review of cases is not assigned to staff. The commission should look at the caseload of the entire court, not just that of individual judges, since cases are assigned to panels. He pointed out that during the drafting of the judicial article of the current state Constitution, a maximum number of judges for the Court of Appeals was not set to allow for expansion. He also pointed out that the judicial branch receives a very small portion of the state’s budget.

Mr. Chris McFadden, Committee Chair, Atlanta Bar Association Court of Appeals Subcommittee and Co-Author of *Georgia Appellate Practice*

Mr. McFadden proposed that whether a judicial system has a remedy in place when a trial judge fails or refuses to follow the law makes an important statement about the quality of justice in that system. He stated his belief that every bar association in the state would be happy to pass a resolution supporting the addition of more Court of Appeals judges. Regarding jurisdiction, he described a chasm between direct and discretionary appeals processes, and said that he does not believe the legislature intended a loss of right to appeal if the wrong decision is made about which type of appeal to file. He feels that language denying a discretionary appeal lessens the credibility of the appellate process, and suggested language affirming the lower court’s decision instead. He will work with Judge Beasley to review recent decisions and possibly survey the Atlanta Bar Association to determine whether the Court’s procedure of now providing a reason for the denial in the order solves this problem.

He feels that domestic relations cases should be directly appealable. One disadvantage of the discretionary process, according to Mr. McFadden, is that trial judges do not show the same level of concern if they feel there will be no review. He also believes that direct appeal should always be an option for criminal misdemeanor cases where incarceration is the sentence.

Mr. McFadden likened the division of responsibility between the Supreme Court and the Court of Appeals to the relationship between the superior and state courts of Georgia. A criminal division of the Court of Appeals could provide the finality of a three judge decision. If after court reform, the Supreme Court is not a certiorari only court, direct jurisdiction cases other than death penalty cases should be decided by panels of three justices, although Constitutional cases should still be heard *en banc*.

In response to questions from the Commission, Mr. McFadden said that when other states are asked how geographical districts are working, they consistently answer that it works well. He said that technological advances have made physical dispersion more practical. A central office with judges hearing cases throughout the state results in less loss of professional collegiality and fewer variations in decisions than geographically separated district courts.

Mr. McFadden disagrees with the premise that it is too easy to appeal, but said that even if the premise were correct, truly frivolous appeals would still be just a subset of nonmeritorious cases. He feels that penalizing unsuccessful appellants is a bad idea. Although he has not studied the fast track approach, he agrees that preparation of the record is avoidable in some cases, and that stipulation to the record should be possible.

Mr. Ralph Bowden, Solicitor General of DeKalb County

Although Mr. Bowden attended the hearing on behalf of the Georgia Association of Solicitors General, he spoke only for himself. He suggested that the appeal of misdemeanors could be limited or even eliminated without affecting the quality of justice. He proposed that the law be changed so that defendants in misdemeanor cases may not appeal on any issue until after trial and sentence. In addition, he suggested limiting the right to appeal in misdemeanor cases to those cases in which the defendant has been convicted and sentenced to serve some predetermined amount of time in confinement. Alternatively, he suggested creating a panel of superior court judges to handle misdemeanor appeals with a right of certiorari to the Court of Appeals in cases of grave concern or with broad reaching consequences. He further agreed with limiting the page length of briefs in misdemeanor appeals, and supported the concept of floppy disk submission of briefs. He assured the Commission that the Solicitors Association will support recommendations of the Commission regarding page limits and limited appeal for misdemeanors.

Scott Henwood

Att.

Supreme Ct. &
Court of Appeals

Megan De Vorsey

Atlanta

public defender-
Fulton Co.

JD Smith

Fairburnville

Court of Appeals

1/14/17

Deuter

Attorney

STATEMENTS RECEIVED BY

THE COMMISSION ON APPELLATE COURTS

DURING THE PUBLIC HEARING SEPTEMBER 5, 1996

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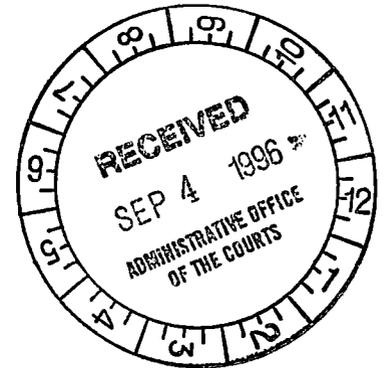
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P. O. Box 246
Macon, Georgia 31298-5399
(912) 755-9813

August 29, 1996



Commission on the Appellate Courts of Georgia
Suite 550, 244 Washington St., S.W.
Atlanta, GA 30334-5900

Dear Sir or Madam:

Enclosed is a copy of the notice of the public hearing on September 5, 1996. This was addressed to Clay Porter on behalf of the Georgia Defense Lawyers Association. Mr. Porter's term of office concluded in May, and I am now the President of Georgia Defense Lawyers Association. Please make a note and send future notices to me. Thank you very much for your help and assistance.

With kind regards.

Yours very truly,

A handwritten signature in black ink, appearing to read "David H. Hanks".

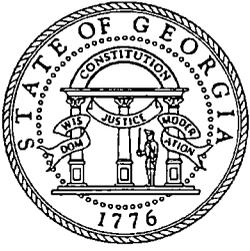
David H. Hanks
For the Firm

DHH/rjj
Enclosure

cc: Mr. R. Clay Porter

COMMISSION ON THE APPELLATE COURTS

August 19, 1996



Representative Thomas S. Chambliss
Chairperson

Senator Mary Margaret Oliver
Vice Chairperson

Members

Judge Harold R. Banke, Sr.
Chief Judge Dorothy T. Beasley
Chief Justice Robert Benham
Mr. R. Alex Crumbley
Mr. Ben F. Easterlin, IV
Cathlene F. Gosselin
Chief Judge H. Arthur McLane
Presiding Judge Marion T. Pope, Jr.
Senator David E. Ralston
Representative Billy C. Randall
Ret. Justice George T. Smith

To: Mr. R. Clay Porter, President
Georgia Defense Lawyers Association

From: Commission on the Appellate Courts

Re: **Public Hearing**

As you may know, the Legislature has established the Commission on the Appellate Courts of Georgia. This Commission is charged with analyzing the current structure and operations of the appellate courts of the State of Georgia with the goal of determining what changes, if any, should be recommended in its structure and operations in order to:

- (1) Ensure a high quality of appellate review of trial court decisions where such review is required or appropriate;
- (2) Facilitate the development of an organized and consistent body of appellate decisions for the guidance of the bench, the bar, and the general public;
- (3) Provide for timely resolutions of appeals;
- (4) Provide an efficient and cost-effective appellate system, subject to the recognition that the system is paid for with public funds; and
- (5) Utilize judicial resources in an effective manner to adequately deal with the increasing judicial workload.

The Commission will hold a public hearing on the issue of the structure and jurisdiction of the appellate courts on **Thursday, September 5, 1996, beginning at 9:00 a.m., in Room 506 of the Legislative Office Building, Atlanta, Georgia.** You are invited to attend this hearing to provide your comments on these issues. If you prefer, you may forward your comments in writing to:

*Commission on the Appellate Courts of Georgia
Suite 550, 244 Washington Street, S.W.
Atlanta, Georgia 30334-5900*

If you or your representative plan to address the Commission at the hearing, please notify the Commission so that we may schedule time accordingly. Please call Ms. Holly Sparrow or Ms. Deborah Zimmerman at (404) 656-5171.

We appreciate your thoughtful consideration of these issues facing the appellate courts of Georgia and hope to hear from you.

PUBLIC NOTICES

Public Hearing

NOTICE OF PUBLIC HEARING

The Legislatively established Commission on the Appellate Courts of Georgia will hold a public hearing on the structure and jurisdiction of the appellate courts on Thursday, September 5, 1996, at 9:00 a.m., in Room 506 of the Legislative Office Building, Atlanta, Georgia. Interested persons may submit comments on these issues to the Appellate Commission, Suite 550, 244 Washington Street, S.W., Atlanta, GA 30334-5900. Those who wish to address the Commission at the hearing should call 404-656-5171.

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JUDICIAL COUNCIL OF GEORGIA
Administrative Office of the Courts

SUITE 550
244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334-5900

(404) 656-5171
FAX: (404) 651-6449

August 20, 1996

To: Members of the Commission on Appellate Courts

From: Holly Sparrow 
Assistant Director for Research

Re: **Notice of Public Hearing**

The enclosed notice of Public Hearing has been distributed as discussed at the July 11, 1996 meeting of the Commission on Appellate Courts. A mailing list of approximately seventy names was developed from suggestions made to Representative Chambless, including the president of each judges' council, committees of the State Bar, organizations related to the State Bar, and many other individuals and groups perceived to have an interest in the operations of the state appellate courts. This notice has also been distributed to each Section of the State Bar, and to all local and circuit bar associations. A copy was provided to the *Fulton County Daily Report* and the hearing will be posted in the weekly Legislative Calendar.

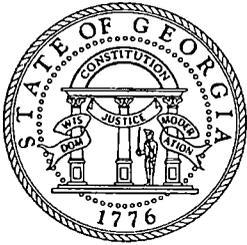
We will schedule speakers as they notify our office of their plans to attend the hearing. Speakers will be scheduled at fifteen minute intervals, with one hour set aside for lunch between noon and 1:00 p.m. If there is not sufficient time on September 5 to accommodate everyone who would like to address the Commission, we can consider scheduling a second hearing on another date. Any written comments will be compiled and copied to the Commission by the hearing date.

Thank you for the opportunity to work with you on this important endeavor. Please do not hesitate to contact me if you have any questions about the planned hearing.

HS:dz

COMMISSION ON THE APPELLATE COURTS

August 19, 1996



Representative Thomas S. Chambliss
Chairperson

Senator Mary Margaret Oliver
Vice Chairperson

Members

Judge Harold R. Banke, Sr.

Chief Judge Dorothy T. Beasley

Chief Justice Robert Benham

Mr. R. Alex Crumley

Mr. Ben F. Easterlin, IV

Judge Thelene F. Gosselin

Chief Justice George H. Arthur McLane

Presiding Judge Marlon T. Pope, Jr.

Senator David E. Ralston

Representative Billy C. Randall

Ret. Justice George T. Smith

To: Interested Parties
From: Commission on the Appellate Courts
Re: **Public Hearing**

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*Commission on the Appellate Courts of Georgia
Suite 550, 244 Washington Street, S.W.
Atlanta, Georgia 30334-5900*

If you or your representative plan to address the Commission at the hearing, please notify the Commission so that we may schedule time accordingly. Please call Ms. Holly Sparrow or Ms. Deborah Zimmerman at (404) 656-5171.

We appreciate your thoughtful consideration of these issues facing the appellate courts of Georgia and hope to hear from you.

To: Holly Sparrow
Suggested by Chambliss

Mr. Hayden Stanley
Georgia Apartment Association
8601 Dunwoody Place
Suite 318
Atlanta, Georgia 30350-2509

Mr. Joe Brannen
Georgia Bankers Association
50 Hurt Plaza
Suite 1050
Atlanta, Georgia 30303

Ms. Sandra Michaels
Georgia Association of Criminal Defense Lawyers
84 Peachtree Street
Suite 701
Atlanta, Georgia 30303

Mr. Lindsay Thomas
Georgia Chamber of Commerce
233 Peachtree Street
Suite 200
Atlanta, Georgia 30303

Mr. Jerry Griffin
Association County Commissioners of Georgia
50 Hurt Plaza
Suite 1000
Atlanta, Georgia 30303

Fulton County Daily Report

Mr. Dick Dorsey
American Insurance Association
950 East Paces Ferry Road
Suite 2240
Atlanta, Georgia 30328

Mr. Ray Farmer
Same address as Dick Dorsey

Mr. Andy Owen
230 Peachtree Street
Suite 1900
Atlanta, Georgia 30303

Mr. William A. Bagwell
405 Washington Street, N.E.
Gainesville, Georgia 30501



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

CHAMBERS OF
CHIEF JUDGE DOROTHY TOTH BEASLEY

PHONE (404) 656-3457
FAX (404) 651-6187

July 15, 1996

The Honorable Tommy Chambliss
Chair, Commission on the Appellate Courts
Post Office Box 2008
Albany, Georgia 31702-2008

Dear Tommy:

Thank you for the very productive meeting we had in Perry. I believe we are moving in the right direction and will have a comprehensive and responsible report to give to the General Assembly at the end of the year. I appreciate your thoughtful guiding hand, which gets to the heart of matters without detours.

I am grateful for the opportunity to work on the Committee on Jurisdiction and believe you are correct; we do not need many committees. I would also like to participate in drafting, if you think that appropriate. I drafted the original bill for the additional judges and other legislation related to this Court.

We were asked to send to you a list of names and addresses of those individuals and organizations which should be invited to the public hearing set for September 5, and to submit their comments in writing if they cannot attend the hearing. My suggestions are enclosed. I am sure others will think of additional voices which should be heard.

Senator Oliver's suggestion that we meet with the House and Senate Judiciary and Special Judiciary Committees is a fine idea, and I recommend that we include also the chairs of the Appropriations Committees. Their perspective and their understanding of the process we are engaged in will be crucial to any additional expenditure which accompanies our final recommendation.

I look forward to seeing you in September and to working on this subject in the meantime. If you need me, I expect to be in my office during the Olympics but will be away from August 8 through August 13.

With best regards,

Sincerely,

A handwritten signature in cursive script that reads "Dorothy Toth Beasley". The signature is written in dark ink and is positioned above the typed name.

DOROTHY TOTH BEASLEY

Suggested by Judge Beasley

**PERSONS AND ORGANIZATIONS FOR INVITATION TO SEPTEMBER 5
PUBLIC HEARING, COMMISSION ON THE APPELLATE COURTS OF GEORGIA**

1. The President of every Council of Judges and Clerks, as shown in the Georgia Courts Directory, plus the Council of Municipal Court Judges, which is not listed. President is probably The Honorable Thomas C. Bobbitt III, Post Office Box 1676, Dublin, Georgia 31040-1676.
2. State Bar of Georgia and its Judicial Procedure and Administration Committee, Professor C. Ronald Ellington, Chair, University of Georgia School of Law, Athens, Georgia 30602. Also, its Advisory Committees on Legislation, Richard deMayo, Esq. (address in State Bar Directory), its Court Futures Committee, Professor Natsu Saito Jenga, Chair, Georgia State University College of Law, Post Office Box 4037, Atlanta, Georgia 30302; and the Younger Lawyers Section, J. Henry Walker, Esq., President (address in State Bar Directory).
3. Chair, Criminal Justice Coordinating Council, Suite 540, 503 Oak Place, Atlanta, Georgia 30349.
4. Director, Georgia Indigent Defense Council, 985 Ponce de Leon Avenue, N.E., Atlanta, Georgia 30306.
5. The Honorable Michael J. Bowers, Attorney General of Georgia, State Law Department, 40 Capitol Square, S.W., Atlanta, Georgia 30334-1300.
6. Chief Judge of each Judicial Administrative District (p. 71 of Georgia Courts Directory).
7. Chair, Prosecuting Attorneys' Council of Georgia, Suite 420, 3200 Highlands Parkway, S.E., Smyrna, Georgia 30082-5192.
8. The Honorable Robert E. Keller, District Attorneys' Association of Georgia, Clayton County Courthouse, Jonesboro, Georgia 30236.
9. The Honorable Tim Madison, President, District Attorneys' Association of Georgia, Post Office Box 276, Jefferson, Georgia 30549-0276.
10. The Honorable Ken Mauldin, President, Solicitors Association, Post Office Box 1226, Athens, Georgia 30602-1226.
11. Public Defenders' Association, if there is one.
12. All Regional and Local Bar Associations, as identified by State Bar of Georgia (see Directory, p. 26).

13. Chamber of Commerce of Georgia.
14. League of Women Voters of Georgia.
15. The Honorable Glenda Battle, President, Association County Commissioners of Georgia, Suite 1000, 50 Hurt Plaza, Atlanta, Georgia 30303.
16. Grand Jurors' Association, if there is one; there is an active local one in Fulton County.
17. Governor's Executive Counsel, Mark Cohen, Esq., Governor's Office, State Capitol, Atlanta, Georgia 30334.
18. Deans of all of the Law Schools in Georgia (page 24 of State Bar Directory).
19. The following Presidents of Related Organizations listed in the State Bar Directory beginning at page 506:

American Civil Liberties Union of Georgia

Atlanta Volunteer Lawyers Foundation

Georgia Association of Administrative Law Judges and Hearing Officers

Georgia Association of Criminal Defense Lawyers

Georgia Defense Lawyers Association

Georgia Legal Aid Society, Inc.

Atlanta Legal Aid Society, Inc.

Georgia Legal Services Program

Georgia Trial Lawyers Association

These are selective; others may be garnered from that list.

20. The following individuals, all of whom have expressed interest in the subject matter and offered suggestions. Addresses are in State Bar Directory:

Robert W. Chasteen, Jr., Esq., Immediate Past-President, State Bar of Georgia, Post Office Box 408, Fitzgerald, Georgia 31750

Nolie J. Motes, Esq., Immediate Past-President, Younger Lawyers Section

The Honorable Willis Hunt, former Chief Justice of Georgia

The Honorable Harold N. Hill, Jr., former Chief Justice of Georgia

The Honorable Harold Clarke, former Chief Justice of Georgia

The Honorable Irwin Stolz, Jr., former Judge, Court of Appeals of Georgia



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

CHAMBERS OF
CHIEF JUDGE DOROTHY TOTH BEASLEY

PHONE (404) 656-3457
FAX (404) 651-6187

July 19, 1996

The Honorable Tommy Chambliss
Post Office Box 2008
Albany, Georgia 31702-2008

Re: Commission on the Appellate Courts

Dear Tommy:

Earlier this week I wrote a letter containing a list of possible invitees to the public hearing on September 5. At that time I did not know whether there was a statewide Grand Jurors' Association, and I am advised by Julius Lennard that the Fulton County Grand Jurors' Association has now become statewide and is called the Grand Jurors' Association of Georgia. The president is Jeannine B. Berry, whose address is:

3540 Vinings Ridge Court
Atlanta, Georgia 30339

Secondly, we suggested that the Chamber of Commerce be invited, and this morning I heard on Georgia Public Radio that former Representative Lindsay Thomas will be the new Director of the Georgia Chamber of Commerce. He will succeed Charlie Harmon and thus might be the appropriate person to invite.

Best regards.

Sincerely,

DOROTHY TOTH BEASLEY

M E M O R A N D U M

TO: TSC
FROM: dg
DATE: July 18, 1996
SUBJECT: Phone call from Mac McLean

Judge McLean
Mac McLean called at 4:30 and suggested that the following
be invited to the September 5th Comm. Appellate Court Public
Hearing:

COUNCIL OF SUPERIOR COURT JUDGES
President (new one)-Judge John Girardeau - Gainesville

COUNCIL OF STATE COURT JUDGES
New President

GEORGIA DEFENSE LAWYERS ASSOCIATION
R. Clay Porter, President
3300 One Atlanta Plaza
950 E. Paces Ferry Road
Atlanta, Georgia 30326
(These lawyers do civil defense work and represent
the insurors)

/dg

**STATE BAR
OF GEORGIA**Ben F. Easterlin, IV
1996-97 President

July 15, 1996

✓
Mr. C. Ronald Ellington
University of Georgia
School of Law
Herty Drive
Athens, GA 30602

Dear Ron:

As you may know, the Legislature has established the Commission on the Appellate Courts of Georgia, and I am a member of that Commission by virtue of my office as State Bar President. I am writing you to let you know that the Commission will be holding a public hearing on the issue of the structure and jurisdiction of the appellate courts on Thursday, September 5, 1996, beginning at 9:00 A.M. I do not yet know the location (I am fairly certain it will be somewhere at the Capitol), but an official notice will be sent out later when that is determined. This letter is just to give you notice as early as possible in case your committee wishes to provide any input. The Commission must finish its task by the end of the year, and it will accept input in writing if you prefer.

Call me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to be 'BFE', written over a horizontal line.

BEN F. EASTERLIN IV

BFE:kds

xc: Mr. Cliff Brashier
Mr. Thomas S. Chambless

**STATE BAR
OF GEORGIA**Ben F. Easterlin, IV
1996-97 President

July 15, 1996

✓ Ms. Natsu Saito Jenga
Georgia State University
College of Law
P.O. Box 4037
Atlanta, GA 30302-4037

Dear Natsu:

As you may know, the Legislature has established the Commission on the Appellate Courts of Georgia, and I am a member of that Commission by virtue of my office as State Bar President. I am writing you to let you know that the Commission will be holding a public hearing on the issue of the structure and jurisdiction of the appellate courts on Thursday, September 5, 1996, beginning at 9:00 A.M. I do not yet know the location (I am fairly certain it will be somewhere at the Capitol), but an official notice will be sent out later when that is determined. This letter is just to give you notice as early as possible in case your committee wishes to provide any input. The Commission must finish its task by the end of the year, and it will accept input in writing if you prefer.

Call me if you have any questions.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'BFE', written over a horizontal line.

BEN F. EASTERLIN IV

BFE:kds

xc: Mr. Cliff Brashier
Mr. Thomas S. Chambless

**STATE BAR
OF GEORGIA**Ben F. Easterlin, IV
1996-97 President

July 15, 1996

The Honorable Martha Currie Christian
Superior Court-Macon Judicial Circuit
310 Bibb County Courthouse
Macon, GA 31201

Dear Martha:

As you may know, the Legislature has established the Commission on the Appellate Courts of Georgia, and I am a member of that Commission by virtue of my office as State Bar President. I am writing you to let you know that the Commission will be holding a public hearing on the issue of the structure and jurisdiction of the appellate courts on Thursday, September 5, 1996, beginning at 9:00 A.M. I do not yet know the location (I am fairly certain it will be somewhere at the Capitol), but an official notice will be sent out later when that is determined. This letter is just to give you notice as early as possible in case your committee wishes to provide any input. The Commission must finish its task by the end of the year, and it will accept input in writing if you prefer.

Call me if you have any questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Ben F. Easterlin, IV'.

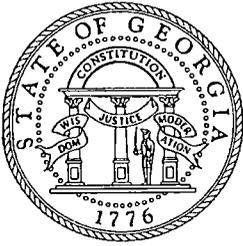
BEN F. EASTERLIN IV

BFE:kds

xc: Mr. Cliff Brashier
Mr. Thomas S. Chambless

COMMISSION ON THE APPELLATE COURTS

August 19, 1996



Representative Thomas S. Chambless
Chairperson

Senator Mary Margaret Oliver
Vice Chairperson

Members

Judge Harold R. Banke, Sr.

Chief Judge Dorothy T. Beasley

Chief Justice Robert Benham

Mr. R. Alex Crumbley

Mr. Ben F. Easterlin, IV

Judge Ethlene F. Gosselin

Chief Judge H. Arthur McLane

Presiding Judge Marion T. Pope, Jr.

Senator David E. Ralston

Representative Billy C. Randall

Ret. Justice George T. Smith

To: Interested Parties
From: Commission on the Appellate Courts
Re: **Public Hearing**

As you may know, the Legislature has established the Commission on the Appellate Courts of Georgia. This Commission is charged with analyzing the current structure and operations of the appellate courts of the State of Georgia with the goal of determining what changes, if any, should be recommended in its structure and operations in order to:

- (1) Ensure a high quality of appellate review of trial court decisions where such review is required or appropriate;
- (2) Facilitate the development of an organized and consistent body of appellate decisions for the guidance of the bench, the bar, and the general public;
- (3) Provide for timely resolutions of appeals;
- (4) Provide an efficient and cost-effective appellate system, subject to the recognition that the system is paid for with public funds; and
- (5) Utilize judicial resources in an effective manner to adequately deal with the increasing judicial workload.

The Commission will hold a public hearing on the issue of the structure and jurisdiction of the appellate courts on **Thursday, September 5, 1996, beginning at 9:00 a.m., in Room 506 of the Legislative Office Building, Atlanta, Georgia.** You are invited to attend this hearing to provide your comments on these issues. If you prefer, you may forward your comments in writing to:

*Commission on the Appellate Courts of Georgia
Suite 550, 244 Washington Street, S.W.
Atlanta, Georgia 30334-5900*

If you or your representative plan to address the Commission at the hearing, please notify the Commission so that we may schedule time accordingly. Please call Ms. Holly Sparrow or Ms. Deborah Zimmerman at (404) 656-5171.

We appreciate your thoughtful consideration of these issues facing the appellate courts of Georgia and hope to hear from you.

COMMISSION ON THE APPELLATE COURTS

August 19, 1996



Representative Thomas S. Chambless
Chairperson

Senator Mary Margaret Oliver
Vice Chairperson

Members

Judge Harold R. Banke, Sr.

Chief Judge Dorothy T. Beasley

Chief Justice Robert Benham

Mr. R. Alex Crumbley

Mr. Ben F. Easterlin, IV

Kathlene F. Gosselin

Chief Judge H. Arthur McLane

Presiding Judge Marion T. Pope, Jr.

Senator David E. Ralston

Representative Billy C. Randall

Ret. Justice George T. Smith

To: FIELD(title), FIELD(First & MI), FIELD(Last & Sur)
FIELD(Group if any)

From: Commission on the Appellate Courts

Re: **Public Hearing**

As you may know, the Legislature has established the Commission on the Appellate Courts of Georgia. This Commission is charged with analyzing the current structure and operations of the appellate courts of the State of Georgia with the goal of determining what changes, if any, should be recommended in its structure and operations in order to:

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*Commission on the Appellate Courts of Georgia
Suite 550, 244 Washington Street, S.W.
Atlanta, Georgia 30334-5900*

If you or your representative plan to address the Commission at the hearing, please notify the Commission so that we may schedule time accordingly. Please call Ms. Holly Sparrow or Ms. Deborah Zimmerman at (404) 656-5171.

We appreciate your thoughtful consideration of these issues facing the appellate courts of Georgia and hope to hear from you.

**INVITEES FOR SEPTEMBER 5, 1996 PUBLIC HEARING
COMMISSION ON THE APPELLATE COURTS**

The following individuals received personalized memos inviting them to the hearing (notices were mailed August 20, 1996) NOTE: Please see the end of this list for individuals to whom additional notices were sent after the first group of 70 invitees.

Mr. William A. Bagwell *Corp. Magn.*
405 Washington Street, N.E.
Gainesville, GA 30501

Mr. Andy Owen *lobbyist; former AG staff*
230 Peachtree Street, Suite 1900
Atlanta, GA 30303

Mr. J. Douglas Stewart, Past President, State
Bar of Georgia
Stewart, Melvin & Frost
P.O. Box 3280
Gainesville, GA 30503-3280

**Administrative Judge, Eighth Judicial
Administrative District**
Chief Judge William M. Towson, Sr.
Dublin Judicial Circuit
P.O. Box 2069
Dublin, GA 31040-2069

**Administrative Judge, Fifth Judicial
Administrative District**
Chief Judge Philip F. Etheridge
Atlanta Judicial Circuit
T8705 Justice Center Tower
185 Central Avenue, S.W.
Atlanta, GA 30303-3643

**Administrative Judge, First Judicial
Administrative District**
Judge Amanda F. Williams
Brunswick Judicial Circuit
P.O. Box 879
Brunswick, GA 31521-0879

**Administrative Judge, Fourth Judicial
Administrative District**
Chief Judge Daniel M. Coursey, Jr.
Stone Mountain Judicial Circuit
303 DeKalb County Courthouse
556 N. McDonough Street
Decatur, GA 30030-3356

**Administrative Judge, Ninth Judicial
Administrative District**
Chief Judge Richard W. Story
Northeastern Judicial Circuit
P.O. Box 1778
Gainesville, GA 30503-1778

**Administrative Judge, Second Judicial
Administrative District**
Chief Judge A. Wallace Cato
South Georgia Judicial Circuit
P.O. Box 65
Bainbridge, GA 31718-0065

**Administrative Judge, Seventh Judicial
Administrative District**
Chief Judge Dorothy A. Robinson
Cobb Judicial Circuit
30 Waddell Street
Marietta, GA 30090-9643

**Administrative Judge, Sixth Judicial
Administrative District**
Judge William F. Lee, Jr.
Coweta Judicial Circuit
P.O. Box 8
Newnan, GA 30264-0008

**Administrative Judge, Tenth Judicial
Administrative District**
Judge E. Purnell Davis, II
Toombs Judicial Circuit
P.O. Box 66
Warrenton, GA 30828-0066

**Administrative Judge, Third Judicial
Administrative District**
Senior Judge E. Mullins Whisnant
Chattahoochee Judicial Circuit
908 2nd Avenue, Suite 201
Columbus, GA 31901

American Civil Liberties Union of Georgia
Mr. Terence Thomas, President
142 Mitchell Street, S.W. Suite 301
Atlanta, GA 30303

American Insurance Association

Mr. Dick Dorsey
950 East Paces Ferry Road, Suite 2240
Atlanta, GA 30328

American Insurance Company

Mr. Ray Farmer
950 East Paces Ferry Road, Suite 2240
Atlanta, GA 30328

Association County Commissioners of Georgia

The Honorable Glenda Battle, President
Suite 1000, 50 Hurt Plaza
Atlanta, GA 30303

Association County Commissioners of Georgia

Mr. Jerry R. Griffin, Executive Director
50 Hurt Plaza, Suite 1000
Atlanta, GA 30303

Atlanta Legal Aid Society, Inc.

Ms. Lisha Wheeler Goins, President
151 Spring Street, N.W.
Atlanta, GA 30303-2097

Atlanta Volunteer Lawyers Foundation

Ms. Deborah S. Ebel, President
Suite 1105 South Tower, 225 Peachtree Street
Atlanta, GA 30303

Attorney General of Georgia

The Honorable Michael J. Bowers
State Law Department
40 Capitol Square, S.W.
Atlanta, GA 30334-1300

Council of Juvenile Court Judges

Judge Stephen E. Franzen, President
Gwinnett County Juvenile Court
75 Langley Drive
Lawrenceville, GA 30245-6900

Council of Magistrate Court Judges

Judge Kelly R. Burke, President
Houston County Magistrate Court
123-B Carl Vinson Parkway
Warner Robins, GA 31088-5817

Council of Municipal Court Judges

Judge C. David Mecklin, Jr., President
P.O. Box 2069
100 Wagon yard Plaza
Carrollton, GA 30117-2069

Council of Probate Court Judges

Judge LaVerne C. Ogletree, President
Greene County Courthouse
113 C North Main Street
Greensboro, GA 30642-1107

Council of State Court Judges

Judge Jeannette L. Little, President
Troup County State Court
119 Ridley Avenue, Suite 201
LaGrange, GA 30240

Council of Superior Court Judges

Judge John E. Girardeau, President
Northeastern Judicial Circuit
P.O. Box 49
Gainesville, GA 30503-0049

Council of Superior Court Clerks

Geraldine G. Ham, President
P.O. Box 450
Forsyth, GA 31029-0450

County Officers' Association of Georgia

Mr. Johnny R. Adams, President
Tax Commissioner, Heard County
P.O. Box 519
Franklin, GA 30217

Criminal Justice Coordinating Council

Sheriff Donnie R. Haralson, Chair
Suite 540, 503 Oak Place
Atlanta, GA 30349

District Attorneys' Association of Georgia

The Honorable Robert E. Keller
Clayton County Courthouse
Jonesboro, GA 30236

District Attorneys' Association of Georgia

The Honorable Tim Madison, President
Post Office Box 276
Jefferson, GA 30549-0276

Emory University School of Law

Dean Howard O. Hunter
Atlanta, GA 30322

Federal Court Judge

Judge Hugh Lawson
U.S. District Court, Middle District
U.S. Federal Courthouse
P.O. Box 838
Macon, GA 31202-0838

Former Chief Justice of Georgia

The Honorable Harold G. Clarke
Troutman Sanders
600 Peachtree Street, N.E., Suite 5200
Atlanta, GA 30308-2216

Former Chief Justice of Georgia

The Honorable Harold N. Hill, Jr.
455 Forest Valley Road
Atlanta, GA 30342-2354

Former Chief Justice of Georgia

The Honorable Willis B. Hunt, Jr.
Judge, U.S. District Court, Northern District of
Georgia
75 Spring Street S.W.
Atlanta, GA 30303-3361

Former Judge, Court of Appeals of Georgia

The Honorable Irwin W. Stolz, Jr.
Gambrell & Stolz
303 Peachtree Street, N.E., Suite 4300
Atlanta, GA 30308

Fulton County Daily Report

Mr. Don DeBenedictis
190 Pryor Street, S.W.
Atlanta, GA 30303

Georgia Apartment Association

Mr. Hayden Stanley
8601 Dunwoody Place, Suite 318
Atlanta, GA 30350-2509

**Georgia Association of Administrative Law
Judges and Hearing Officers**

Ms. E. Angela Branch, President
P.O. Box 38382
Atlanta, GA 30334

**Georgia Association of Criminal Defense
Lawyers**

Ms. Sandra Michaels
84 Peachtree Street, Suite 701
Atlanta, GA 30303

**Georgia Association of Criminal Defense
Lawyers**

Mr. Donald F. Samuel, President
P.O. Box 8506
Atlanta, GA 30306-0506

Georgia Bankers Association

Mr. Joe Brannen
50 Hurt Plaza, Suite 1050
Atlanta, GA 30303

Georgia Chamber of Commerce

Mr. Lindsay Thomas, President
233 Peachtree Street, N.E., Suite 200
Atlanta, GA 30303

Georgia Defense Lawyers Association

Mr. R. Clay Porter, President
P.O. Box 1606
Macon, GA 31202-1606

Georgia Indigent Defense Council

Mr. Michael B. Shapiro, Director
985 Ponce de Leon Avenue, N.E.
Atlanta, GA 30306

Georgia Legal Services Program

Ms. Phyllis J. Holmen, Executive Director
161 Spring Street, N.W., 5th Floor
Atlanta, GA 30303

Georgia State University College of Law

Dean Janice Griffith
University Plaza
P.O. Box 4037
Atlanta, GA 30302-4037

Georgia Trial Lawyers Association

Mr. David William Boone, President
1250 The Hurt Building
50 Hurt Plaza, S.E.
Atlanta, GA 30303-2916

Governor's Executive Counsel

Mr. Mark Cohen, Esq.
Governor's Office
State Capitol
Atlanta, GA 30334

Grand Jurors' Association of Georgia

Ms. Jeannine B. Berry, President
3540 Vinings Ridge Court
Atlanta, GA 30339

**Immediate Past President, State Bar of
Georgia**

Mr. Robert W. Chasteen, Jr., Esq.
Post Office Box 408
Fitzgerald, GA 31750

**Immediate Past President, Younger Lawyers
Section, State Bar**

Nolie J. Motes, Esq.
Forrester & Brim
P.O. Box 1688
459 E.E. Butler Parkway
Gainesville, GA 30503

John Marshall Law School

Dean David Meltz
805 Peachtree Street, NE, 4th Floor
Atlanta, GA 30308

League of Women Voters of Georgia

1776 Peachtree Street, N.W.
Atlanta, GA 30303

President, Younger Lawyers Section of State Bar

Mr. J. Henry Walker
1100 Peachtree Street, N.E., Suite 2800
Atlanta, GA 30309-4530

Prosecuting Attorneys' Council of Georgia

Mr. Robert B. Ellis, Chair
Suite 420, 3200 Highlands Parkway, S.E.
Smyrna, GA 30082-5192

Public Defenders' Representative

Mr. Harry Gardner
City of Atlanta PD Office
Suite 1200
Atlanta, GA 30303

Public Defenders' Representative

Mr. Vernon Pitts, Jr.
Fulton County Public Defender
41 Marietta Street, N.W.
Atlanta, GA 30303

Public Defenders' Representative

Mr. Lawrence L. Schneider
DeKalb County Public Defender
408 Callaway Building
Decatur, GA 30030

Solicitors' Association

The Honorable Ken Mauldin, President
Post Office Box 1226
Athens, GA 30602-1226

State Bar Advisory Committee on Legislation

Mr. Richard T. de Mayo, Chair
Wallace & de Mayo
6356 Corley Road
Norcross, GA 30071

State Bar Commission on Family Courts

Judge Martha Currie Christian
Superior Court, Macon Judicial Circuit
310 Bibb County Courthouse
Macon, GA 31201

State Bar Court Futures Committee

Professor Natsu Saito Jenga, Chair
Georgia State University College of Law
Post Office Box 4037
Atlanta, GA 30302

State Bar Judicial Procedure and Administration Committee

Professor C. Ronald Ellington, Chair
University of Georgia School of Law
Athens, GA 30602

State Bar of Georgia

Mr. Ben F. Easterlin, IV, President
P.O. Box 488
Americus, GA 31709-0488

Superior Court Clerks Association

Ms. Carol Jackson, President
59 South Main Street, Suite B
Cleveland, GA 30528

University of Georgia School of Law

Dean Edward D. Spurgeon
Herty Drive
Athens, GA 30602

Walter F. George School of Law, Mercer University

Dean Lawrence Dessem
1021 Georgia Avenue
Macon, GA 31207

The following persons received invitations to attend the September 5 Public Hearing as follows:

Mr. Chris McFadden
Chair, Court of Appeals Subcommittee
Atlanta Bar Courts Committee
118 E. Trinity Place
Decatur, GA 30030
Phone: (404) 371-5062, FAX (404) 378-0152
mailed generic notice 8/20/96 after Mr. McFadden called and requested to be added to mailing list

The following list of eleven people are on the mailing list for Commission on Appellate Court Meetings and received personalized memos inviting them to attend the hearing (mailed 8/20/96)

1. Wayne Allen
Office of Legislative Counsel
316 State Capitol
Atlanta, GA 30334
2. Michael J. Cuccaro
Council of Superior Court Judges
Legislative Office Building
18 Capitol Square, Ste. 108
Atlanta, GA 30334
3. Harold T. Daniel, Jr.
1201 W. Peachtree Street, NW
Suite 2000, One Atlantic Center
Atlanta, GA 30309-3400
4. Melvin B. Hill
Institute of Government
University of Georgia
201 N. Milledge Ave.
Athens, GA 30602-5482
5. Danette Joslyn-Gaul
Assistant Executive Counsel
Office of the Governor
201 State Capitol
Atlanta, GA 30334
6. Rep. Dan Lakly
Georgia House of Representatives
306 Raintree Bend
Peachtree City, GA 30269
7. Speaker Thomas B. Murphy
Georgia House of Representatives
P.O. Drawer 1140
Bremen, GA 30110
8. Molly J. M. Perry
Executive Director
Council of Superior Court Judges
Legislative Office Building
18 Capitol Square, Ste. 108
Atlanta, GA 30334
9. Robert E. Rivers
Clerk, Georgia House of Representatives
Office of the Clerk
309 State Capitol
Atlanta, GA 30334
10. G. Joseph Scheuer
Deputy Legislative Counsel
Office of Legislative Counsel
316 State Capitol
Atlanta, GA 30334
11. Wanda C. Segars
Boller, Sewell and Segars
1100 Spring St. NW, Ste. 380
Atlanta, GA 30309

On August 20, 1996, we faxed a generic invitation to Mr. Ben Easterlin. He will distribute the notice to each Section of the State Bar. (see pp. 22-23 of the Bar Directory for a listing of those sections)

Representative Chambless's office will ensure that this hearing is posted in the weekly Legislative Calendar.

Office of the Public Defender of DeKalb County

408 CALLAWAY BUILDING

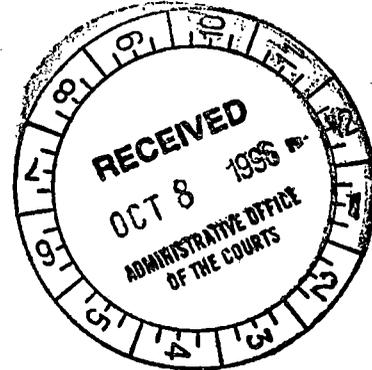
DECATUR, GEORGIA 30030

LAWRENCE L. SCHNEIDER
PUBLIC DEFENDER

(404) 371-2222
FAX (404) 371-2298

October 1, 1996

Commission on the Appellate Courts of Georgia
Suite 550, 244 Washington Street, SW
Atlanta, Georgia 30334-5900



Dear Commission Members:

Our office files a significant number of appeals with both the Supreme Court and Court of Appeals; at this time we have 55 appellate cases open. Having received your letter I have discussed it with a number of my subordinates.

From our point of view the appellate courts work reasonably well. The length of time required to decide an appeal is lengthy, but not excessively so. We are not intimately familiar with the internal processes of the appellate courts, and I do not feel competent to comment on organization, staffing or other internal matters. We have no problem with the current jurisdictional setup.

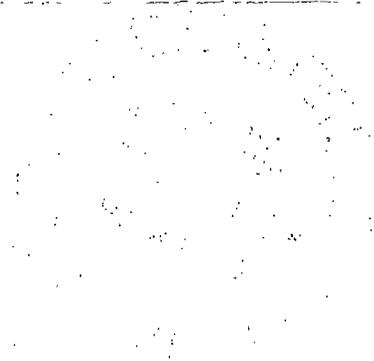
I am sorry I can't be more helpful; the fact is that we are content with the current system. As criminal defense lawyers we would naturally like to see some changes in law and policy, but they have nothing to do with structure and operations.

Possibly if specific changes in jurisdiction or other areas are proposed I would be in a position to comment in a useful way.

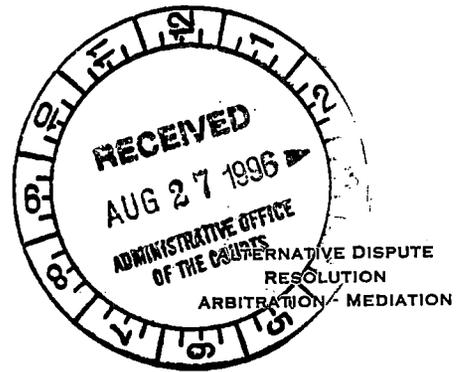
Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. Schneider".

Lawrence L. Schneider
Public Defender



BRASWELL D. DEEN, JR.
SENIOR APPELLATE COURT JUDGE
4715 KITTY HAWK PL. N.E.
ATLANTA, GEORGIA 30342



PHONE: (404) 255-1194
FAX: (404) 424-6319

August 26, 1996

To: Commission on the Appellate Courts

From: Braswell D. Deen, Jr., (Law Practice about 16 years; Bank and County Attorney 10 years; State Legislature 8 years, authoring Georgia's Woman Jury Bill; over 25 years on Court of Appeals of Georgia, serving as Chief Judge, and Presiding Judge; and, almost 6 years in ADR...Case Evaluation, Mediation and Arbitration; now serving as a Senior Appellate Court Judge).

Re: Streamlining and Improvement of current structure and operations of the Appellate Courts of the State of Georgia.

DEEN'S A. B. C.'s as to recommended changes in the Appellate Courts of Georgia:

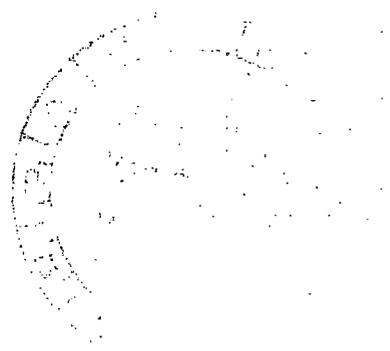
(A) Consider submitting a constitutional amendment to the voters creating 5, 2-Judge Divisions or Panels in lieu of the present 3, 3-Judge Divisions on the Court of Appeals.

COMMENTS- This will increase the production of the court by 30 to 40%, without cost to the taxpayers. This will reduce the Hearing Time and Review Time of each Judge 33 1/3%. Presently, about 9 out of 10 cases are unanimously agreed to by 3 Judges. Two Judges can do the same work (agreeing unanimously 9 times out of 10) now done by three. With 5 Divisions, if a dissent arises in about every 10 cases then 2 additional Divisions plus the Chief Judge can decide and bring finality to the case. As we enter the 21st century this change can solve the workload of the Court of Appeals for the next 50 years.

(B) Consider submitting a constitutional amendment to the voters placing jurisdiction of all Criminal Cases on appeal in the Supreme Court of Georgia, and, placing jurisdiction of all Domestic (Family, Children and Juvenile Disputes) Cases on appeal in the Court of Appeals of Georgia.

COMMENTS- After trial, this will provide one speedy appeal in all criminal cases made directly to the Supreme Court. This will also eliminate in many criminal cases multiple appeals of first going to the court of appeals and then seeking to go the supreme court. The



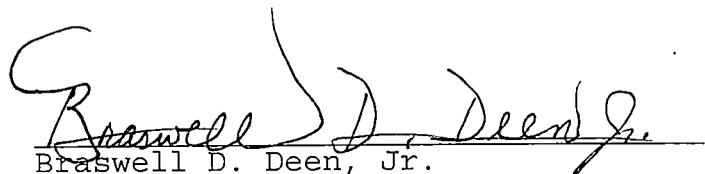


criminal justice system will be improved, expedited, fair to all, and bring finality at an earlier date. This will also not work a hardship on the Supreme Court if they will sit in 2 Divisions of 3-Justices. This should free the Chief Justice for Administrative Duties. This swapping or placing of criminal cases in the Supreme Court and placing of Domestic, Family and Juvenile cases in the Court of Appeals will make the workload of the two courts more equal. The Supreme Court would always sit in two Divisions except in Constitutional Questions, Death Cases, where there occurs a dissent in one of its two Divisions and, cases reviewing decisions of the Court of Appeals.

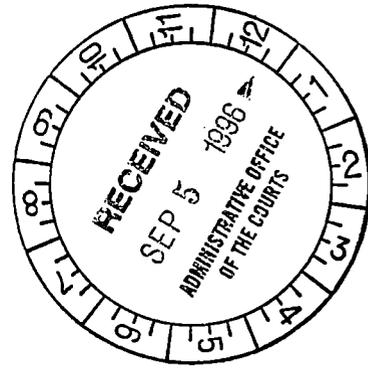
(C) Consider, after the trial of a civil or criminal case, where both parties agree, providing all litigants on appeal an option of using a very brief (1-3 pages) stipulation of facts and issues on appeal, in lieu of the present expensive, voluminous, and time consuming exact transcripts of the trial.

COMMENTS- This creative, innovative and resourceful option will allow and place many appeals on a fast-track, inexpensive, speedy and prompt answer and speedy appeal in a large number of disputes. Thousands of Arbitration Cases are disposed of in Georgia every year with no transcript or record made in the Hearing of the case, with final decisions being given within 24 hours after the hearing. The parties should be allowed to make this choice, if both sides agree, of a Transcript and regular appeal, or, a Stipulation and a speedy appeal, one or the other, when there is to be an appeal. If a constitutional amendment is needed to accomplish this recommendation same should be submitted to the voters.

All three above recommendations are creative, efficient, cost-effective, utilize judicial resources in an effective manner and provide for timely resolution of appeals. If the above A.B.C.'s are not adopted then the only reasonable probable alternative is more Judges, more Law Clerks, additional Administrative Assistants, Law Libraries, more Computers, more Office Space and more bureaucracy. The above suggestions can be accomplished with no new state employees and no additional state funds, while nonetheless ensuring a high quality of Appellate review and at the same time developing a consistent body of Appellate Decisions. Some will say the above is too simplistic and that additional funds are needed. I say the Judicial System belongs to the Citizens of Georgia; the judgment is in the hands of the Commission on the Appellate Courts and the State Legislature, but, the people in our state should have the final word.


Braswell D. Deen, Jr.

September 3, 1996



To: Commission on the Appellate Courts

From: Braswell D. Deen, Jr.

Re: Adding and annexing an "Addendum" to the August 26, 1996 DEEN'S A. B. C.'s as to recommended changes in the Appellate Courts of Georgia:

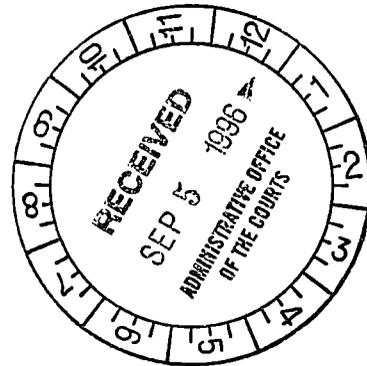
ADDENDUM

"(D) Consider submitting a constitutional amendment to the voters requiring all appeals, (with the possible exception of Death Sentences) from the trial courts to the Appellate Courts be, by application to the Appellate Courts. The courts would either grant or deny an appeal.

COMMENTS;- The state of Virginia may have a similar system of an appellate jurisdiction by application to the courts. This system would not require any additional state funds or state employees. In fact whenever a vacancy occurs in the Court of Appeals the position could go unfilled reverting back to 9 Judges. This would allow the two courts to deny applications as to frivolous appeals, cases filed for delay, and, those totally without merit. This would allow the two courts to grant all the applications and focus on and concentrate on the smaller number of cases deserving of appellate consideration, and, meriting an appeal."

Braswell D. Deen, Jr.

September 3, 1996



To: Commission on the Appellate Courts

From: Braswell D. Deen, Jr.

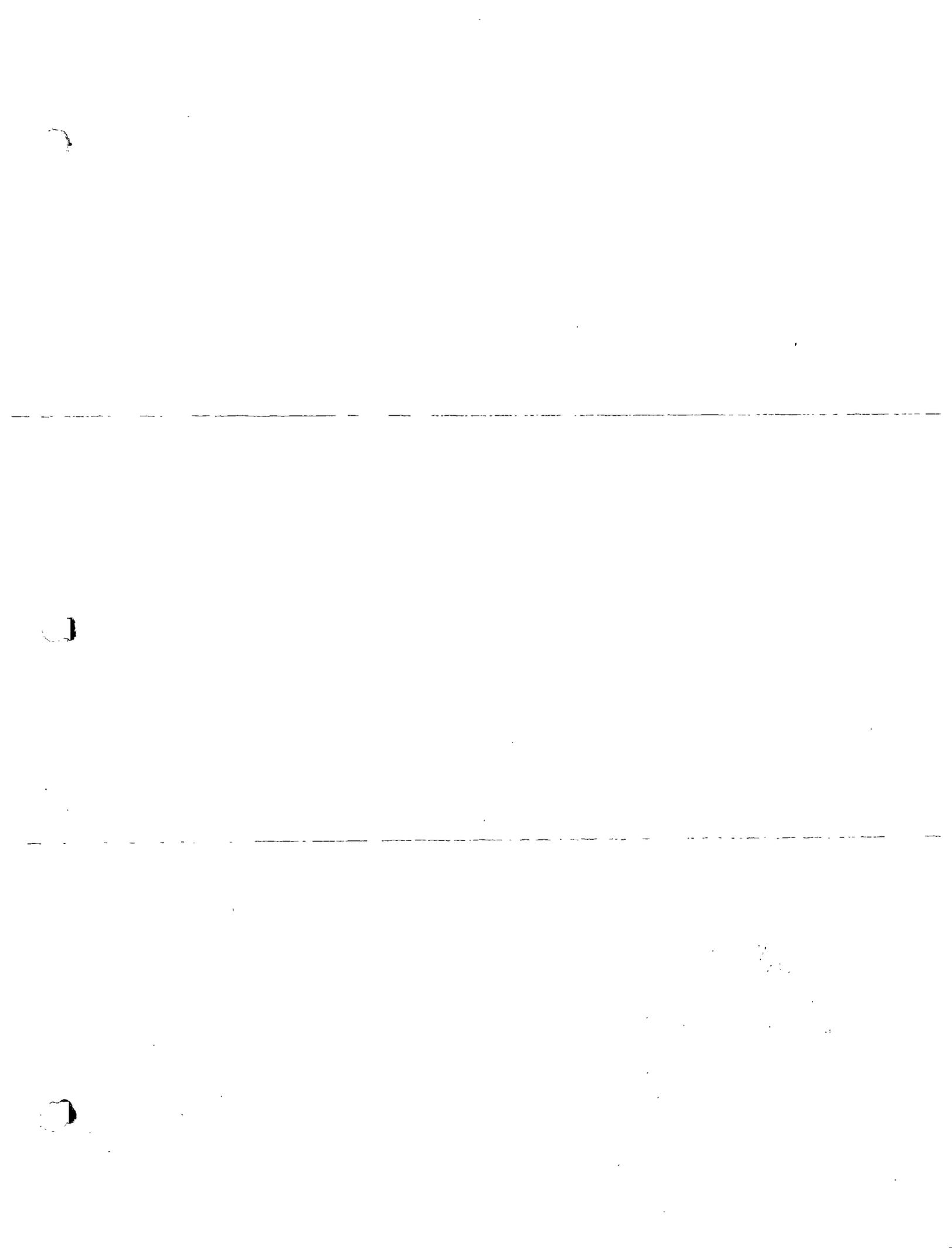
Re: Adding and annexing an "Addendum" to the August 26, 1996 DEEN'S A. B. C.'s as to recommended changes in the Appellate Courts of Georgia.

ADDENDUM

"(D) Consider submitting a constitutional amendment to the voters requiring all appeals, (with the possible exception of Death Sentences) from the trial courts to the Appellate Courts be, by application to the Appellate Courts. The courts would either grant or deny an appeal.

COMMENTS:- The state of Virginia may have a similar system of an appellate jurisdiction by application to the courts. This system would not require any additional state funds or state employees. In fact whenever a vacancy occurs in the Court of Appeals the position could go unfilled reverting back to 9 Judges. This would allow the two courts to deny applications as to frivolous appeals, cases filed for delay, and, those totally without merit. This would allow the two courts to grant all the applications and focus on and concentrate on the smaller number of cases deserving of appellate consideration, and, meriting an appeal."

Braswell D. Deen, Jr.



to: Holly



July 15, 1996

Mr. R. Alex Crumbley
Crumbley & Chafin
P.O. Box 1436
McDonough, GA 30253

Dear Alex:

I am writing to you regarding the Commission on the Appellate Courts subcommittee on jurisdiction. While all members of the Commission could do this equally well, I perceive one of my functions to be to provide input on behalf of the lawyers in the state. In considering jurisdictional matters, one inevitable issue will be whether or not to restrict the availability of appeals, as the real problem here is that the case loads of the Georgia Appellate Courts are too heavy, especially when compared to the case loads of the courts of other states. In considering this issue, the question of how the lawyers in the state would react to a limitation on appeals is certain to arise. I am writing to address that question.

In my opinion, a substantial majority of the lawyers in the state would not be affected by nor aware of any restriction on appeals. With over 28,000 lawyers in the state, however, a minority can be a large number in absolute terms, and I believe that a significant minority would be vocal in opposition to such a move. My recommendation to the subcommittee, however, is to stand up to the minority who would oppose restrictions on appeals and to recommend such restrictions as a major component of the Commission's plan of action.

To my observation, we have too many unnecessary, even though not technically frivolous, appeals. I see appeals taken in order to gain leverage for settlement, for delay, for the losing lawyer to save face with his client, and because some lawyers refuse to give up even though their client and justice would be better served if they did so. It is so easy to appeal that it almost seems like it is automatic that the losing party do so. This not only clogs the process, it demeans it, and it delays or denies justice in those matters which really ought to be considered and decided by the Appellate Courts. Many lawyers would oppose any limitations on appeals, however, for various reasons. When those reasons are boiled down to their essence, though, it really amounts to nothing more than

Mr. R. Alex Crumbley
July 15, 1996
Page 2

self interest in most cases. In contrast, the mission of the Commission is not to represent the interest of lawyers, but to enhance the attainment of justice for the general public by improving the delivery system.

Thus, my recommendation is that the disapproval of lawyers opposing limitations on appeals as a matter of self interest be subordinated to the higher purpose of improving the system and that the Commission recommend appeals restrictions aimed at reducing the appellate caseload.

Thank you for your consideration.

Very truly yours,



BEN F. EASTERLIN IV

BFE:kds

xc: Members of the Commission on the Appellate Courts

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OF COUNSEL:
JOHN E. RAMSEY
ANITA Y. CASON

September 5, 1996

William L. Martin, III
Clerk and Court Administrator
334 State Judicial Building
Atlanta, Georgia 30334

Dear Bill:

I would appreciate it if you would pass the enclosed to the Administrative Offices of the Courts to become a part of the Official Record of the Joint House, Senate Public Hearing on September 5, 1996.

Thank you and with kind, personal regards.

Sincerely,



Jule W. Felton, Jr.

JWF/sle
Enclosure

September 5, 1996

Mr. Chairman, distinguished members of the Joint Committee, judges and friends;

I am Jule W. Felton, Jr. I practice law in Atlanta with Proctor, Felton, Atkinson & Chambers and have been a courtroom lawyer for 41 years.

I come to you today to ask you to consider my views concerning an expansion of the Court of Appeals by two judges so that it will have a fourth division, or twelve judges.

To give you some background about my interest in this subject, permit me to briefly share with you my background.

In my career at the Bar, I have had the opportunity to serve for four years as a member of the House of Representatives, representing all of Fulton County at large. In 1973, I served as President of the Atlanta Bar Association, and in 1985, President of the State Bar of Georgia.

Most of all, I come to you as a son of the Court, not merely a friend of the Court. When I was four years old, my father was elected to the Court of Appeals. The year was 1936. I remember well the move from Montezuma, Georgia (population 3,000) to Atlanta (population 275,000) in a 1935 Chrysler.

During my childhood years, I visited my father's office in the State Capitol. If you stood at the doors of the House of Representatives looking toward the Senate, the Court of Appeals offices began immediately to one's left about where the office of the Clerk of the House is today. To your right, beginning at the Speaker's office were the offices of the Supreme Court.

These offices were a single, deep room and housed a judge and one law assistant. Books, some on walls, some on turnstiles, were everywhere. A brass spittoon was standard in every office.

In the 30's and 40's, judges' offices were legislative coat closets and committee rooms, as the

General Assembly had no such facilities.

As the years passed, I continued to visit the Court. First, six judges, then nine, now ten with multiple law assistants.

My father was Chief Judge when the judicial building was erected. He wrote whatever is on the cornerstone and composed the marble engraving above the bench on the courtroom. I'll never forget how he agonized over those words. He served the Court for 29 years and moved on to the Supreme Court for five years, after which he retired.

I would notice the cases he brought home to study. Those records with the bows on them were awesome. But over the years, the number of cases, briefs and records, increased - and increased. The briefcase had to be replaced with a bigger one.

Today, we study the need for two or more judges, or some increase in size of the Court. The statistical evidence is overwhelming.

In the early 1980's, I became Chairman of the State Bar Committee on the new State Constitution. At that time, I remember well one of my father's observations - that anything can be done if it is in the Constitution.

The Board of Governors adopted our committee report and recommended non-partisan elections, uniform rules, uniform classes of courts, and an increase in the size of the Court of Appeals.

The caseload on this Court today exceeds any Court in this country. As compared to the time for study, deep thought, and debate in the past, the judges are pushed to an abbreviation of their writing of cases and dialogue among themselves. It is truly amazing what they are doing to get cases out.

Georgia has been behind the times in providing this Court with what it needs. The pain of this Court needs to be treated. I urge you to recommend that the Court of Appeals be increased in size by at least two judges, and preferably five. Authority to increase the size of the Court was written into the Georgia Constitution of 1983 by the people of Georgia so that the needs of judicial administration could be met. The General Assembly should carry out the will of the people.



Holly

JUDICIAL COUNCIL OF GEORGIA
Administrative Office of the Courts
SUITE 550
244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334-5900
(404) 656-5171
FAX: (404) 651-6449

September 11, 1996

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

RE: Commission on Appellate Courts of Georgia

Dear Bill:

Thank you for your letter of this date transmitting to the Commission on the Appellate Courts of Georgia a copy of Mr. Jule Felton's statement to the Commission. We will make certain that a copy of this is delivered to each member of the Commission.

Sincerely,

Robert L. Doss, Jr.
Robert L. Doss, Jr.
Director

RLD/tec

cc: Mr. Jule W. Felton, Jr.
Chief Judge Dorothy Toth Beasley
Presiding Judge Marion T. Pope, Jr.
Senior Judge Harold R. Banke

*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

September 11, 1996



Mr. Robert L. Doss, Jr.
Director
Administrative Office of the Courts
Suite 550
244 Washington Street, S. W.
Atlanta, Georgia 30334

Re: Commission on the Appellate Courts of Georgia

Dear Bob:

Enclosed please find a copy of Mr. Jule Felton's statement to the Commission as well as his cover letter. I would appreciate your including this as a part of the official record of the Commission.

If you have any questions or if there are other steps I need to take to perfect this request, please let me know.

As always, I want to thank you for your help and cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Will. L. Martin, III".

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

WLM, III/sc
Enclosures

cc: Mr. Jule W. Felton, Jr.
Chief Judge Dorothy Toth Beasley
Presiding Judge Marion T. Pope, Jr.
Senior Judge Harold R. Banke

*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

September 10, 1996

Mr. Jule W. Felton, Jr.
Proctor, Felton & Atkinson
Attorneys at Law
Suite 350
3520 Piedmont Road
Atlanta, Georgia 30305

Re: Commission on the Appellate Courts of Georgia

Dear Mr. Felton:

Thank you for your letter of September 5, 1996 with the enclosed report to the above Commission. On behalf of the Court, and myself, it is deeply gratifying and very appreciated that you would take time out of your busy schedule to present the Commission with your view of the needs of the Court of Appeals of Georgia. In addition to your many years of distinguished practice before this Court and others of this State, your unique insight as the son of a judge of this Court is particularly interesting and invaluable.

As you can see, I have passed on your report to the Administrative Office of the Courts as well as sharing it with Chief Judge Beasley and Commission members, Presiding Judge Pope and Senior Judge Banke of our Court.

Thank you again for your words of encouragement.

Sincerely,



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

WLM, III/sc

Enclosures

Good morning,
Chairperson Chambless,
Vice Chair Senator Oliver,
Chief Justice Benham,
Chief Judge Beasley,
Senators, Representatives,
Judges, and friends.

As many of you know,
the Supreme Court of Georgia
was created in 1846,
150 years ago this year,
with 3 justices.

The Court of Appeals was
created in 1907, with 3 judges.
At that time, the Supreme Court
had 6 judges, for a total of
9 appellate judges.

There were then 30 Superior Court judges and Georgia's population was 2.6 million in 1910.

That would be 1 trial judge for each 86,666 people, and 1 appellate judge for each 288,888 people.

But population is not the only factor to be considered.

In the first decade of the 19 hundreds, there were many small banks and a few railroads, but not many other commercial institutions.

To day, the banks are bigger, and the railroads smaller, but we have hundreds of thousands of corporations, partnerships, and other business entities creating loans, debts, torts and other obligations.

In the early 19 hundreds, Georgia essentially was an agricultural state, but not so much today. Farmers paid their debts, because they owed the money, and they couldn't move their land.

The automobile was mass produced, starting about the time the Court of Appeals was created. The automobile increased the Court's collection cases, and its tort cases, and it allowed criminals to travel and increase their range of operation.

So population explosion is a factor, if you add the explosion of corporations and other business entities, and automobiles, to the population figures.

Today, there are 17 appellate judges, and over 250 superior court and state court judges. In 1990, Georgia had a population of 6.5 million, and it has risen since then.

That would be 1 trial judge for every 26 thousand people, and 1 appellate judge for every 400,000 people. But there are 1, 2, 3, 4 and even 5 cars, pick-ups, station wagons and vans in most garages. And thousands of corporations.

It has been said that Georgians are litigious.

I think it more apt to say:
"Georgians will litigate to protect their rights."

Georgians are like the United States. They will fight if they have to.

The answer to this problem of continuing litigation is simple, yet complex.

Justice George T. Smith has heard it. He may have been the one who said it first.

The simple answer is:

"More judges — or fewer cases."

That is the bottom line.

More judges, or fewer cases.

Arbitration and mediation
may help the trial judges,
I hope it will.

But once a case is tried in
court, the parties and their
lawyers cannot easily
arbitrate or mediate a zero verdict
or a large verdict. Only the
appellate courts can say:
"Enough is enough"
And the quicker a court
says "enough" the better,
even for the unhappy parties.

The "Application to Appeal" began, on a very modest scale, when I was on the Court. Considering whether to grant or deny an application to appeal takes the time of appellate judges, but not near as much time as preparing for and hearing oral argument, and then preparing, considering, discussing and voting on a full blown written opinion.

~~The appellate courts need more judges or fewer cases. More judges costs the state and the parties more money. Fewer cases saves the State and the parties time and money.~~

I would go one step further. Putting cases on an "application to appeal" basis will help the Court of Appeals, but it won't help the Supreme Court if every application to appeal to the Court of Appeals becomes a petition for certiorari to the Supreme Court by changing the title of the Application to Petition for Cert. Lawyers would be foolish not to have the Application renamed, retyped automatically, and re-filed.

Hence, an Application to Appeal to the Court of Appeals denied by that Court should ^{not} be allowed as a Petition for Certiorari unless one Judge on the Court of Appeals dissents, or 3 if the whole Court

of Appeals denies the Application.

The appellate courts need more judges or fewer cases. More judges cost more money for the state, and the parties. Fewer cases save the state and the parties time and money.

Those fewer appeals which are granted and decided will be better decisions for all Georgians and their lawyers. And fewer opinions will save on lawyer library expenses.

Thank you, very much. I don't envy you. The solution is easy, but bitter, but worth the price.

J.M. RAFFAUF
ATTORNEY AT LAW
1064 WACHOVIA BUILDING
315 W. PONCE DE LEON
DECATUR GA 30030
(404) 373-0112

September 5, 1996

Commission on the Appellate Courts
Rep. Thomas S. Chambless, Chairperson
Ga House of Representatives
Room 332 State Capitol
Atlanta GA 30334

Re: Public Hearing: Commission on the Appellate Courts

Dear Chairperson Chambless:

This is in response to the Commission on Appellate Courts which sprang out of an ill-conceived plan to expand the Court of Appeals because of a perceived crisis in the court's caseload. The original proposal met with surprisingly strong opposition. As an interim measure one judge was added to the current number of nine creating a nightmarish assignment system based on dividing an odd number by an even one. Also "full" court opinions will be heard by only 70% of the appellate judges. Any division of 5-2 or smaller could conceivably mean that the addition of the three judges that were left out would change the result. Therefore, any split decision probably will not create strong precedent as another full court configuration could be completely different.

Many believe that there is a "crisis" at the Georgia Court of Appeals, but it is not caused by an overworked Court. Most recently an incumbent Court of Appeals' Judge was almost defeated by a candidate whose main issue was a pledge to restore faith in our appellate courts.

What we want the Court of Appeals to do is decide cases fairly based on the law and the facts. The Court of Appeals, however, has another major function. That is, its role in overseeing the trial courts. The Court of Appeals is the major vehicle for making sure that trial courts provide fair trials and proceedings. The Court of Appeals is not up to either task.

I. The caseload is not the major problem

Although it is undeniable that the Georgia Court of Appeals has one of the highest caseloads in the country, I am unconvinced that adding more judges will solve that problem, much less the more serious problems that the Court has.

Many are convinced the judges are not overworked. In the late 70's the same issue came up about how overworked our appellate judges were. The idea was pushed aside when an investigation revealed that one Judge spent over 100 days one year at the golf course.

Even now the appellate judges seem to have plenty of time for conferences, seminars, speeches, chairing various committees, etc. Many have even sought master's degrees and other higher degrees from state and even out of state universities while they have been on the Court of Appeals. They were elected and/or appointed to decide appeals, not for these other activities.

If the appellate judges can't find the time to do the job maybe they should resign. No one is forcing them to take the job. There are thousands of lawyers who would like to have their jobs. It should be noted that historically, the appellate judges have opposed expanding the court because it would dilute their power.

II. The litigation explosion is accelerated by the Court itself

The expansion of the number of appeals is largely the fault of the Court itself. The litigation expansion is accelerated by the ever-changing, unsettled, erratic application, and arbitrary application of the law at the appellate level. For instance, nearly every slip and fall case goes to the appellate level because the court has not laid down clear standards and has not applied what standards that do exist uniformly. (See 12/19/95 Fulton Daily Report, "Appeals Court Slips and Falls") Certain judges always vote against Plaintiffs in these cases. These cases should be able to be handled without all this litigation. The facts and their application to the law should be decided by a jury, not the Court of Appeals. However, because certain judges have their own agenda, each case goes to the Court of Appeals, many twice, on the hopes that the loser below will get a favorable panel that will reverse. Justice, then depends on what panel you get, not on what the law says. If the law was clear and uniformly applied then many appeals would not be made.

Similarly, in criminal cases appeals have increased as trials increase. It is difficult to win a criminal appeal as the actual reversal rate is around 3%. This bolsters the prosecution and, in turn, deters reasonable plea bargaining. The number of issues in each criminal appeal has increased because of the way the Court handles criminal appeals. Prosecutors know they can get away with almost anything, so they do whatever is necessary in an effort to get a conviction. Other factors have also increased criminal trials such as mandatory sentencing the curbing of the powers of the Georgia Board of Pardons And Paroles.

III. The Court has abandoned its legal and moral duty

First, instead of correcting errors and insuring the parties get a fair trial, the Georgia Court of Appeals has degenerated into a "norm" court. These norms, called norms of affirmance, include the harmless error rule, the abstention rule, the overwhelming evidence rule, waiver, and other rules designed to reach a decision

affirming the trial court on factors other than on the merits. These institutional norms allow the affirmance of criminal appeals even though errors may have occurred in the convictions. Law articulation concerns (adherence to precedent, application of rules, etc.) are replaced by emphasis on the substantive characteristics (seriousness of offense, factual guilt, etc.) of the particular case. What this means is that the Court has become primarily interested in affirming criminal convictions or "substantive justice" rather than ensuring the correction of errors of law or "due process enforcement."

Second, in order to enhance their power and judicial power in general, the Court of Appeals has set up a system where each case is decided on a case by case basis. Bright line rules are rarely recognized. Bright line rules set out clear standards as to what is prohibited or permitted. There are, of course, some general rules but they can be applied, changed, or overlooked based on the desired outcome of each case. If cases are decided on a case by case basis, then the Court, rather than the law, has total control over the outcome of each case. It logically and politically follows that if the Court feels it is free to selectively apply the law on a case by case basis, then the next step is to selectively choose the facts of the case to apply the law to. It is a very short leap from omitting and distorting facts to just making them up to fit the desired outcome. This leads to what is called result oriented decisionmaking. That means that first the outcome of the case is decided and then the law and facts are selectively applied to that case to reach predetermined result.

The trend in the Georgia Supreme Court is just the opposite. That Court has attempted recently to set out bright line rules regarding comments on a defendant's silence, similar transactions, charging on lesser included crimes and circumstantial evidence. But, the Court of Appeals has shown no signs of abandoning its case by case approach.

Third, institutional concerns also interact with substantive justice to ensure affirmance of criminal appeals. For instance it is much easier to process cases by affirming the ruling below.

The result is that the Court of Appeals reverses very few cases. No one is making sure that the trial courts are applying the law fairly and evenly. It is not a difficult task to ensure that the trial courts follow and apply the law fairly. A few reversals would send the message that the law will be applied fairly and evenly.

IV. Two case histories

Two case histories underscore the problems with the Court of Appeals.

In Beck v. State, 200 Ga. App. 557, 409 SE2d 57 (1991), the Court of Appeals reversed the trial court that had granted the Defendant's double jeopardy motion based on prosecutorial misconduct, finding that the trial court's decision was not based upon the proper standard. The State was the Appellant. The Court of Appeals supplanted the trial court's finding of fact for its own. This was a violation of clearly established review procedure. What's more the record of the Court did not even include the transcript of the evidentiary hearing on the double jeopardy motion. The Court thus violated another well established rule that the Appellant, in this case the State, must have the transcript included in the record to secure review on appeal.

Justice did prevail as the Georgia Supreme Court granted certiorari, ordered the missing transcript sent up and then reversed the Court of Appeals, holding that the trial court's findings were supported by the facts and the law. See Beck v. State, 261 Ga. 826, 412 SE2d 530 (1992).

In Vincent v. State, Case No. A93A0837 (7/7/93) (withdrawn and unpublished) a three judge panel of the Court of Appeals reversed the Defendant's convictions because of the State's improper impeachment of the Defendant's sister. On the State's Motion For Rehearing, one judge in the panel changed their mind and the case went to the full court. The full court opinion then affirmed the conviction finding that appellate counsel had not properly presented the impeachment issue. Vincent v. State, 210 Ga. App. 6, 436 SE2d 222 (1993).

Again the Supreme Court granted certiorari and found appellate counsel did properly raise the issue, that the impeachment was improper, but found the error harmless. Vincent v. State, 264 Ga. 234, 442 SE2d 748 (1994). The point is that Ms. Vincent's fate turned upon the vote of one judge who misstated the facts and law.

V. Structural and political reforms

This Commission is primarily interested in structural reforms. Two guiding principles should be kept in mind. First, no structural reform is going to cure the problems with this Court. Second, the citizens of Georgia will never give up their right to elect the judges.

Structural reforms that have been proposed include expansion of the Court, further curtailing the right to appeal, transferring jurisdiction to other courts including the Supreme Court and/or district appellate courts.

Some political reforms mentioned include retention elections, filling vacancies by election only, not by appointment, revamping the nominating committee, or taking some of the politics out of the nominating committee by making it an independent commission.

Structural and political reforms certainly would not address the Court's lack of integrity. However, it is possible that some major type of reform such as total restructuring, retention elections, or filling vacancies only by election might provide the framework for lasting reform.

V. Proposal for real reforms

I have several suggestions for some real reforms.

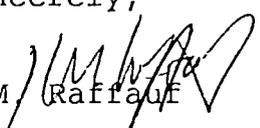
First, oral argument should be allowed on the demand of any party or the party's counsel. The litigants, not the judges, are the best judges of whether oral argument is needed. Historically, oral argument has been a right. The litigants should have a right to confront the judges who will decide their case. It seems odd, that when the level of distrust of the Court is at its highest that the Court does away with oral argument.

- Second, all written decisions of the Court should give transcript cites for all factual statements. This will deter misrepresentation of the facts.

Third, the Court deliberations and records should be subject to the sunshine laws and opens records acts. There is absolutely no reason why the judges should be allowed to meet in private to discuss and decide cases. It is unconscionable that the judicial branch of government has escaped one of the major reforms in democracy that has taken place over the last 25 years. If the legislature can't ensure this, then the Court itself can.

The Supreme Court rules should be changed to allow for writs of certiorari on fact based issues. Currently, the Supreme Court does not have certiorari power to correct factual errors by the Court of Appeals. If the Supreme Court did, this would have a deterrent effect on the Court of Appeals propensity to get the facts wrong.

Sincerely,

J.M. Raffauf 

cc: Jim Wooten, Editor, Atlanta Journal
Cynthia Tucker, Editorial Page Editor, Atlanta Constitution