

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

Wednesday, October 19, 2011

10:30 a.m.

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

Atlanta, Georgia 30334

A G E N D A

- | | | |
|------|---|--|
| I. | Call Meeting to Order - Ascertainment of Quorum | Chief Judge Ellington |
| II. | Approval of June 15, 2011 Banc Meeting Minutes | Chief Judge Ellington |
| III. | Progress of Project on New Docket | Presiding Judge Phipps
John Ruggeri |
| IV. | Old Business | |
| | Record Appendix | Judge Christopher McFadden |
| V. | New Business | |
| | Circulation of Orders/Vote | Judge Christopher McFadden |
| VI. | Announcements | |
| VII. | Adjournment | |



COPY

Court of Appeals

Memorandum

To: Chief Judge John J. Ellington

From: Holly Sparrow *HS*

Subject: Draft Administrative Banc Meeting Minutes
Wednesday, October 19, 2011

Date: October 21, 2011

I would appreciate your reviewing the October 19, 2011 Draft Administrative Banc Meeting Minutes. Please make whatever changes you deem appropriate. If the Minutes are correct as submitted, please initial same and return them to me for distribution to the judges.

Thank you.

/ld

Enclosure

**MINUTES OF THE BANC MEETING
OF THE
COURT OF APPEALS OF GEORGIA
Banc Room
Wednesday, October 19, 2011
10:30 a.m.**

D R A F T

A Banc Meeting of the Court of Appeals was called and held in the Court of Appeals Banc Room at 10:30 a.m. on Wednesday, October 19, 2011. Those present were:

Chief Judge John J. Ellington
Presiding Judge J.D. Smith
Presiding Judge Anne Elizabeth Barnes
Presiding Judge M. Yvette Miller
Presiding Judge Herbert E. Phipps
Judge Gary B. Andrews
Judge Charles B. Mikell
Judge A. Harris Adams
Judge Sara L. Doyle
Judge Keith R. Blackwell
Judge Stephen Louis A. Dillard
Judge Christopher J. McFadden

Also attending: Holly Sparrow, Clerk and Court Administrator
John Ruggeri, Information Technology Director

I. **CALL TO ORDER - ASCERTAINMENT OF QUORUM**

Chief Judge Ellington called the meeting to order at 10:35 a.m. He announced a quorum was present.

II. **APPROVAL OF BANC MEETING MINUTES**

Chief Judge Ellington asked for a motion to approve the Minutes. The motion was made by Presiding Judge Phipps and seconded by Judge Andrews. The Minutes were unanimously approved.

III. PROGRESS OF PROJECT ON NEW DOCKET

Chief Judge Ellington asked John Ruggeri to report to the judges on this subject. Mr. Ruggeri stated that the project was on target to have all the work for the pivot release completed by November 1, 2011, so that the pivot release of the new docket could be used by the Court by the beginning of the January 2012 Term. He pointed out that some features would be added later. He displayed how the remittitur will look in the new system pointing out some changes in the text and the process for inserting the judgment line.

Mr. Ruggeri also provided an alert to the judges that GBA is going to shut down all electrical power to all state facilities on Capitol Hill including the Judicial Building and Health Building on Saturday October 29 through Sunday October 30, 2011. He explained that as a result, no one will be able to be in either building and all electrical equipment including computer equipment will be out of service. This also means that there will be no remote access by the public or the Court to the web page, e-filing or any other remote access applications.

IV. RECORD APPENDIX

Chief Judge Ellington noted that this was the last time the Court was going to address Record Appendices. He stated that the Court had asked the State Bar to suggest a proposal to the Court concerning this issue. Chief Judge Ellington asked Judge McFadden to explain the State Bar proposal. Judge McFadden prefaced his report on the State Bar proposal with information compiled in the clerk's office. He pointed out that the Rule is harmless now since the superior court record page preparation rate was reduced to \$1.00. Although there was a high of over 50 Record Appendix cases in the last year, the last month had only 5, and only 1 has been filed this month. He handed out copies of the State Bar proposal which included limiting the filing of Record Appendices to members of the State Bar.

After a discussion of the pros and cons of the two State Bar proposals, the Court voted to terminate the Rule permitting the filing of Record Appendices. This change will be effective at the end of the current term of Court. Chief Judge Ellington will inform the State Bar of the Court's decision.

V. CIRCULATION OF ORDERS/VOTE

Chief Judge Ellington asked Judge McFadden to explain his proposal concerning dissents on dismissal orders. Judge McFadden said that currently dismissal orders are sent out under the clerk's signature without a vote line. He would like the order to contain the judge's individual votes and allow a written dissent to be included. At Chief Judge Ellington's request, Ms. Sparrow explained the Internal Operating Manual's current policy for dismissal orders. After discussion, this issue was tabled until the next Banc Meeting.

VII. ELECTION OF JUDGE CHARLES B. MIKELL AS CHIEF JUDGE

At Chief Judge Ellington's invitation, Presiding Judge Phipps presented a motion to elect Judge Mikell as Chief Judge for a period to run from November 14, 2011 through January 16, 2012. The motion was seconded by Judge Andrews and unanimously approved. A companion motion, proposed by Presiding Judge Phipps and seconded by Judge Dillard, that in the event of sickness of the Chief Judge, emergency or inconvenience, the duties of the Chief Judge would be performed by Judge Ellington or Presiding Judge Phipps, was also passed unanimously.

VII. ADJOURNMENT

There being no further business, a motion to adjourn was made, seconded and approved unanimously at 11:35 p.m.

Respectfully submitted,

Minutes approved by the Court
En Banc on the _____ day of
_____, 2011

HOLLY K.O. SPARROW
Clerk/Court Administrator
Court of Appeals of Georgia

Minutes 10/19/2011 Banc Meeting

I 10:35 Called to order Quorum
Smith, Barnes late here

II Minutes approved
Phipps, McFadden

III show remittitur fine / Nov 1 done - implement
end of term Dec.

Power outage 28429

IV. Record Appendix

Rule mostly harmless back \$1.00

A month High 50's, low ~~last month~~ 5 last month

proposal limit to atty's only

2 proposals - atty only

could make procedures more stringent
if different prob. continue

legitimacy contrary to appellate practice act

Atty Kaplan argument act only mandate
trial ct clk

not prohibit other way

uskell
Name Plate

Supreme says author exists so
it does

Portrait & Ceremony
Swear In
Docket Charge

legal community [Pavan]
support by bar of Court on
budget

Announcement
web / chat /
Consti

Recognize Patty

▶ occasional cases clerk delay - shuts down litigation, out for delay - limited out

▶ Phipps v. Q. only to licensed atty - how defend Smith is Supreme Ct considering same - concern procedure different

access
M&F problem fixed
merits of case
not resource

→ prob. atty vs prose difference
one legal way
Andrew staff against

Barnes - thank bai & Chus
McFadden — appreciate
remains access issue one a month

McFadden not presume existing rule / sec Doyle
Barnes Adams Doyle for — loss
continues through end of term / current

~~Wick~~ - Chief write to banc / #s not justify
continue / appreciate
Ellington let know letter sent / put

IV McFadden - showing dissents in dismissed
order

case now in Sup Ct

city could waive dissent around

written dissent or just vote

HS explain ~~to~~ TOM provisions
appearance of unity of ct

list of judges on vote

McKell decide to do it

dismissed, McFadden J. dissents

~~McFadden~~ dissent can be written

mat talked to next banc meeting
get examples for Ellington

Donuts for Wistress on week of distress

Ellington

McKee be Chief Nov. 14²⁰¹¹ - Jan. 16 2012

Phipps, and Andrews - ~~same~~ approval

* Court photo Mornig Nov. 10th - Jan

Sickness, in cover, emergency Judge Ellington
& Phipps backup

Phipps Richard and

McKee gratified

12:35 adjourn

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**MINUTES OF THE BANC MEETING
OF THE
COURT OF APPEALS OF GEORGIA
Banc Room
Wednesday, June 15, 2011
10:30 a.m.**

A Banc Meeting of the Court of Appeals was called and held in the Court of Appeals Banc Room at 10:30 a.m. on Wednesday, June 15, 2011. Those present were:

Chief Judge John J. Ellington
Presiding Judge J.D. Smith
Presiding Judge Anne Elizabeth Barnes
Presiding Judge Herbert E. Phipps
Judge Gary B. Andrews
Judge Charles B. Mikell
Judge A. Harris Adams
Judge Sara L. Doyle
Judge Keith R. Blackwell
Judge Stephen Louis A. Dillard (attended by conference telephone)
Judge Christopher J. McFadden

Presiding Judge M. Yvette Miller was absent

Also attending were: Holly Sparrow, Clerk/Court Administrator
John Ruggeri, IT Director

I. CALL TO ORDER - ASCERTAINMENT OF QUORUM

Chief Judge Ellington called the meeting to order at 10:37 a.m. A quorum was noted as present.

II. APPROVAL OF BANC MEETING MINUTES

Chief Judge Ellington asked for a motion to approve the April 20, 2011 Banc Meeting Minutes. The motion was made by Presiding Judge Phipps and seconded by Judge McFadden. The Minutes were unanimously approved.

III. PROGRESS OF PROJECT ON NEW DOCKET

Chief Judge Ellington asked Mr. Ruggeri to give a status report on the new Docket Project. Mr. Ruggeri stated that the project would not be completed by June 30, 2011 as hoped. The new docket would continue to be developed and tested through the remainder of the Summer. The contractor, Trivir, has increased the number of developers working on the project from one to four and is now delivering updates more frequently for testing. Mr. Ruggeri said he expects the contractor will have the Chambers functions ready for testing by mid-July. Chief Judge Ellington noted he and Presiding Judge Phipps had met with Mr. Ruggeri, Ms. Sparrow and Ms. Kelley recently concerning the progress of the project. The Chief Judge had also spoken with the contractor's representative on the telephone. He indicated these actions seem to have motivated the contractor to make a greater effort to complete the project.

IV. OLD BUSINESS

Chief Judge Ellington stated he was reversing the order of the old business topics on the Agenda unless there was an objection. He proceeded to ask Presiding Judge Smith to comment on the Disqualification/Recusal Rule and Internal Operating Manual amendment. Presiding Judge Smith stated that the only addition to the proposal from the last meeting was Section (f) of the Rules which was included to deal with a motion to recuse more than one judge. The amendments were adopted unanimously upon the motion of Judge Adams and second of Presiding Judge Phipps.

Chief Judge Ellington pointed out that the next topic, Pauper Status and Transfers of Applications by the Supreme Court to the Court of Appeals, was tabled at the last meeting. He said he was bringing up it again because the clerk was unable to attend the last meeting. He asked her to explain why a decision was needed on this topic. After Ms. Sparrow's comments and the judges' discussion, a motion was made by Presiding Judge Phipps to docket an inmate's application transferred by the Supreme Court to the Court of Appeals upon the determination of the Supreme Court that the inmate is a pauper even if a pauper's affidavit was not filed with the application. The motion was seconded by Judge Mikell. The motion was approved with ten votes in favor of the motion and Judge Blackwell opposed. Judge McFadden proposed an amendment to the motion, but it failed to obtain a majority vote.

Chief Judge Ellington stated that he had added the Record Appendix to the Old Business Topics because the Court had previously set an expiration date of June 30, 2011 for the Record Appendix Rule. He asked the judges to provide him with their thoughts on whether to allow the Rule to expire or to continue the Record Appendix procedure as a permanent change to the Rules. After a lengthy discussion, with many counterpoints, Judge Blackwell proposed that the Court extend the deadline one more time to give the State Bar Committee an opportunity to present a proposal that would make the Record Appendix palatable to the Court as a permanent procedure. A consensus was reached on Judge Blackwell's motion, which had been informally seconded by Judge Dillard. The Chief Judge recognized the judges' consensus as a vote by the judges to require

the State Bar to submit its proposal by October 1, 2011 and for the Court to vote at the October Banc Meeting on whether the Rule will expire or the Record Appendix will become a regular procedure of the Court.

There being no further old business, Chief Judge Ellington asked the Banc to consider the personnel item under New Business. He asked Ms. Sparrow to explain her request for the promotion of Deputy Clerk, Patty Bender. Ms. Sparrow stated that Ms. Bender had assumed the duties and responsibilities of the Deputy Clerk, Sheila Collins, in 2009 when the Court had to meet a budget decrease with a reduction in force. This last year when the Deputy Administrator's position was eliminated and Ms. Sparrow was appointed Clerk/Court Administrator, Ms. Bender took on additional responsibilities from the Deputy Administrator's position. Ms. Sparrow requested the Court to recognize this change in duties and responsibilities by promoting Ms. Bender to Chief Deputy Clerk and approving an appropriate salary increase. Chief Judge Ellington pointed out that due to the state budget crisis, the Court has not approved any salary increases for current positions, but he felt that Ms. Bender's new duties and critical position in the clerk's office should permit an exception. He stated he supported a salary increase and suggested an amount of \$6,000. He also noted that there was over a \$100,000 savings when the deputy administrator position was eliminated and Ms. Sparrow assumed the Clerk's position at a lower salary than the prior Clerk. Presiding Judge Barnes made a motion to promote Ms. Bender and grant her a \$6,000 raise which was seconded by Presiding Judge Smith and unanimously approved.

Chief Judge Ellington asked Ms. Sparrow address the last item under new business. Ms. Sparrow explained she just wanted to make the judges aware of the provisions of the conflict rule of the Superior Courts and how it does not necessarily provide the Court of Appeals sufficient time for the Court to accommodate attorneys' schedules for oral arguments.

Chief Judge Ellington inquired if there was any other new business. Judge Doyle asked if the Court has a current chart or directory of chambers' staff. Ms. Sparrow stated that with the recent staff changes, she had asked IT to update the directory. Mr. Ruggeri explained that although the directory is about a year old, it was organized by each Chamber and is accessible on the S: drive of the Court's computer system.

V. ANNOUNCEMENTS

Judge Mikell, as Chairman of the Portrait Committee, noted that brass name labels or plaques were being made for three of the chief judge portraits displayed in the Courtroom that did not have these labels.

Presiding Judge Barnes stated she hoped everyone will welcome her new Administrative Assistant, Deborah Rodgers. She said she was counting on the graciousness of the other Administrative Assistants to help orient her new AA to Court procedures while Tracey Parker is on sick leave.

VI. ADJOURNMENT

There being no further business and upon motion by Presiding Judge Phipps and seconded by Judge Adams, the meeting was adjourned at 11:55 a.m.

Respectfully submitted,

Minutes approved by the Court
En Banc on the _____ day of
_____, 2011

HOLLY K.O. SPARROW
Clerk/Court Administrator
Court of Appeals of Georgia

SAMPLE
REMITTITUR

REMITTITUR

Court of Appeals of Georgia

Atlanta, September 23, 2011

A03A0007. DANIEL A. SPOTTSVILLE V. THE STATE

Upon consideration of this case, which came before this Court on appeal from the SUPERIOR Court of FULTON County, this Court rendered the following decision:

Judgment affirmed.

Blackburn, P. J., Adams and Doyle, JJ., concur.

Lower Court Case No.
SU98CR14456

Costs paid in the Court of Appeals: \$80.00.



*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, October 18, 2011*

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

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

Hally K. O. Spawort, Clerk.

REMITTITUR

Court of Appeals of Georgia

Atlanta, September 23, 2011

A03A0007. DANIEL A. SPOTTSVILLE V. THE STATE

Upon consideration of this case, which came before this Court on appeal from the SUPERIOR Court of FULTON County, this Court rendered the following decision:

Judgment reversed as to adjudication of delinquency on charge of influencing witness, disposition vacated, and case remanded for new disposition.

Blackburn, P.J., Ellington and Phipps, JJ., concur.

Lower Court Case No.
SU98CR14456

Costs paid in the Court of Appeals: \$80.00.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, October 18, 2011

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

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

Hally H. O. Spencer, Clerk.

REMITTITUR

Court of Appeals of Georgia

Atlanta, September 23, 2011

A03A0007. DANIEL A. SPOTTSVILLE V. THE STATE

Upon consideration of this case, which came before this Court on appeal from the SUPERIOR Court of FULTON County, this Court rendered the following decision:

The appeal is dismissed.

Blackburn, P.J., Ellington and Phipps, JJ., concur.

Lower Court Case No.
SU98CR14456

Costs paid in the Court of Appeals: \$80.00.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, October 18, 2011

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

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

Hally K. O. Spawort, Clerk.

REMITTITUR

Court of Appeals of the State of Georgia

ATLANTA, FEBRUARY 23, 2010

The Court of Appeals having met, the following judgment was rendered:

**COURT OF APPEALS CASE NO. A09A2127
STEVEN WAYNE BOYD V. THE STATE**

This case came before this court on appeal from the SUPERIOR Court of TROUP County; it is considered and adjudged that

**THE JUDGMENT OF THE COURT BELOW BE AFFIRMED.
MILLER, C.J., ANDREWS, P.J., AND BARNES, J., CONCUR.**

LC NUMBERS: 2008R140

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, MAR 12, 2010

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

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

Clerk.

*Court of Appeals Cost \$80.00. O.C.G.A. Sec. 5-6-10.
No costs are payable to the Court of Appeals.*

Willi Z. Mat; [Signature]