

Wed Johnson late morn discuss portrait

Board Meeting  
minutes  
10/20/2018

Doyle

And

Johns

Phipps

Adams

Ellington

Miller

Minutes Ellington Phipps

Ellington Clerk Suggestion

Ellington ~~to~~ Explore get rid of court car

Phipps, Johnson, Ellington

Jan

Ed Johnson's last meeting

Last meeting unless unknown

Smith 10/13  
send around 1/17  
Sunset Rule thru March 1  
Ellington } And  
Vote all in favor

Johnson  
ex case  
continue  
contact  
wordy  
collected

Miller  
no further  
auto to Miller  
clerk's  
office

10:55

10

partner  
firm

Keith Blackwell Cobb find bio & read tonight  
Steve Dillard - Macon find bio & read tonight

firm

Nov. 1st swearing in

House

week Nov. 8th set

Feb Nov. 16th orientation

Contact

Crystal  
Assign  
Meet

Adams

assign office

Chief Judge Miller  
Chief Judge Miller

Andrews

\* Repealed clerks of  
Adams of Salary 75%  
judges

Ellington  
Move to hire Holly as  
w/ \$5K raise  
- Phipps

VII

I



# Court of Appeals

## Memorandum

---

**To:** All Judges  
**From:** Chief Judge M. Yvette Miller *mygm*  
**Subject:** October Banc Meeting  
**Date:** October 5, 2010

---

There will be a Banc Meeting on Wednesday, October 20, 2010 at 10:30 a.m. The main purpose is to present the Committee's recommendation for a new Clerk and the selection of the Clerk. There may be a few additional items on the agenda although not related to the budget. For this reason the meeting will be brief.

Thank you very much.

/ld

cc: Holly Sparrow



# Court of Appeals

## Memorandum

---

**To:** Chief Judge Yvette Miller  
**From:** Holly Sparrow *HS*  
**Subject:** Summary - Original Petition Filed in Supreme Court Versus the Court of Appeals  
**Date:** October 20, 2010

---

A petition for writ of prohibition and/or mandamus, S11O0182. Citizens for Ethics in Government, LLC et al. v. Georgia Court of Appeals, was docketed in the Supreme Court of Georgia on September 24, 2010. Mr. Woodham, Appellant's counsel, argues that: (1) the Supreme Court of Georgia is authorized to mandate the Court of Appeals of Georgia; (2) the Court of Appeals decision in A09A2105. Citizens for Ethics in Government, LLC et al. v. The Atlanta Development Authority et al. on March 30, 2010 did not apply the law correctly and such action exceeded its authority under the Georgia Constitution. The petition requests the Supreme Court of Georgia to direct the Court of Appeals to vacate a portion of its decision in A09A2105 and to reissue a revised decision.

A petition for a writ of certiorari on case A09A2106 was filed in the Supreme Court of

Georgia on May 4, 2010 (S10C1350) and that Court denied the petition on September 7, 2010. Mr. Woodham filed a Motion for Reconsideration on September 7, 2010 and that motion is still pending.

After a discussion of the filing by Mr. Woodham in the Supreme Court with Mr. Dennis Dunn of the Law Department, I requested (on behalf of this Court) the Georgia Attorney General's office to represent the Court of Appeals in this matter and to make a response to the petition on behalf of the Court.

A response was submitted by Ms. Rebecca Mick of the Law Department on October 8, 2010.

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
*244 Washington Street, Room 572*  
*Atlanta, Georgia 30334*  
*(404) 656-3470*

*Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.*

---

**Docketing Date: September 24, 2010**

Thurbert E. Baker, Attorney General  
Department of Law  
40 Capitol Square, S.W.  
Atlanta, Georgia 30334

**Case No. S11O0182**

**CITIZENS FOR ETHICS IN GOVERNMENT, LLC et al. v. GEORGIA COURT OF  
APPEALS**

An Original Petition has been docketed in the Supreme Court today.

Therese S. Barnes, Clerk

IN THE SUPREME COURT OF GEORGIA  
STATE OF GEORGIA

|                           |   |                       |
|---------------------------|---|-----------------------|
| CITIZENS FOR ETHICS IN    | ) |                       |
| GOVERNMENT, LLC ET AL.,   | ) | CASE NO. _____        |
|                           | ) |                       |
| Petitioners,              | ) |                       |
|                           | ) |                       |
| v.                        | ) |                       |
|                           | ) | ORIGINAL JURISDICTION |
| GEORGIA COURT OF APPEALS, | ) | PROCEEDING            |
|                           | ) |                       |
| Respondent.               | ) |                       |

---

PETITION FOR WRIT OF PROHIBITION  
AND/OR MANDAMUS

---

JOHN F. WOODHAM  
GEORGIA BAR NO. 775066  
WOODHAM AND ASSOCIATES, LLC  
2625 PIEDMONT ROAD, SUITE 56-295  
ATLANTA, GEORGIA 30324  
(404) 862-2480  
(404) 478-6510 (FAX)  
COUNSEL FOR PETITIONERS

**IN THE SUPREME COURT OF GEORGIA  
STATE OF GEORGIA**

**CITIZENS FOR ETHICS IN** )  
**GOVERNMENT, LLC ET AL.,** )  
 )  
 **Petitioners,** )  
 v. )  
 )  
**GEORGIA COURT OF APPEALS,** )  
 )  
 **Respondent.** )

**CASE NO.** \_\_\_\_\_

**ORIGINAL JURISDICTION  
PROCEEDING**

**PETITION FOR WRIT OF PROHIBITION  
AND/OR MANDAMUS**

Petitioners Citizens for Ethics in Government, LLC and John F. Woodham (“Petitioners”) hereby bring this original jurisdiction action for a writ of prohibition and/or mandamus against the Georgia Court of Appeals and show this Honorable Supreme Court of Georgia as follows:

**Part I: INTRODUCTION**

This proceeding is related to Case No. S10C1350, a petition for certiorari docketed May 4, 2010 regarding the Georgia Court of Appeals’ decision in *Citizens for Ethics in Government, LLC v. The Atlanta Development Authority*, 303 Ga.App. 724 (2010). This Court denied the petition for certiorari by Order dated September 7, 2010, and a Motion for Reconsideration was filed September 17,

2010. The conclusion of the Motion for Reconsideration addressed the concept of bringing an original jurisdiction proceeding in this Court against the Georgia Court of Appeals, which in very limited circumstances Petitioners respectfully believe is available under the 1983 Georgia Constitution to fill a void created by the very narrow certiorari criteria of the Georgia Constitution. *See* Art. VI, Sec. VI, Par. V (“The Supreme Court may review by certiorari cases in the Court of Appeals *which are of gravity or great public importance.*”). (emphasis supplied.) *See also Supreme Court of Georgia Rule 40* (“A petition for the writ will be granted only in cases of *great concern, gravity, or importance to the public.*”). (emphasis supplied.)

### **Part I: STATEMENT OF JURISDICTION**

An original jurisdiction petition to the Supreme Court of Georgia is authorized both by the Georgia Constitution and the Georgia Code. Art. VI, Sec. I, Par. IV of the Georgia Constitution of 1983 provides as follows: “Each court may exercise such powers as necessary in aid of its jurisdiction or *to protect or effectuate its judgments*; but only the superior *and appellate courts shall have the power to issue process in the nature of mandamus, prohibition, specific performance, quo warranto, and injunction.*” (emphasis supplied.) *See also* O.C.G.A. § 15-2-8(3) (“The Supreme Court has authority: . . . To grant *any writ necessary* to carry out any purpose of its organization or *to compel any inferior*

*tribunal or officers thereof to obey its order;”). Raybestos-Manhattan, Inc. v. Moran, 248 Ga. 461, 462 (1981) (“1976 Ga.Const., Art. VI, Sec. II, Para. VIII; Code Ann. § 2-3108. Code Ann. § 24-3901 enumerates the powers of the Supreme Court. Among them is the authority ‘(t)o grant any writ necessary to carry out the purposes of its organization, or to compel any inferior tribunal or officers thereof to obey its order.’ (Emphasis supplied). That authority is not only inherent in the judicial powers of the courts, but is also established clearly by law. We hold therefore that the Court of Appeals has the power to entertain a petition for mandamus or prohibition in order to enforce its judgments.”).*

The general rule and scenario in this State is a writ of prohibition and/or mandamus brought against a trial court, and this Court has made it clear that it will not exercise its original jurisdiction in a matter regarding a trial court. Instead, the matter must be initiated in the trial court, and can then be subsequently appealed to this Court. *Brown v. Johnson*, 251 Ga. 436 (1983); *Carey Canada, Inc. v. Head*, 252 Ga. 23, 310 S.E.2d 895 (1984); *Howard v. Fuller*, (Case No. S08O0357, November 30, 2007). However, a case involving a writ of prohibition and/or mandamus against the Georgia Court of Appeals appears to be a case of first impression in this State, and such a case would clearly seem to fall within the ambit of the “extremely rare” circumstances where parties “need to resort to the

appellate courts for such relief by petition filed in the appellate courts”. *Brown, supra*, at 437.

It is clear a superior court, being an inferior tribunal, would have no authority to issue any such writs to the Georgia Court of Appeals. The question then becomes whether the action should be initiated in the Georgia Court of Appeals itself, or in the Supreme Court of Georgia. This inquiry seems initially answered by referring to one of the principle foundations for this cause of action, which is Art. VI, Sec. VI, Par. VI of the Constitution of the State of Georgia (“The decisions of the Supreme Court shall bind all other courts as precedents.”). This provision of the Georgia Constitution, coupled with the language from Art. VI, Sec. I, Par. IV (“Each court may exercise such powers as necessary in aid of its jurisdiction or *to protect or effectuate its judgments . . .*”), suggests the action should originate in the Supreme Court of Georgia. This position is bolstered by Georgia Court of Appeals Rule 33 (a), “If an appeal is decided by a Division, a judgment in which all three judges fully concur is a binding precedent; . . .”), as well as Art. VI, Sec. V, Par. III of the Constitution of the State of Georgia (“The decisions of the Court of Appeals insofar as not in conflict with those of the Supreme Court shall bind all courts *except the Supreme Court as precedents.*”). (emphasis supplied.)

Based on the foregoing, the Court of Appeals is constrained by its own rules, as well as Art. VI, Sec. V, Par. III of the Georgia Constitution, to follow its own precedents. As such, initiating an original jurisdiction action for a writ of prohibition and/or mandamus in the Georgia Court of Appeals against the Georgia Court of Appeals in respect of the decision in *Citizens for Ethics in Government, LLC v. The Atlanta Development Authority* (a case in which all members of the three-judge panel concurred) does not appear feasible under the Georgia Constitution. Under the unique circumstances of this case, an original jurisdiction action against the Georgia Court of Appeals for a writ of prohibition and/or mandamus must therefore logically originate in the Supreme Court of Georgia.

## **Part II: STATEMENT OF THE ISSUES**

### **1. The Georgia Court of Appeals Has Exceeded Its Jurisdiction Under the Separation of Powers Doctrine.**

“[U]nder our system of separation of powers *this Court does not have the authority to rewrite statutes.*” *State v. Fielden*, 280 Ga. 444, 448 (2006). (emphasis supplied.) “[T]he doctrine of separation of powers is an immutable constitutional principle *which must be strictly enforced.* Under that doctrine, statutory construction belongs to the courts, legislation to the legislature. *We can not add a*

*line to the law.*" (Punctuation and citations omitted.) *Etkind v. Suarez*, 271 Ga. 352, 353(1), (1999). (emphasis supplied.)

O.C.G.A. § 9-11-11.1(d) reads as follows: "All discovery and any pending hearings or motions in the action *shall be stayed upon the filing of a motion to dismiss or a motion to strike made pursuant to subsection (b) of this Code section.* The motion shall be heard not more than 30 days after service unless the emergency matters before the court require a later hearing. The court, on noticed motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted notwithstanding this subsection." (emphasis supplied.) The foregoing statutory language could not be more clear. In *Citizens, supra*, however, the Court of Appeals exceeded its constitutional authority by effectively rewriting O.C.G.A. § 9-11-11.1(d) entirely out of existence. This represents an unconstitutional intrusion of the judicial branch into the exclusive province of the General Assembly. This further violates O.C.G.A. § 9-6-40 ("The writ of prohibition is the counterpart of mandamus, to restrain subordinate courts and inferior tribunals from exceeding their jurisdiction . . .").

Based on the foregoing, Petitioners respectfully request this Court to issue a writ of prohibition to the Georgia Court of Appeals, together with such other decree as may be necessary, to direct the Georgia Court of Appeals to vacate that portion of the decision in *Citizens, supra* pertaining to O.C.G.A. § 9-11-11.1(d),

and to instead reissue such decision in a manner which does not unconstitutionally intrude upon the exclusive province of the General Assembly, in contravention of the separation of powers clause of the Georgia Constitution, Art. I, Sec. II, Par. III (“The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided.”).

2. **The Georgia Court of Appeals Has Exceeded Its Jurisdiction In Violation of Art. VI, Sec. VI, Par. VI of the Constitution of the State of Georgia.**

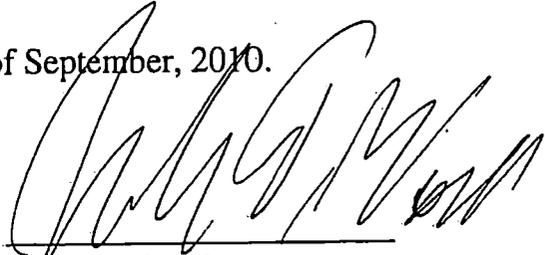
Art. VI, Sec. VI, Par. VI of the Constitution of the State of Georgia provides as follows: “The decisions of the Supreme Court shall bind all other courts as precedents.”. In Division 3 of *Citizens, supra*, the Court of Appeals failed to follow the binding precedents of this Court, as set forth in *Wall v. Thurman*, 283 Ga. 533 (2008) and *Williams v. Cooper*, 280 Ga. 145 (2006). “Before attorney fees may be awarded against a party under O.C.G.A. § 9-15-14 (b), the party must be given notice that *an award of attorney fees under that Code section is under consideration* so that he or she has ‘an opportunity to challenge the basis on which the fees are assessed’”. *Wall v. Thurman*, 283 Ga. 533, 534 (2008), quoting *Williams, supra*, at 147. (emphasis supplied.)

Notwithstanding this Court's unanimous, clear and unambiguous holdings in *Wall* and *Williams*, the Court of Appeals in *Citizens* failed to follow *Wall* and *Williams*, in violation of Art. VI, Sec. VI, Par. VI of the Constitution of the State of Georgia. "And though *the trial court did not specifically state it was considering an award of attorney fees under OCGA § 9-15-14 (b)*, we find that the Intervenors received sufficient notice of the potential sanctions. . . . *Thus they had sufficient notice to challenge the basis for the attorney fee award in this case.*" *Citizens*, at 736. (emphasis supplied.)

Based on the foregoing, Petitioners respectfully request this Court to issue a writ of prohibition and/or mandamus to the Georgia Court of Appeals, together with such other decree as may be necessary, to direct the Georgia Court of Appeals to comply with Art. VI, Sec. VI, Par. VI of the Constitution of the State of Georgia, by vacating that portion of *Citizens* which contradicts *Wall* and *Williams*, and to reissue a decision in keeping with this Court's binding precedent as set forth in *Wall* and *Williams*.

Respectfully submitted, this 24<sup>th</sup> day of September, 2010.

Woodham and Associates, LLC  
2625 Piedmont Road, Suite 56-295  
Atlanta, Georgia 30324  
(404) 862-2480  
(404) 478-6510 (fax)

  
\_\_\_\_\_  
John F. Woodham  
Georgia Bar. No 775066  
Counsel for Appellant

**IN THE SUPREME COURT OF GEORGIA  
STATE OF GEORGIA**

|   |   |                              |
|---|---|------------------------------|
| <b>CITIZENS FOR ETHICS IN<br/>GOVERNMENT, LLC ET AL.,</b> | ) |                              |
|   | ) | <b>CASE NO. _____</b>        |
| <b>Petitioners,</b>                                       | ) |                              |
|   | ) |                              |
| v.  | ) |                              |
|   | ) | <b>ORIGINAL JURISDICTION</b> |
| <b>GEORGIA COURT OF APPEALS,</b>                          | ) | <b>PROCEEDING</b>            |
|   | ) |                              |
| <b>Respondent.</b>  | ) |                              |

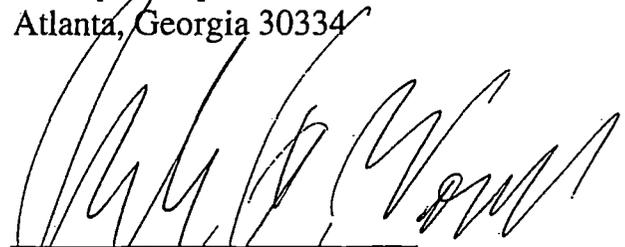
**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a copy of the within and foregoing Petition for Writ of Prohibition on the Clerk of the Georgia Court of Appeals and the Attorney General of the State of Georgia by placing same in the United States Mail, with proper postage thereon to ensure delivery, addressed to:

Clerk of Court  
Georgia Court of Appeals  
47 Trinity Avenue, Suite 501  
Atlanta, Georgia 30334

The Honorable Thurbert E. Baker  
Georgia Attorney General  
Department of Law  
40 Capital Square, SW  
Atlanta, Georgia 30334

This 24<sup>th</sup> day of September, 2010.

  
\_\_\_\_\_  
John F. Woodham  
Georgia Bar. No 775066  
Counsel for Petitioners

Woodham and Associates, LLC  
2625 Piedmont Road, Suite 56-295  
Atlanta, Georgia 30324  
(404) 862-2480

**From:** "Dennis Dunn" <ddunn@law.ga.gov>  
**To:** <sparrowh@gaappeals.us>  
**Date:** 10/8/2010 4:27 PM  
**Subject:** FW: Notice of Docketed E-Filing

Just FYI -

\*\*\*\*\*  
\*\*\*\*

\* This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

-----Original Message-----

**From:** noreply@gasupreme.us [mailto:noreply@gasupreme.us]  
**Sent:** Friday, October 08, 2010 2:09 PM  
**Subject:** Notice of Docketed E-Filing

**TO:** ALL PARTIES

**Case Number:** S1100182  
**Case Style:** CITIZENS FOR ETHICS IN GOVERNMENT, LLC et al. v. GEORGIA COURT OF APPEALS

A filing in the above styled case has been docketed.

**Filing Type:** APPELLEE - Brief of A.G.  
**Filed by:** Rebecca Mick  
**Filing date and time:** 10/08/2010 12:00 AM EDT.

The filing can be accessed at:  
<https://efile.gasupreme.us/efile/viewFiling?filingId=d12c5d45-f724-4fef-a42e-49e7fcb5262e>

For additional information, please contact the Supreme Court Clerk's Office.

Clerk's Office  
Supreme Court of Georgia  
244 Washington Street, S.W., Suite 572  
Atlanta, Georgia 30334  
404 656 3470

*asked Dennis to fax or email copy*





Petitioners then sought reconsideration from the Court of Appeals, which was denied on April 14, 2010. *Id.*

On May 4, 2010, Petitioners sought review of the Court of Appeals' decision through the filing of a petition for writ of certiorari, docketed with this Court as Case No. S10C1350. This Court unanimously denied the writ on September 7, and Petitioners filed a motion for reconsideration of that denial on September 17. This Court has now on October 4 denied that motion for reconsideration.

During the pendency of the motion for reconsideration, though, the Petitioners on September 24, 2010, filed this original action seeking an order of the Court in the nature of either mandamus or prohibition, essentially requiring that Georgia Court of Appeals reverse its decisions in *CEG* and enter a new order in favor of the Petitioners. While the substance of the Petitioners' claim for legal relief is essentially the same legal arguments already presented to the Court of Appeals on their direct appeal and to this Court in the petition for writ of certiorari, the Petitioners have now presented the claim as one arguing that the Court of Appeals, in wrongly deciding the Petitioners' case, has exceeded its constitutional authority. Mandamus Pet., pp. 5-8. (Compare, to Pet. For Writ of Certiorari, pp. 7-13, 22-24.) Petitioners seek an order of

prohibition and mandamus from this Court against the Court of Appeals to require that court to vacate its decision and to enter an order in favor of Petitioners. Petitioners' action must be dismissed because (1) Mandamus is not available to correct perceived judicial errors; (2) Mandamus is not available to compel the performance of judges' discretionary acts; and (3) to the extent that Petitioners seek redress against the Court of Appeals, the Judges are entitled to absolute judicial immunity.

B. Statement of Facts

The original, underlying case here involved the Petitioners intervening in two bond validation proceedings filed in the superior court pursuant to the Revenue Bond Law, O.C.G.A. § 36-82-60 *et seq.* *CEG*, 303 Ga. app. at 724. A dispute thereafter developed involving whether the Intervenors, in invoking the State's "Anti-Strategic Lawsuits Against Public Participation (Anti-SLAPP) statute, O.C.G.A. § 9-11-11.1, had effectively stayed the proceedings in the trial court. *Id.* at 724-27.

Ultimately, the trial determined that the Petitioners' actions had not stayed the court's ability to move forward on the bond validation, which it did. *Id.* 727-30. In doing so, the court also imposed sanctions upon the Petitioners. *Id.*

On direct appeal, the Petitioners raised and the Court of Appeals addressed their argument regarding the stay of the proceedings by the Petitioners' "Anti-SLAPP" activities. *CEG*, 303 Ga. App. at 731-733. The Court of Appeals rejected the Petitioners' arguments and affirmed the trial court. *Id.* The Petitioners also raised on direct appeal a challenge to the imposition of sanctions. *Id.* at 735-737. Again, the Court of Appeals rejected the Petitioners' arguments. *Id.* As noted above, Petitioners also raised the same arguments in their Petition for Writ of Certiorari, which has been reviewed and denied by this Court.

Further facts will be developed as necessary in this response to address the response of the Court of Appeals.

## **II. Argument and Citation of Authority**

- A. Petitioners are not entitled to any relief sought by means of this petition for prohibition or mandamus relief.

Georgia law is clear that "Mandamus is an extraordinary remedy that is granted only when a petitioner has a clear legal right to the relief sought and no other adequate legal remedy." *She, Inc. v. West*, 269 Ga. 201 (1998); accord *Paul Maynard Constr. v. City of Watkinsville*, 274 Ga. 496, 497 (2001), *Pryor Org. v. Stewart*, 274 Ga. 487, 487-88 (2001). It lies only to compel the performance of an official act that is purely

ministerial. *Banks v. Benham*, 270 Ga. 91, 91-92 (1998), accord *Ford Motor Co. v. Lawrence*, 279 Ga. 284, 285-86 (2005); *Smith & Wesson Corp. v. City of Atlanta*, 273 Ga. 431, 433 (2001); *Barber Fertilizer v. Chason*, 265 Ga. 497 (1995); *Rossi v. Price*, 237 Ga. 651 (1979).

Mandamus may not be used to “obtain the reversal of a judicial order.” *White v. Lumpkin*, 272 Ga. 398 (2000), accord *Ford Motor Co v. Lawrence*, *supra*. Appeal to the proper court is the **only** remedy available for correction of judicial error. *Barksdale v. Cobb*, 16 Ga. 13, 14 (1854); accord *Ford Motor Co. v. Lawrence*, *supra*. Extraordinary writs such as mandamus or prohibition cannot be used to challenge an action that is judicial in nature, but instead the requested act must be one that is “simple, absolute and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty.” 16 Ga. at 92. If the act sought requires “the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed” by law, then it is a discretionary act that is not subject to mandamus. *Id.*

In seeking mandamus relief, “it is well established that the burden of proof rests with the party seeking mandamus relief.” *Roach v.*

*Employees' Retirement Systems of Georgia*, 275 Ga. 447, 448 (2002); *Forsyth County v. White*, 272 Ga. 619, 620 (2000). As such, a petitioner must demonstrate all of the elements necessary for the granting of mandamus relief, including the legal duty to perform the act sought, the lack of discretion or a gross abuse of discretion on the part of the respondent and the lack of any other legal remedy. *Id.*, see also *Pryor Org.*, 274 Ga. at 477-78; *Dickerson v. Augusta-Richmond Co. Comm'n*, 271 Ga. 612, 613 (1999).

Pretermitted the question of whether there could ever be appropriate circumstances for the issuance of a writ of mandamus or prohibition issued by this Court and directed to the Court of Appeals, that issue is simply not presented here. It is clear that all the Petitioners are attempting to do is to present in yet one other form the same claims previously raised and reviewed both on direct appeal and by this Court on its review of the writ of certiorari. That review by certiorari by this Court was the available and appropriate legal remedy open to the Petitioners. They have exercised and exhausted that remedy. The law does not provide them with yet another "bite at the apple" to present that issue through the instant case and to otherwise circumvent the requirements that they must show in order to obtain the relief they seek.

B. The Judges of the Court of Appeals are entitled to absolute judicial immunity from suit by the Petitioners in this case.

To the extent that Petitioners seek any other liability against the Court of Appeals, it is undisputed that all acts complained of were done in the course of its official role as an appellate court of this State.

Absolute judicial immunity clearly shields the Judges on the Court of Appeals from any other claims that may be suggested in this action.

*Pierson v. Wray*, 386 U.S. 547, 554 (1967); *Dole Food Co. v. Patrickson*, 538 U.S. 468, 479 (2003). Georgia courts have consistently held that judges are immune from liability in civil actions for acts performed in their judicial capacity. *Gault v. Wallis*, 53 Ga. 675, 677 (1875); *Calhoun v. Little*, 106 Ga. 336, 339 (1897); *West End Warehouses, Inc. v. Dunlap*, 141 Ga. App. 333, 333-34 (1977); *Peacock v. National Bank & Trust Co. of Columbus*, 241 Ga. 280, 281 (1978); *Earl v. Mills*, 275 Ga. 503, 504 (2002). The Supreme Court has ruled a number of times that the doctrine of judicial immunity is “firmly established” even where acts are done in excess of authority or erroneously. *Pierson*, 386 U.S. at 554; *Imbler v. Pachtman*, 424 U.S. 409, 419 n. 13 (1976).



**CERTIFICATE OF SERVICE**

I do hereby certify that I have this day served the within and foregoing **BRIEF ON BEHALF OF THE GEORGIA COURT OF APPEALS**, prior to filing the same, by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed upon:

John F. Woodham, Esq.  
Woodham and Associates, LLC  
2625 Piedmont Road, Suite 56-295  
Atlanta, GA 30324

This 8<sup>th</sup> day of October, 2010.

  
\_\_\_\_\_  
REBECCA S. MICK  
Senior Assistant Attorney General

THIRD DIVISION  
BLACKBURN, P. J.,  
ADAMS and DOYLE, JJ.

NOTICE: Motions for reconsideration must be  
*physically received* in our clerk's office within ten  
days of the date of decision to be deemed timely filed.  
(Court of Appeals Rule 4 (b) and Rule 37 (b), February 21, 2008)  
<http://www.gaappeals.us/rules/>

March 30, 2010

In the Court of Appeals of Georgia

A09A2105. CITIZENS FOR ETHICS IN GOVERNMENT, LLC  
et al. v. THE ATLANTA DEVELOPMENT AUTHORITY et al.

A09A2312. CITIZENS FOR ETHICS IN GOVERNMENT, LLC  
et al. v. THE ATLANTA DEVELOPMENT AUTHORITY et al.

A10A1040. CITIZENS FOR ETHICS IN GOVERNMENT, LLC  
et al. v. THE ATLANTA DEVELOPMENT AUTHORITY et al.

ADAMS, Judge.

Citizens for Ethics in Government, LLC (“CEG”) and John F. Woodham (“Woodham”) (collectively referred to herein as “Intervenors”)<sup>1</sup> filed these appeals in connection with two bond validation proceedings filed under the Revenue Bond Law, OCGA § 36-82-60 et seq., involving the Atlanta Development Authority (the

---

<sup>1</sup> Woodham, who is a member of the State Bar, represents himself pro se in this action and also represents CEG. Woodham is the controlling member/manager of CEG, which the Developers assert he formed two days after the State filed its bond validation petitions.

“Authority”), 13th Street Holdings, LLC (“13th Street”) and Mezzo Development, LLC (“Mezzo”) (13th Street and Mezzo collectively referred to herein as the “Developers”).

On October 29, 2008, the district attorney, on behalf of the State of Georgia, filed a Petition and Complaint for Bond Validation pursuant to OCGA § 36-82-75 in each of the two proceedings. The first petition sought to confirm and validate the issuance of taxable lease-purchase bonds by the Authority in an amount of up to \$70 million for a project developed by 13th Street, and the second petition sought the same for bonds in an amount up to \$60 million for a project developed by Mezzo. Each of these projects involved multi-family apartment developments. The Intervenor sought to intervene in each of these proceedings under OCGA § 36-82-77 (a) by appearing at the bond validation hearings on November 17, 2008, and filing complaints in open court. The trial court continued the validation hearings to allow for discovery and to allow the Authority and the Developers to respond to the Intervenor’s complaints.

#### *The December 15 Hearing*

The trial court scheduled a status conference on December 15, 2008, and the Intervenor, who had previously filed notices to produce, filed subpoenas in anticipation of that hearing. The Authority and the Developers filed motions to quash

the notices and subpoenas on December 12, 2008, and the trial court heard argument on those motions at the December 15 hearing.

During argument, Cary Ichter, counsel for the Developers, represented that Woodham had phoned Scott Leventhal, president of Tivoli Properties, Inc., the manager of both Developers, on November 19, 2008, two days after the Intervenors filed their complaints. Patricia Roy, outside counsel for the Developers, was also a party to the phone call. Ichter represented that in that conversation, Woodham said he had no issue with the Developers but was prepared to litigate with the Authority all the way to the Supreme Court. According to Ichter, Woodham suggested that the Developers could avoid the costs of this extended litigation if they paid the Intervenors \$1.3 million, or one percent of \$130 million, the amount of the combined bond issuance. These allegations were also included in the motions to quash filed by the Developers and the Authority. Woodham refused to discuss these allegations at the hearing, citing privilege. But Woodham noted that what Ichter “has described is not the nature of what I intended to do” and had Ichter returned his phone calls, Ichter “would know that any discussions that we may have had would have been dramatically different than he has described.”

The trial court granted the motions to quash and sua sponte ordered a continuance of the hearing until January 30, 2009. The trial judge indicated that at that time, 1) he would determine whether the bond validation issue presented strictly a question of law or whether it involved factual issues; 2) if he determined that the matter presented a legal question, he would rule upon the bond validation; 3) if factual issues were presented, he would determine if discovery was necessary; 4) he would consider whether John Woodham's actions warranted sanctions, including attorney fees or a referral to the State Bar; and 5) he would "hear any motions I deem appropriate with respect to this case." The judge cautioned Woodham to prepare for those issues. This hearing was subsequently re-scheduled for February 27, 2009.

*First Motion to Recuse*

Meanwhile, on December 19, the Intervenors filed a motion to recuse the trial judge. The motion asserted, inter alia, that the trial judge should be recused because he had allowed Ichter "to make a series of grossly inflammatory remarks in open court" over the Intervenors' objection at the December 15 hearing. At the trial judge's request, the clerk of court randomly assigned the motion to another judge for consideration. After reviewing the motion with supporting affidavit and briefs, "the entirety of the clerk's file" and the transcript of the December 15 hearing, the assigned

judge issued an order on January 9, 2009, denying the motion and finding that the Intervenor had failed to establish any ground for recusal. The Intervenor apparently did not seek reconsideration or permission to appeal that order.<sup>2</sup>

*Anti-SLAPP Motions*

Additionally, on December 20, 2008, Woodham sent Ichter a letter invoking the Anti-Strategic Lawsuits Against Public Participation (“anti-SLAPP”) statute, OCGA § 9-11-11.1. The letter requested verification of the motions to quash under that statute, as follows:

To the extent the foulmouthed invective set forth in your Motions to Quash filed December 15, 2008 . . . purports to set forth or assert a claim against Intervenor Parties or the undersigned counsel, Intervenor Parties and the undersigned hereby bring to your attention that the verifications required under OCGA § 9-11-11.1 (b) are missing.”

On February 25, over two months after sending this letter and two days before the scheduled February 27 hearing, the Intervenor filed Motions to Strike and To Dismiss with Prejudice under OCGA § 9-11-11.1 (d) in each case. Each motion stated

---

<sup>2</sup>We note that the parties chose not to provide this Court with the full record on appeal, and instead each side designated or requested this Court to order that certain portions of the file below be included in the record on appeal. Accordingly, the filings did not come to us in chronological order and we are left with something of a piecemeal view of the proceedings below.

in underlined type that “[t]he filing of this Motion automatically stays, by operation of law, all pending discovery and hearings in this proceeding.” The motions asserted that the Developers and their counsel made “certain slanderous allegations and claims against Intervenors” in their earlier motions to quash. The Intervenors contended that the motions to quash should have been verified under OCGA § 9-11-11.1 (b), and the Developers failed to do so.

The next day, the Developers’ attorneys e-mailed the trial court to announce that they were ready to proceed with the February 27 hearing and to request the court to confirm that the parties were required to appear at that hearing, notwithstanding the Intervenors’ “11th Hour filings.” The trial court replied by e-mail to all parties, that they were “required to appear at the bond validation hearing scheduled for tomorrow, 2/27/2009, at 9 a.m. . . .” Woodham responded that the February 27 hearing was stayed under OCGA § 9-11-11.1, and the “Intervenors will not be attending any hearings which have very clearly been stayed by operation of law.”

#### *February 27 Hearing*

The hearing took place as scheduled the next day with the Authority and the Developers, and their respective counsel in attendance, but without the Intervenors. The trial court noted at the beginning of the hearing that the Intervenors were not

present despite the fact that the hearing was noticed “at least 30 days ago,” and again the previous evening. The court also noted that the Intervenors had filed motions based upon the Anti-SLAPP proceeding, which they contended stayed the hearing, but the trial court found the motions to be “completely meritless” and denied them from the bench. The trial court found, therefore, that no stay applied, and the hearing should go forward.

The trial court then heard evidence from the Developers in connection with the court’s consideration of sanctions against the Intervenors. Scott Leventhal testified about his telephone conversation with Woodham in November 2008, and the Developers presented a recording and transcript of that conversation. Leventhal testified that Woodham made multiple calls to his office asking to speak to an attorney who was not bond counsel, and would not speak to Leventhal without such alternate counsel. Woodham said that he did not wish to speak with Leventhal’s bond counsel because bond attorneys did not find him credible. Leventhal contacted attorney Roy at her office and the parties engaged in a three-way conference call, with each party at a separate location.<sup>3</sup>

---

<sup>3</sup> Ichter represented that before speaking to Roy and Leventhal, Woodham extracted a promise from Roy that she would not record the conversation. While Roy did not record the phone call, unbeknownst to her, Leventhal did record the call and

Leventhal testified that during that conversation, Woodham said that he did not have a problem with the Developers and that he did not fault them for getting into the deals offered by the Authority, but Woodham said he criticized the Authority for offering such deals. He noted that if no one intervened in the validation process, such deals are automatically validated by the courts. But Woodham emphasized several times that he had been involved in a prior bond validation proceeding, which he had taken to the Supreme Court. He did not mind taking any case that far, and he did so “out of the taxpayers’ perspective.” Woodham said that he was not looking for anything from the Developers, but he was prepared to litigate this matter with the Authority “all the way to the Supreme Court.” Nevertheless, Woodham suggested that a possible resolution, to avoid the attorney fees involved in such litigation, would be for the Developers to pay the Intervenors one percent of the bond issuance, which would total \$1.3 million. He reiterated, “if you guys want to prevent [litigation to the Supreme Court] from happening, you have a way out, and I just suggested it.”

Attorney Ichter also questioned Leventhal about a letter Woodham sent on December 17, 2008, addressing the allegations Ichter raised at the December 15 hearing. Ichter read Woodham’s statement from the letter that if either Roy or Ichter \_\_\_\_\_ it was his recording that was introduced into evidence.

had returned Woodham's e-mails or phone messages they would have learned that he was asking for .1 percent, not one percent, of the bond value and that he was intending that such funds be paid in the form of a donation to a homeless shelter. Leventhal testified, however, that Woodham never made any reference to .1 percent of the bond issuance, nor did he ever mention any donation to a homeless shelter. Instead, when Roy and Leventhal specifically asked Woodham to whom the one percent payment should be made, he replied "to the Intervenors."

The trial court found that Leventhal's testimony was credible and the court relied upon this uncontroverted testimony in reaching a decision, while the recording of the phone call "had very little bearing on the court." The trial court found that Woodham had handled the matter "in an unethical manner" because he admitted that the Developers had done nothing wrong, but still solicited a payment to make the litigation "go away." The trial court indicated that it would refer the matter to the State Bar for investigation and ruled that Woodham pay the litigation costs and attorney fees of both the Authority and the Developers. The trial court further dismissed the Intervenors' complaints and granted the bond validations after hearing argument and testimony on the issue.

*March 26 Order*

On March 26, 2009, the trial court entered a written order, prepared by the Developers' attorneys, which denied the Interveners' Motions to Strike and Dismiss under OCGA § 9-11-11.1, nunc pro tunc as of February 27.

*Second Motion to Recuse*

Approximately one month later, on April 21, 2009, the Interveners filed a second motion to recuse. That motion cited the first recusal motion and additionally asserted that the trial judge had held "one or more unlawful [ex parte] hearings" in violation of the stay provisions of OCGA § 9-11-11.1 (d). In particular, the Interveners took issue with the judge's statement at the February 27 hearing that "It [becomes] clear to the court [that . . . ] this was an unethical and perhaps illegal way to conduct business . . . . This is what gives lawyers a bad name. [. . .] This is why they have jokes about lawyers outside [of the courtrooms.]"<sup>4</sup> The Interveners asserted that these remarks demonstrated that the trial judge "has stepped into the role of prosecutor and is not able to act as a neutral arbiter in this matter." The Interveners also objected to a proposed amendment submitted by attorney Roy to a proposed final

---

<sup>4</sup> The bracketed changes indicate differences between the quote as recited in the motion and the quote as transcribed at the hearing.

order submitted earlier. That amendment proposed a ruling that the Intervenors could not file any lawsuit or intervene in any other bond validation proceeding until they presented an affidavit showing that they had paid the attorney fees and litigation costs awarded in this case.

*May 11, 2009 Hearing and May 8, 2009 Order*

In response, the trial court ordered the parties to attend a hearing on May 11, 2009. At the hearing, the trial court distributed a "Final Order" entered May 8, 2009, imposing sanctions against the Intervenors, including the dismissal of their complaints and payment of attorney fees and costs. Additionally, the trial court adopted the Developers' proposed amendment requiring payment of attorney fees before the Intervenors could file any new lawsuit. The order also validated both bond issues.

The trial court then heard argument from the parties on Woodham's Second Motion to Recuse. Woodham, who filed emergency motions to disqualify the trial judge, for continuance and for assignment to another judge the morning of the hearing, challenged the trial judge's authority to hear the second motion to recuse. In order not to waive this objection, Woodham refused to argue the merits of his recusal motion. He also objected to the issuance of a Final Order until his Motion to Recuse was decided.

The Developers and the Authority countered that under Rule 25.3 of the Uniform Rules of the Superior Court, a trial judge is first required to determine if the motion to recuse was timely and substantive before referring it to another judge. They asserted that the Intervenors' motion was both substantively flawed and untimely, and they asked that the motion be denied. They also asked the judge, "out of an abundance of caution," to withdraw its May 8, 2009 final order, which was issued while the Motion to Recuse was pending, and to issue another order after denying the Motion to Recuse.

The trial court denied the motion to recuse as untimely. The trial judge further stated he would "re[-]sign" the May 8 order "out of [an] abundance of caution." The judge also warned Woodham against filing any more "frivolous" motions to recuse, which the court would find contemptuous.

#### *The First Appeal on May 11*

Woodham filed a Notice of Appeal the same day, May 11, 2009, from the trial court's May 8 order and the March 26 order denying the Anti-SLAPP motions ("First Appeal").

*May 13, 2009 Order*

Subsequently, on May 13, 2009, the trial court signed a written order 1) denying the second motion to recuse as untimely; 2) noting that the court had vacated and withdrawn the May 8 order at the May 11 hearing and withdrawing and vacating that order in writing as of May 11; 3) denying the Intervenors' emergency motions to disqualify, for continuance and for re-assignment; 4) denying the Intervenors' request for a Certificate of Immediate Review; 5) ordering Intervenors not to file any other motions to recuse or any other pleadings concerning prior proceedings; and 6) setting a hearing on the reasonableness of the attorney fees requested by the Developers and the Authority for June 12, 2009.

*May 21, 2009 Orders*

On May 21, 2009, the trial court issued an order granting the motion of the Developers and the Authority to dismiss the First Appeal because the March 26 order was not a final, appealable order, and the May 8 order had been withdrawn and vacated prior to the appeal.

That same day, the trial court also signed a Final Order imposing sanctions and validating the bonds.

### *Emergency Motion to Court of Appeals*

On May 29, 2009, however, the Intervenors filed an emergency motion with this Court pursuant to Ct. App. R. 40 (b), to stay further proceedings by the trial court pending their appeal of the May 8 order in the First Appeal. This Court denied the motion on June 12, 2009, finding on the basis of the trial court's assertion in the May 13 order that the trial court had sustained the Intervenors' objection to the May 8 order at the May 11 hearing, that the court had withdrawn and vacated the May 8 order at that time, which ruling was then formalized in the May 13 order. The Intervenors subsequently moved for reconsideration of that decision, arguing that a transcript of the May 11 hearing would demonstrate that the trial court actually did not withdraw and vacate the May 8 order at the May 11 hearing. This Court denied the motion for reconsideration on June 24, 2009, noting that the trial court's May 13 order was entitled to the presumption of regularity and Intervenors had not demonstrated anything to rebut that presumption.

### *The Current Appeals*

The Intervenors filed a second Notice of Appeal on May 26, 2009 from 1) the May 21, 2009 Final Order; 2) the May 21, 2009 Order dismissing the May 11, 2009 Notice of Appeal; and 3) the May 13, 2009 Order, denying, inter alia, the second

motion to recuse and withdrawing and vacating the May 8 order. That appeal is docketed as Case No. A09A2105.

The trial court subsequently held an evidentiary hearing on June 30, 2009 to determine the amount of attorney fees. The trial court issued an order on July 6, 2009, awarding the Developers attorney fees and expenses in the amount of \$132,705.97 and awarding the Authority attorney fees and expenses in the amount of \$303,141.89. The Intervenors appealed that order and in Case No. A09A2312, they argue that their May 26 Notice of Appeal divested the trial court of jurisdiction to rule on the attorney fees issue; that the trial court failed to follow proper procedure at the June 30 hearing; and that the award is not supported by law or evidence.

On September 8, 2009, the Developers and the Authority filed a motion for supersedeas bond, and on November 4, 2009, the trial court granted that motion and ordered the Intervenors to post bond in the amount of \$479,432.64, which represents the full amount of attorney fees and costs awarded against them, together with costs and interest. The Intervenors appeal that order in Case No. A10A1040 asserting that their May 26 Notice of Appeal divested the trial court of jurisdiction to enter that order.

Case No. A09A2105

1. The Intervenor contend that the trial court erred in failing to recognize that the February 27 hearing was stayed by operation of law under OCGA § 9-11-11.1 (d)<sup>5</sup> upon the filing of their motions to strike. They further argue that the trial court violated their due process rights in holding the hearing ex parte without notifying the Intervenor that their motions to strike would be argued at that time.

The General Assembly adopted the anti-SLAPP statute in order “to encourage participation by the citizens of Georgia in matters of public significance through the exercise of their constitutional rights of freedom of speech and the right to petition government for redress of grievances.” OCGA § 9-11-11.1 (a). “With the anti-SLAPP statute, the General Assembly sought to prevent the chilling effect that abusive lawsuits would have on the valid exercise of these rights.” (Citation omitted.) *Hawks v. Hinely*, 252 Ga. App. 510, 512 (1) (556 SE2d 547) (2001). Thus whenever anyone files a “claim” arising from a protected act as defined in the statute, he must provide

---

<sup>5</sup> That statute provides in pertinent part that “[a]ll discovery and any pending hearings or motions in the action shall be stayed upon the filing of a motion to dismiss or a motion to strike made pursuant to subsection (b) of this Code section.” OCGA § 9-11-11.1 (d)

3  
a detailed verification of that claim or the claim may be stricken. Id.; OCGA § 9-11-11.1 (b).

The Intervenors' motions to strike asserted that the Developers should have provided OCGA § 9-11-11.1 (b) verifications in connection with the motions to quash argued at the December 15 hearing. Although those motions made allegations about Woodham's statements in the November 19 phone call, they asserted no claims against the Intervenors. Rather, the motions were defensive in nature, merely seeking relief from the obligation to produce documents. Although the allegations in the motions prompted the trial court to set a hearing to consider sanctions against the Intervenors, that action was taken by the trial court sua sponte and not at the Developers' request. The Intervenors have provided no authority, and we have found none, to support their assertion that the Developers had an obligation to provide a 9-11-11.1 (b) verification of a defensive motion. Under these circumstances, in the absence of any claim against the Intervenors, the anti-SLAPP statute did not apply. The trial court was therefore entitled to find that the motions to strike were meritless on their face and that no stay barred the scheduled hearing.<sup>6</sup>

---

<sup>6</sup> Moreover, the Intervenors first raised the issue of verification under the anti-SLAPP statute on December 20, 2008, but waited over two months later, until just two days before the scheduled hearing, to file their motions. Accordingly, the trial court

3

And even if the Developers' subsequent presentation of evidence and argument at the February 27 hearing could be construed as a "claim" for sanctions, the anti-SLAPP statute does not apply to a claim based upon abusive litigation. The coverage of the anti-SLAPP statute extends to "abusive litigation that seeks to chill exercise of certain First Amendment rights. . . . It plainly does not extend to protecting those who abuse the judicial process." (Citation and punctuation omitted.) *EarthResources v. Morgan County*, 281 Ga. 396, 401 (4) (638 SE2d 325) (2006) (holding anti-SLAPP statute inapplicable to claim for OCGA § 9-15-14 attorney fees filed after plaintiff's claims found meritless). *Id.*

That the hearing turned out to be *ex parte* was attributable solely to Woodham's failure to appear as directed by the trial court. This failure was not induced by any acts or conduct of the Developers or the court. Woodham was on notice that the court intended to proceed in spite of his claimed stay, yet he chose not to appear, not even to make a limited appearance to argue the stay. Thus Woodham was not denied the opportunity to be heard; rather, he chose not to take advantage of the opportunity

---

also would have been authorized to conclude the motions were interposed merely to delay the proceedings.

presented. “[I]nduced error cannot form the basis of a due process claim. [Cit.]” *Wallace v. State*, 294 Ga. App. 159, 161 (2) (669 SE2d 400) (2008).<sup>7</sup>

2. We turn next to the Intervenor’s argument that the First Appeal divested the trial court of jurisdiction and thus all subsequent orders, including the order dismissing that appeal, are null and void.<sup>8</sup> In the First Appeal, filed May 11, 2009, the Intervenor appealed, inter alia, from the “Final Order” entered on May 8. They argue that supersedeas attached when they paid the court costs on May 12,<sup>9</sup> divesting the trial court of jurisdiction to enter its May 13 order. Although that order vacated and withdrew the May 8 Order “as of May 11, 2009,” the Intervenor asserts that the trial

---

<sup>7</sup> We note, moreover, that OCGA § 9-11-11.1 (d) provides that the trial court may hold a hearing, “on noticed motion and for good cause shown . . . notwithstanding [the stay provisions of] this subsection.”

<sup>8</sup> As noted above, this argument was the subject of the Intervenor’s emergency motion to this Court seeking a stay in June 2009. Under Ct. App. R. 40 (b), this Court has the authority to issue an emergency order or to give “such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot.” This Court’s finding that the Intervenor failed to establish a ground for emergency relief in June 2009 does not prevent us from revisiting the merits of their argument in this appeal. Notably, the appellate record now contains a transcript of the May 11 hearing, which apparently was not available to the Court at the time of the emergency motions.

<sup>9</sup> See OCGA § 5-6-46 (a) (“in civil cases, the notice of appeal . . . shall serve as supersedeas upon payment of all costs in the trial court by the appellant.”).

court actually did not vacate the May 8 order at the May 11 hearing, and thus it lacked the power to enter a written order nunc pro tunc dating back to that date. They assert the May 8 order remained in place and the First Appeal was valid. We must determine, therefore, whether the trial court vacated the May 8 order at the May 11 hearing and thus whether the May 13 order simply memorialized that ruling nunc pro tunc or whether it represented a new ruling by the trial court.<sup>10</sup>

“A court’s power to amend nunc pro tunc is the power to correct inadvertent errors or omissions in the record to reflect the truth of what happened; it does not include the power to supply judicial omissions so as to include what a court might or should have decided, but did not actually so decide.” (Citation and punctuation omitted.) *Paine v. Nations*, 301 Ga. App. 97, 100 (2) (686 SE2d 876) (2009). Accordingly, “[t]he purpose of entering an order nunc pro tunc is to record some previously unrecorded action actually taken or judgment actually rendered. It may not be used to supply an order not yet made by the court. “ (Citations and punctuation

---

<sup>10</sup> Although the Intervenors take issue with the fact that the May 13 order does not use the phrase “nunc pro tunc,” we find no merit to their argument on this point. The May 13 order does vacate and withdraw the May 8 order “as of May 11, 2009,” which has the same effect as an order issued nunc pro tunc.

omitted.) *Andrew L. Parks, Inc. v. SunTrust Bank*, 248 Ga. App. 846, 848 (545 SE2d 31) (2001).

At the May 11 hearing, the Intervenors “objected to a final order being entered prior to the motion to recuse hearing “ relying upon U. Sup. Ct. R. 25.3, which provides that

[w]hen a judge is presented with a motion to recuse, or disqualify, accompanied by an affidavit, *the judge shall temporarily cease to act upon the merits of the matter* and shall immediately determine the timeliness of the motion and the legal sufficiency of the affidavit, and make a determination, assuming any of the facts alleged in the affidavit to be true, whether recusal would be warranted.

(Emphasis supplied.) The opposing parties also expressed “concern” regarding the trial court’s entry of the May 8 order while the motion to recuse was pending and requested “out of an abundance of caution” that the court withdraw the May 8 “Final Order.”

After denying the motion to recuse, the trial court recognized that “there was another issue with respect to the order . . . that the court signed.” The trial court explained:

At the time that I signed the order, I was aware of the motion to recuse. I was also aware of the dates in which the motion to recuse had been

filed. And at that point in time it was very easy to look at the date stamped on the motion and see that it was untimely.<sup>11</sup> Very simple for a court to do. That is a threshold issue that I had the right to determine, and I did that. And so I went ahead and signed the order because based [up]on the filing[ ] itself, the motion was untimely. That being said, out of [an] abundance of caution I will happily re[-]sign the [order]. That's not a problem. So I will do that.

While this pronouncement does not expressly state that the trial court was withdrawing and vacating the May 8 order, we find that such a ruling is implicit in the trial court's statement that he would re-sign the order. Obviously, there would be no need to sign a new order if the May 8 order remained in effect. Moreover, this pronouncement must be considered in its context. The Intervenors objected to the May

---

<sup>11</sup> Under U. Sup. Ct. R.25.1, a recusal motion accompanied by an affidavit must be filed and presented to the judge:

not later than five (5) days after the affiant first learned of the alleged grounds for disqualification, and not later than ten (10) days prior to the hearing or trial which is the subject of the recusal or disqualification, unless good cause be shown for failure to meet such time requirements.

The motion and affidavit cited alleged grounds occurring at either the December 15, 2008 or February 27, 2009 hearings, and the second motion to recuse was not filed until April 21, 2009, well outside these time requirements. Although the motion also took issue with the proposed amendment filed by the Developers, which was filed within the time period, the motion did not explain how that document provided a ground for the judge's recusal.

8 order in light of the pending recusal motion, and the Developers also requested that the trial court withdraw that order “out of an abundance of caution.” The trial court echoed those words in stating that he would re-sign the order. Thus it appears that the trial court was granting the relief the parties requested.

Accordingly, as we interpret the trial court’s ruling, the May 8 order was withdrawn at the time of the hearing,<sup>12</sup> and the court planned to sign a new order in the future. Under these circumstances, the Intervenors’ subsequent appeal of that order was without effect and the trial court retained jurisdiction to enter its May 13 order nunc pro tunc. See 5 Ga. Procedure: Verdicts and Judgments § 6:15 (“An entry nunc pro tunc functions to correct the record to reflect a prior ruling made in fact but defectively recorded.”)

3. The Intervenors also raise a number of issues in connection with the trial court’s imposition of sanctions. They first assert that the trial court erred in awarding attorney fees under OCGA § 9-15-14 (b) without proper notice and a hearing. “Before attorney fees may be awarded against a party under OCGA § 9-15-14 (b), the party must be given notice that an award of attorney fees under that Code section is under

---

<sup>12</sup> Accordingly, the Intervenors’ argument on appeal that the trial court entered the May 8 order in violation of U. Sup. Ct. R. 25.3 is moot.

consideration so that he or she has an opportunity to challenge the basis on which the fees are assessed.” (Punctuation and footnote omitted.) *Wall v. Thurman*, 283 Ga. 533, 534 (3) (661 SE2d 549) (2008).

In this case, the trial court gave the Intervenors ample notice of its intent to consider the imposition of sanctions based upon allegations that Woodham sought \$1.3 million in personal gain to drop his public interest lawsuit, even though he acknowledged that the Developers had done nothing wrong. At the December 15 hearing, the trial court specifically told Woodham to be prepared for the issues of bond validation and the possibility that sanctions, including attorney fees and a bar referral, might be imposed based upon Woodham’s conduct. Woodham knew that this issue of sanctions was raised upon the court’s own motion, and thus no other motion was required to give him notice that attorney fees could be imposed against the Intervenors. The fact that the hearing was continued from January 30 to February 27 does not alter this notice. Neither does the court’s e-mail referring to a bond validation hearing, as Woodham knew that the trial court intended to take up sanctions at the same hearing it considered the bond validation.

And although the trial court did not specifically state it was considering an award of attorney fees under OCGA § 9-15-14 (b), we find that the Intervenors

received sufficient notice of the potential sanctions. A trial court may award fees under OCGA § 9-15-14 (b) if it finds:

(1) that an attorney or party brought or defended an action, or part of an action, that lacked substantial justification; or (2) that the action, or part of it, was interposed for delay or harassment; or (3) that an attorney or party unnecessarily expanded the proceedings by other improper conduct. The statute defines “lacked substantial justification” as, “substantially frivolous, substantially groundless, or substantially vexatious.”

(Footnote omitted.) *MacDonald v. Harris*, 266 Ga. App. 287, 288 (597 SE2d 125) (2004). Thus an award under OCGA § 9-15-14 (b) involves consideration of “the conduct of the party against whom an award is sought, and the conduct of the party’s counsel . . . along with the impact of that conduct on the attorney fees incurred by the opposing party.” (Citation omitted.) *Williams v. Cooper*, 280 Ga. 145, 147 (1) (625 SE2d 754) (2006).

Here, the Intervenors were on notice that the trial court would be considering the imposition of attorney fees on the court’s own motion based upon evidence of Woodham’s actions. Thus they had sufficient notice to challenge the basis for the attorney fee award in this case. Compare *Wall v. Thurman*, 283 Ga. at 534 (3) (award reversed where attorney did not receive notice that trial court was considering an

award of attorney fees against him under OCGA § 9-15-14 award *or a hearing on that issue*); *Williams v. Cooper*, 280 Ga. at 147 (1) (attorney fee award reversed where divorce hearing under OCGA § 19-6-2 imposing fee award based upon financial situation gave no reasonable opportunity to challenge award under OCGA § 9-15-14 (b)).

Although Woodham was on notice that the imposition of attorney fees based upon his conduct would be considered at the February 27 hearing, he made the conscious choice not to attend that hearing. Woodham therefore rejected the opportunity to be heard on this issue. Under these circumstances, we find that the Intervenor received adequate notice and opportunity to be heard as to the appropriateness of an attorney fee award in this case.

4. The Intervenor also contend that the trial court erred in awarding attorney fees based upon a finding that Woodham had violated the Rules of Professional Conduct. But the May 21 "Final Order" states that the trial court was awarding fees under its inherent power and under OCGA § 9-15-14 (b). The trial court concluded that the intervention complaints had been filed for "an improper purpose" and in "bad faith." Thus the trial court did not award attorney fees upon a finding of unethical conduct. Although the trial court was disturbed by Woodham's conduct and stated at

the February 27 hearing that it was unethical and possibly illegal, the Final Order demonstrates that the court's reliance upon that finding was confined to its decision to refer the matter to the State Bar of Georgia for further investigation. We find no error. Compare *Stevens v. Thomas*, 257 Ga. 645, 646-647 (1) (361 SE2d 800) (1987) (attorney fee award reversed where based solely and expressly upon attorney's violation of disciplinary rules).

5. The Interveners further argue that the trial court erred in failing to make the findings necessary to support an award under OCGA § 9-15-14 (b). They also assert that the trial court erred in improperly awarding a lump sum of attorney fees.

A trial court is required "to make express findings of fact and conclusions of law as to the statutory basis" for an award of attorney fees under OCGA § 9-15-14. *Bailey v. McNealy*, 277 Ga. App. 848, 849 (1), 627 SE2d 893 (2006). The Final Order here recites the facts surrounding Woodham's suggestion that \$1.3 million would make the intervention go away and his subsequent attempt in a letter to re-characterize that demand as a donation of .1 percent of the bond issue to a homeless shelter. Based upon these facts, the trial court found that the "Interveners intervened in these bond validation proceedings for an improper purpose and, thus, acted in bad faith by demanding a \$1.3 million payment from parties against whom Interveners had no

legal claims, as a condition for dismissing [their] Complaints in Intervention.” But OCGA § 9-15-14 (b) does not specifically authorize an award of attorney fees based upon a finding that litigation was instituted for an “improper purpose”<sup>13</sup> or a finding that a party has acted in bad faith.<sup>14</sup>

In *In re Serpentfoot*, 285 Ga. App. 325, 328 (4) (a) (646 SE2d 267) (2007), the defendant moved for attorney fees on the ground that the plaintiff’s “conduct in seeking [a] name change was ‘frivolous and an obvious attempt to use the name change statute for wrongful personal pursuits . . . ,’” but did not specify a statutory basis for the motion. The trial court found that the plaintiff’s request for a name change was based upon “improper motives” and was made for “improper purposes.” *Id.* The trial court also found that appellant “has been unreasonably and stubbornly litigious and has been frivolous in her conduct in these proceedings.” *Id.* The trial

---

<sup>13</sup> Rule 11 of the Federal Rules of Evidence authorizes the award of attorney fees based upon such a finding. We note that this Court has found that “Rule 11 and OCGA § 9-15-14 are analogous. Rule 11 authorizes the court in which an action is brought to award reasonable attorney fees and other expenses where pleadings or motions are presented for an improper purpose or where claims or defenses are without legal or evidentiary support.” (Footnote omitted.) *Great Western Bank v. Southeastern Bank*, 234 Ga. App. 420, 422 (507 SE2d 191) (1998). See also Fed. R. Evid. R. 11 (b) (1)-(4).

<sup>14</sup> OCGA § 13-6-11 authorizes an award upon a finding of bad faith.

court based its fee award to the defendant on these findings without specifying the statute it relied upon for that award. Id.

On appeal, this Court noted that while OCGA § 13-6-11 authorized an award of attorney fees for being stubbornly litigious, that statute generally only authorizes a fee award for a plaintiff. Id. The Court also found that the trial court's order did not contain the elements required for an award of attorney fees under OCGA § 9-15-14 (b), and determined that "the issue of attorney fees must be remanded for an explanation of the statutory basis for the award and any findings necessary to support it." (Punctuation and footnote omitted.) Id. at 329 (4) (a).

Here, although the trial court stated that it relied upon OCGA § 9-15-14 (b), the court failed to specify a ground for awarding attorney fees under that statute, but rather cited standards found in other comparable statutes. Although the trial court found that Intervenor's complaints were filed for an improper purpose and the Intervenor acted in bad faith, the court did not enter a finding that the complaints lacked substantial justification, that they were interposed for delay or harassment or that Woodham unnecessarily expanded the proceedings by his conduct as required under OCGA § 9-15-14 (b). Accordingly, we vacate the portion of the May 21 Final Order awarding attorney fees and remand "for an explanation of the statutory basis of

the award and any findings necessary to support it.” Id. Cf. *Moore v. Moore-McKinney*, 297 Ga. App. 703, 711 (4) (678 SE2d 152) (2009) (where order did not cite specific statute, finding at hearing that party had expanded the litigation by “mak[ing] it more difficult than it ought to be” did not support OCGA § 9-15-14 award).<sup>15</sup>

Further, the Intervenor is correct that under OCGA § 9-15-14 (a) or (b), the trial court “must limit sanctions to those fees incurred because of [the] sanctionable conduct.” *Harkleroad v. Stringer*, 231 Ga. App. 464, 472 (6) (499 SE2d 379) (1998). Because we have vacated the award of attorney fees, however, we need not reach the issue of whether the trial court’s award of attorney fees was proper in that regard.

6. For the same reason, we need not reach the Intervenor’s argument that the trial court erred in requiring them to furnish an affidavit showing payment of such fees before initiating another action in the trial court.

7. The Intervenor also argue that the trial court erred in striking their complaints and dismissing them as parties as a sanction for Woodham’s conduct. In

---

<sup>15</sup> We are aware that the trial court also purports to rely upon its “inherent powers” in awarding attorney fees. But to the extent that the trial court relied upon the express authority of OCGA § 9-15-14 (b), it must find a sanctionable basis under that statute for the imposition of fees.

support of that sanction, the trial court found that “Intervenors were notified and admonished at the December 15, 2008 hearing that the Court would conduct an evidentiary hearing to consider the imposition of sanctions against them, including the possibility of attorney fees and referral to the State Bar of Georgia. Nonetheless, Intervenors refused to attend the hearing.” The court then invoked its inherent powers, including those under OCGA §§ 15-1-3 and 15-6-9 (8), to dismiss the complaints in intervention finding that “the Intervenor’s conduct is egregious.”

But “[o]ur Supreme Court has cautioned against the use of these harsh sanctions except in extreme cases,” and “we have generally held that before imposing the ultimate sanction of dismissal or default judgment, the court must first make a determination, after notice and an opportunity for hearing, that the failure to comply with [an] order was wilful.” (Punctuation and footnotes omitted.) *Largo Villas Homeowners’ Assn. v. Bunce*, 279 Ga. App. 524, 526 (631 SE2d 731) (2006) (sanctions under OCGA §§ 9-11-12 (e) and 9-11-37 (b).(2)). See also *Whitley v. Piedmont Hosp.*, 284 Ga. App. 649, 659 (4) (644 SE2d 514) (2007) (sanctions under OCGA § 15-1-3). It appears from the trial court’s order that the trial court issued this sanction based, at least in part, upon Woodham’s failure to appear at the February 27 hearing when directed to do so. Although the Intervenors were on notice that

sanctions, including attorney fees and bar referral, could be imposed based upon Woodham's actions in November, they were never informed or given an opportunity to be heard on the issue of whether their complaints in intervention should be dismissed based upon their failure to appear at the scheduled hearing. Accordingly, we vacate that portion of the order dismissing the Intervenor's complaints and remand for a noticed hearing on that issue.

8. The Intervenor's also appeal the trial court's orders validating the bond issues, but because their standing to appeal the trial court's rulings in that regard depends upon whether they remain parties to the validation proceedings and because we have remanded that issue to the trial court for a hearing, we do not reach those issues in this appeal.

*Case Nos. A09A2312 and A10A1040*

The judgments appealed in these cases are dependent upon the trial court's award of attorney fees in the May 21 Final Order. Because we have vacated that portion of the Final Order, any orders and judgments based upon the award of attorney fees would also stand vacated. Accordingly, we need not reach the issues raised in these appeals, and they are accordingly dismissed.

*Judgment affirmed in part and vacated in part, and case remanded in Case No. A09A2105. Appeal dismissed in Case Nos. A09A2312 and A10A1040. Blackburn, P. J., and Doyle, J., concur.*

Decided March 30, 2010.

Revenue bond. Fulton Superior Court. Before Judge Johnson.

John F. Woodham, for appellants.

Paul L. Howard, Jr., District Attorney, Thurbert E. Baker, Attorney General, Ichter & Thomas, Cary Ichter, Patricia A. Roy, Hunton & Williams, Douglass P. Selby, Ashley F. Cummings, Gregory M. Evans, Jr., James E. Dearing, Jr., Michelle L. Barnett, for appellees.



# Court of Appeals

## Memorandum

---

**To:** Chief Judge Yvette Miller  
**From:** Holly Sparrow *HS*  
**Subject:** Summary - Original Petition Filed in Supreme Court Versus the Court of Appeals  
**Date:** October 20, 2010

---

A petition for writ of prohibition and/or mandamus, S11O0182. Citizens for Ethics in Government, LLC et al. v. Georgia Court of Appeals, was docketed in the Supreme Court of Georgia on September 24, 2010. Mr. Woodham, Appellant's counsel, argues that: (1) the Supreme Court of Georgia is authorized to mandate the Court of Appeals of Georgia; (2) the Court of Appeals decision in A09A2105. Citizens for Ethics in Government, LLC et al. v. The Atlanta Development Authority et al. on March 30, 2010 did not apply the law correctly and such action exceeded its authority under the Georgia Constitution. The petition requests the Supreme Court of Georgia to direct the Court of Appeals to vacate a portion of its decision in A09A2105 and to reissue a revised decision.

A petition for a writ of certiorari on case A09A2106 was filed in the Supreme Court of

Georgia on May 4, 2010 (S10C1350) and that Court denied the petition on September 7, 2010. Mr. Woodham filed a Motion for Reconsideration on September 7, 2010 and that motion is still pending.

After a discussion of the filing by Mr. Woodham in the Supreme Court with Mr. Dennis Dunn of the Law Department, I requested (on behalf of this Court) the Georgia Attorney General's office to represent the Court of Appeals in this matter and to make a response to the petition on behalf of the Court.

A response was submitted by Ms. Rebecca Mick of the Law Department on October 8, 2010.



# Court of Appeals

## Memorandum

---

**To:** Chief Judge Yvette Miller

**From:** Holly Sparrow *HS*

**Subject:** Summary - Original Petition Filed in Supreme Court Versus the Court of Appeals

**Date:** October 20, 2010

---

A petition for writ of prohibition and/or mandamus, S11O0182. Citizens for Ethics in Government, LLC et al. v. Georgia Court of Appeals, was docketed in the Supreme Court of Georgia on September 24, 2010. Mr. Woodham, Appellant's counsel, argues that: (1) the Supreme Court of Georgia is authorized to mandate the Court of Appeals of Georgia; (2) the Court of Appeals decision in A09A2105. Citizens for Ethics in Government, LLC et al. v. The Atlanta Development Authority et al. on March 30, 2010 did not apply the law correctly and such action exceeded its authority under the Georgia Constitution. The petition requests the Supreme Court of Georgia to direct the Court of Appeals to vacate a portion of its decision in A09A2105 and to reissue a revised decision.

A petition for a writ of certiorari on case A09A2106 was filed in the Supreme Court of

Georgia on May 4, 2010 (S10C1350) and that Court denied the petition on September 7, 2010. Mr. Woodham filed a Motion for Reconsideration on September 7, 2010 and that motion is still pending.

After a discussion of the filing by Mr. Woodham in the Supreme Court with Mr. Dennis Dunn of the Law Department, I requested (on behalf of this Court) the Georgia Attorney General's office to represent the Court of Appeals in this matter and to make a response to the petition on behalf of the Court.

A response was submitted by Ms. Rebecca Mick of the Law Department on October 8, 2010.

October 20, 2010

Print this page

## Computerized Docketing System and Case Types

## Docket Search Results

**Case Number:** S10C1350  
**Status:** Remittitur  
**Style:** Citizens for Ethics in Government, LLC  
 et al. v. Atlanta Development Authority  
 et al.  
**Description:** Civil - Certiorari  
**Docket Date:** May 4, 2010  
**Calendar:** September 2010  
**Oral Argument Date:** \*\*This date is not official until the Court  
 Calendar is transmitted to the parties.  
**County Location:** Fulton  
**Lower Court Numbers:** 2008CV15



## Proceedings

| Date               | Filings & Motions                                   | Date            | Orders                            |
|--------------------|---|-----------------|-----------------------------------|
| May 4, 2010        | Motion to file Petition for Certiorari              |                 |                                   |
| May 24, 2010       | RESPONSE to Petition for Certiorari                 |                 |                                   |
| July 20, 2010      | APPELLANT - Amended/Revised Brief                   |                 |                                   |
| September 17, 2010 | Motion for Reconsideration                          | October 4, 2010 | Motion for Reconsideration denied |
| September 23, 2010 | RESPONSE to Motion                                  |                 |                                   |
| September 26, 2010 | Motion for Reconsideration -<br>Addendum/Supplement |                 |                                   |
| October 4, 2010    | Motion to Stay Remittitur                           |                 |                                   |
| October 6, 2010    | Motion to Recall Remittitur                         |                 |                                   |

## Disposition

Disposition Date: September 7, 2010  
**Certiorari - Writ denied**  
**All the Justices concur.**

## Attorneys

| Name | Type | Address | Phone |
|------|------|---------|-------|
|------|------|---------|-------|

|                           |           |   |                |
|---------------------------|-----------|---|----------------|
| John Floyd Woodham        | Appellant | WOODHAM AND ASSOCIATES LLC<br>2625 Piedmont Road Suite 56-295<br>Atlanta, Georgia 30324                                   | (404) 862-2480 |
| Thurbert E. Baker, A.G.   | Appellee  | Department of Law<br>40 Capitol Square, S.W.<br>Atlanta, Georgia 30334  | (404) 656-3351 |
| Gregory Moffett Evans Jr. | Appellee  | LAW OFFICES OF GREGORY M<br>EVANS<br>1827 Powers Ferry Rd SE, Bld 6 Ste<br>Atlanta, Georgia 30339                         | (404) 474-0470 |
| Ashley Fillingim Cummings | Appellee  | HUNTON & WILLIAMS<br>Bank Of America Plaza Suite 4100 600<br>Peachtree Street. NE<br>Atlanta, Georgia 30308-2216          | (404) 888-4223 |
| Paul L. Howard Jr., D.A.  | Appellee  | 136 Pryor Street, S.W. 4th Floor<br>Atlanta, Georgia 30303  |                |
| Cary Ichter               | Appellee  | ICHTER THOMAS, LLC<br>3340 Peachtree Road, N.E. Suite 1530<br>Atlanta, Georgia 30326                                      | (404) 869-7600 |
| Patricia Anne Roy         | Appellee  | ICHTER THOMAS, LLC.<br>3340 Peachtree Road, N.E. Suite 1530<br>Atlanta, Georgia 30326                                     | (404) 869-7600 |
| Douglass Payton Selby     | Appellee  | HUNTON & WILLIAMS, LLP<br>Bank of America Plaza, Suite 4100 600<br>Peachtree Street, N. E.<br>Atlanta, Georgia 30308-2216 | (404) 888-4000 |
| Michelle Lee Barnett      | Appellee  | SEYFARTH SHAW LLP<br>1545 Peachtree Street, N.E. Suite 700<br>Atlanta, Georgia 30309-2401                                 | (404) 881-5456 |

Contact the Clerk | Privacy Statement

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

**Wednesday, September 15, 2010, 10:30 a.m.**

A Banc Meeting of the Court of Appeals was called and held in the Court of Appeals Banc Room, Suite 501, 47 Trinity Avenue, S. W., Atlanta, Georgia at 10:30 a.m. on Wednesday, September 15, 2010. Those present were:

Chief Judge M. Yvette Miller  
Presiding Judge Gary B. Andrews  
Presiding Judge J. D. Smith  
Presiding Judge Anne Elizabeth Barnes  
Presiding Judge Herbert E. Phipps  
Judge Edward H. Johnson  
Judge John J. Ellington  
Judge Charles B. Mikell  
Judge A. Harris Adams  
Judge Sara L. Doyle

Also attending were:

Ms. Holly Sparrow, Clerk and Court Administrator  
Ms. Jan Kelley, Fiscal Officer  
Mr. John Ruggeri, Director, Information Technology

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

Chief Judge Miller called the meeting to order at 10:35 a.m. noting that all the judges were in attendance so a quorum was present.

**II. APPROVAL OF BANC MEETING MINUTES**

Chief Judge Miller asked whether the judges had an opportunity to review the Minutes and accepted a motion made by Judge Ellington to approve the Minutes of the May 19, 2010, June 9, 2010 and August 18, 2010 Banc Meetings. The motion was seconded by Presiding Judge Barnes. All of the Minutes were approved by a unanimous vote.

### III. BUDGETS - FY2011

At the request of Chief Judge Miller, Jan Kelley, Fiscal Officer, presented the current status of the Court budget for FY2011. She described the changes since the Court's last review of the budget at the May 2010 Banc Meeting and the information she had about the Supreme Court of Georgia furlough plans. After a discussion of the current budget status, a motion was made by Presiding Judge Andrews to adopt the operational cuts to the information technology and printing budgets presented to the judges by Ms. Kelley. Judge Ellington seconded the motion and it was approved unanimously.

A second motion was presented by Judge Mikell that the Court set one furlough day a month for all months in the fiscal year excluding December 2010 until the furlough days are not needed to balance the budget. Judge Johnson seconded Judge Mikell's motion. The motion passed unanimously.

In discussing the furlough days, the judges decided to set the specific dates for the months of October and November so that those dates could be announced. Presiding Judge Andrews moved to set the remaining two furlough dates for FY2010 on Friday, October 8, 2010 and Friday, November 12. The motion was seconded by Judge Ellington. The motion was approved upon a unanimous vote. Following the adoption of the motion for October and November furlough days, it was proposed that Jan Kelley suggest a furlough date for January 2011 and a memorandum be circulated for a vote of the judges. Ms. Kelley promised to circulate promptly a memorandum to the judges with a voting block for the January furlough.

### IV. INFORMATION TECHNOLOGY REPORT

Chief Judge Miller noted that the Court had made excellent progress in accepting e-filed documents and issuing orders on e-filed motions. Chief Judge Miller stated that the Court must have a docket that incorporates modern technology in order to advance. She said it has come time to replace the old COBOL technology. The Chief Judge pointed out the problem of depending on outdated technology by referring to an article provided to her by Presiding Judge Barnes. The article described the problems the California unemployment department had in issuing unemployment checks from an old technology COBOL system when the Federal Government passed several extensions of unemployment benefits.

Chief Judge Miller stated that she, along with Holly Sparrow and John Ruggeri, met with Britt Courtney of TriVir, the Court's vendor for the docket project, about a week ago to consider the next steps for the Court. She said she would like to meet with Representative Chuck Martin and introduce him to the Court's vendor to explain the importance of the new docket and the progress the Court has made to date.

Chief Judge Miller explained that the Court is initiating the design and development of the new docket which is scheduled to be completed by the end of the current fiscal year. She referred to the timetable chart included in the Banc Meeting materials and explained the Court should be testing the preliminary release by November and subject to change, the preliminary release should be completed by the end of December.

Chief Judge Miller then asked Presiding Judge Phipps and John Ruggeri whether they had any other information for the judges. Presiding Judge Phipps asked Mr. Ruggeri to comment. Mr. Ruggeri explained that the final E-FAST changes will be made by the end of the next week and work will then begin on the new docket. The target is for the preliminary version of the docket, the Pivot Release to be in operation no later than January or February 2011. After this initial release, there will be several iterations to make the new system as efficient as possible. A final release is scheduled for the end of fiscal year 2011.

Presiding Judge Barnes asked upon what language would the new docket be based. Mr. Ruggeri stated that it would be JAVA and that the system would take advantage of open source technology as much as possible.

Judge Ellington stated that he wanted to thank Chief Judge Miller and Mr. Ruggeri as well as retired clerk, William L. Martin, III, for the work that has already been done on the e-filing application. He also noted that as the Court moves forward with its new technology plans, it will probably have to consider changes in the Rules, as well as, the technology. As an example, he pointed out the inequity when an attorney e-files a motion for reconsideration, but serves the opposing counsel by snail mail.

## V. SCREENING APPLICANTS FOR CLERK/COURT ADMINISTRATOR

Chief Judge Miller asked the judges to consider the next item on the agenda, Screening Applicants for the Clerk/Court Administrator position. She stated that she thought all the judges should participate in determining the applicants to be interviewed.

Presiding Judge Barnes suggested that only three or four applicants be interviewed and made her recommendations. After further discussion, it was decided that the following

five applicants would be interviewed: Holly Sparrow, Ann Kelley, Miguel Cortez, Deborah Craytor and Wendy Jenkins.

The judges also discussed the advertised salary. Judge Ellington proposed that the recommended applicants be interviewed and if the right candidate was not found among these applicants, the position be re-advertised. Presiding Judge Barnes' recommendation was adopted by the judges.

#### **VI. PLAN FOR JUDICIAL OFFICE MOVES**

Chief Judge Miller asked Judge Ellington to explain the plan for judicial office moves. Judge Ellington stated all the judges were very responsive to his inquiry about office moves. He said he hopes the plan will address equity issues that have not been addressed in years because there had not been so many open judicial positions. Judge Ellington explained his chart stating that the planned moves involve major changes and that he will continue to address a few small requests, such as, the use of certain desks as that is needed until the moves are completed.

#### **VII. MINOR AMENDMENT TO INTERNAL OPERATIONS MANUAL**

Presiding Judge Smith presented a small change in the Internal Operations Manual to Chapter XXXIII, (A) (2) changing who is required to be present at the selection of a judge to replace a judge who is recusing or is disqualified. This change, he explained, is required because of the reduction in positions in the clerk's office. The motion by Presiding Judge Smith to adopt the suggested IOM change was seconded by Judge Adams and approved unanimously.

#### **VIII. IMPACT OF RECORD APPENDIX ON COURT**

Chief Judge Miller introduced this subject by reminding the judges that the Record Appendix was a creation of the trial bar and the Supreme Court of Georgia as a solution to the increase in the appellate preparation fee from \$1.50 per page to \$10.00 per page resulting from the passage of House Bill 1055 by the 2010 General Assembly. Judge Ellington then noted that Ms. Sparrow had brought to his attention the difficulties the Record Appendix has caused for the clerk's office in her memorandum of September 8, 2010. He asked Ms. Sparrow to describe some of these problems.

After describing the problems and the additional work the Record Appendix has caused the clerk's office, Ms. Sparrow pointed out that several groups including the State Bar and Judicial Council are seeking the Court's view of what permanent solution to HB1055

should be proposed. She also mentioned that as a result of HB1055, Justice Melton's information technology group has recommended electronic transmission of trial court records to the appellate courts as its highest priority for new technology in the judicial branch.

Judge Ellington suggested that the Court determine its position on HB1055. Judge Mikell proposed that the statutory record preparation fee be changed from \$10.00 per page to \$2.00 per page and the Record Appendix be abandoned. After discussion of the motion and with Judge Mikell's consent, the motion was amended by Presiding Judge Smith to repeal HB1055 so that the record preparation fee would return to \$1.50 and so the Court need not accept Record Appendices from the parties. The motion was seconded by Judge Johnson and approved unanimously.

Following the adoption of the motion, Chief Judge Miller suggested that one or more of the judges work with Ms. Sparrow to determine a policy on how the Court should treat Record Appendices that do not strictly conform to Rule 17 and the Court of Appeals Record Appendix guidelines. Presiding Judges Smith and Phipps volunteered to assist Ms. Sparrow.

Presiding Judge Smith also proposed a motion that Ms. Sparrow's memorandum on Record Appendices and any other memoranda related to the Record Appendix issues prepared by the Court be distributed to former State Bar President Bryan Cavan, Representative Wendell Willard, and Atlanta Bar Association President Michael Terry. With Presiding Judge Smith's consent, Judge Johnson proposed an amendment to Presiding Judge Smith's motion to include the members of the Judiciary and Special Judiciary Committees of the Georgia House of Representatives and Georgia Senate. The amended motion was seconded by Judge Ellington and the motion was approved unanimously.

#### IX. OLD BUSINESS

No old business was discussed.

#### X. NEW BUSINESS

Election of the Next Chief Judge

Presiding Judge Andrews proposed that the new Chief Judge (for the term of office beginning January 1, 2011) be elected at this time and made a motion to select Judge Ellington. Chief Judge Miller seconded the motion and the motion was approved unanimously.

XI. ANNOUNCEMENTS

Chief Judge Miller announced that the clerk's office has filled the Intake Clerk position with Ms. Bonnie Rayburn and the File Librarian position with Mr. Will Moore. She also announced that a new Orders Clerk, Ms. Rane Zilton, would begin work with the clerk's office on Monday, September 20, 2010. She commended Ms. Sparrow on filling these positions quickly and with capable applicants.

The clerk's employees were then invited into the Banc Meeting. Chief Judge Miller introduced Ms. Rayburn and Mr. Moore to the judges and commended the whole staff on its hard work and loyalty to the Court during the recent difficult times.

XII. ADJOURNMENT

There being no further business, the Banc Meeting was adjourned at 11:45 a.m.

Respectfully submitted,

Minutes approved by the Court  
En Banc on the \_\_\_\_\_ day of  
\_\_\_\_\_, 2010

---

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

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

**Wednesday, September 15, 2010, 10:30 a.m.**

A Banc Meeting of the Court of Appeals was called and held in the Court of Appeals Banc Room, Suite 501, 47 Trinity Avenue, S. W., Atlanta, Georgia at 10:30 a.m. on Wednesday, September 15, 2010. Those present were:

Chief Judge M. Yvette Miller  
Presiding Judge Gary B. Andrews  
Presiding Judge J. D. Smith  
Presiding Judge Anne Elizabeth Barnes  
Presiding Judge Herbert E. Phipps  
Judge Edward H. Johnson  
Judge John J. Ellington  
Judge Charles B. Mikell  
Judge A. Harris Adams  
Judge Sara L. Doyle

Also attending were:

Ms. Holly Sparrow, Clerk and Court Administrator  
Ms. Jan Kelley, Fiscal Officer  
Mr. John Ruggeri, Director, Information Technology

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

Chief Judge Miller called the meeting to order at 10:35 a.m. noting that all the judges were in attendance so a quorum was present.

**II. APPROVAL OF BANC MEETING MINUTES**

Chief Judge Miller asked whether the judges had an opportunity to review the Minutes and accepted a motion made by Judge Ellington to approve the Minutes of the May 19, 2010, June 9, 2010 and August 18, 2010 Banc Meetings. The motion was seconded by Presiding Judge Barnes. All of the Minutes were approved by a unanimous vote.

### III. BUDGETS - FY2011

At the request of Chief Judge Miller, Jan Kelley, Fiscal Officer, presented the current status of the Court budget for FY2011. She described the changes since the Court's last review of the budget at the May 2010 Banc Meeting and the information she had about the Supreme Court of Georgia furlough plans. After a discussion of the current budget status, a motion was made by Presiding Judge Andrews to adopt the operational cuts to the information technology and printing budgets presented to the judges by Ms. Kelley. Judge Ellington seconded the motion and it was approved unanimously.

A second motion was presented by Judge Mikell that the Court set one furlough day a month for all months in the fiscal year excluding December 2010 until the furlough days are not needed to balance the budget. Judge Johnson seconded Judge Mikell's motion. The motion passed unanimously.

In discussing the furlough days, the judges decided to set the specific dates for the months of October and November so that those dates could be announced. Presiding Judge Andrews moved to set the remaining two furlough dates for FY2010 on Friday, October 8, 2010 and Friday, November 12. The motion was seconded by Judge Ellington. The motion was approved upon a unanimous vote. Following the adoption of the motion for October and November furlough days, it was proposed that Jan Kelley suggest a furlough date for January 2011 and a memorandum be circulated for a vote of the judges. Ms. Kelley promised to circulate promptly a memorandum to the judges with a voting block for the January furlough.

### IV. INFORMATION TECHNOLOGY REPORT

Chief Judge Miller noted that the Court had made excellent progress in accepting e-filed documents and issuing orders on e-filed motions. Chief Judge Miller stated that the Court must have a docket that incorporates modern technology in order to advance. She said it has come time to replace the old COBOL technology. The Chief Judge pointed out the problem of depending on outdated technology by referring to an article provided to her by Presiding Judge Barnes. The article described the problems the California unemployment department had in issuing unemployment checks from an old technology COBOL system when the Federal Government passed several extensions of unemployment benefits.

Chief Judge Miller stated that she, along with Holly Sparrow and John Ruggeri, met with Britt Courtney of TriVir, the Court's vendor for the docket project, about a week ago to consider the next steps for the Court. She said she would like to meet with Representative Chuck Martin and introduce him to the Court's vendor to explain the importance of the new docket and the progress the Court has made to date.

Chief Judge Miller explained that the Court is initiating the design and development of the new docket which is scheduled to be completed by the end of the current fiscal year. She referred to the timetable chart included in the Banc Meeting materials and explained the Court should be testing the preliminary release by November and subject to change, the preliminary release should be completed by the end of December.

Chief Judge Miller then asked Presiding Judge Phipps and John Ruggeri whether they had any other information for the judges. Presiding Judge Phipps asked Mr. Ruggeri to comment. Mr. Ruggeri explained that the final E-FAST changes will be made by the end of the next week and work will then begin on the new docket. The target is for the preliminary version of the docket, the Pivot Release to be in operation no later than January or February 2011. After this initial release, there will be several iterations to make the new system as efficient as possible. A final release is scheduled for the end of fiscal year 2011.

Presiding Judge Barnes asked upon what language would the new docket be based. Mr. Ruggeri stated that it would be JAVA and that the system would take advantage of open source technology as much as possible.

Judge Ellington stated that he wanted to thank Chief Judge Miller and Mr. Ruggeri as well as retired clerk, William L. Martin, III, for the work that has already been done on the e-filing application. He also noted that as the Court moves forward with its new technology plans, it will probably have to consider changes in the Rules, as well as, the technology. As an example, he pointed out the inequity when an attorney e-files a motion for reconsideration, but serves the opposing counsel by snail mail.

## V. SCREENING APPLICANTS FOR CLERK/COURT ADMINISTRATOR

Chief Judge Miller asked the judges to consider the next item on the agenda, Screening Applicants for the Clerk/Court Administrator position. She stated that she thought all the judges should participate in determining the applicants to be interviewed.

Presiding Judge Barnes suggested that only three or four applicants be interviewed and made her recommendations. After further discussion, it was decided that the following

five applicants would be interviewed: Holly Sparrow, Ann Kelley, Miguel Cortez, Deborah Craytor and Wendy Jenkins.

The judges also discussed the advertised salary. Judge Ellington proposed that the recommended applicants be interviewed and if the right candidate was not found among these applicants, the position be re-advertised. Presiding Judge Barnes' recommendation was adopted by the judges.

#### **VI. PLAN FOR JUDICIAL OFFICE MOVES**

Chief Judge Miller asked Judge Ellington to explain the plan for judicial office moves. Judge Ellington stated all the judges were very responsive to his inquiry about office moves. He said he hopes the plan will address equity issues that have not been addressed in years because there had not been so many open judicial positions. Judge Ellington explained his chart stating that the planned moves involve major changes and that he will continue to address a few small requests, such as, the use of certain desks as that is needed until the moves are completed.

#### **VII. MINOR AMENDMENT TO INTERNAL OPERATIONS MANUAL**

Presiding Judge Smith presented a small change in the Internal Operations Manual to Chapter XXXIII, (A) (2) changing who is required to be present at the selection of a judge to replace a judge who is recusing or is disqualified. This change, he explained, is required because of the reduction in positions in the clerk's office. The motion by Presiding Judge Smith to adopt the suggested IOM change was seconded by Judge Adams and approved unanimously.

#### **VIII. IMPACT OF RECORD APPENDIX ON COURT**

Chief Judge Miller introduced this subject by reminding the judges that the Record Appendix was a creation of the trial bar and the Supreme Court of Georgia as a solution to the increase in the appellate preparation fee from \$1.50 per page to \$10.00 per page resulting from the passage of House Bill 1055 by the 2010 General Assembly. Judge Ellington then noted that Ms. Sparrow had brought to his attention the difficulties the Record Appendix has caused for the clerk's office in her memorandum of September 8, 2010. He asked Ms. Sparrow to describe some of these problems.

After describing the problems and the additional work the Record Appendix has caused the clerk's office, Ms. Sparrow pointed out that several groups including the State Bar and Judicial Council are seeking the Court's view of what permanent solution to HB1055

should be proposed. She also mentioned that as a result of HB1055, Justice Melton's information technology group has recommended electronic transmission of trial court records to the appellate courts as its highest priority for new technology in the judicial branch.

Judge Ellington suggested that the Court determine its position on HB1055. Judge Mikell proposed that the statutory record preparation fee be changed from \$10.00 per page to \$2.00 per page and the Record Appendix be abandoned. After discussion of the motion and with Judge Mikell's consent, the motion was amended by Presiding Judge Smith to repeal HB1055 so that the record preparation fee would return to \$1.50 and so the Court need not accept Record Appendices from the parties. The motion was seconded by Judge Johnson and approved unanimously.

Following the adoption of the motion, Chief Judge Miller suggested that one or more of the judges work with Ms. Sparrow to determine a policy on how the Court should treat Record Appendices that do not strictly conform to Rule 17 and the Court of Appeals Record Appendix guidelines. Presiding Judges Smith and Phipps volunteered to assist Ms. Sparrow.

Presiding Judge Smith also proposed a motion that Ms. Sparrow's memorandum on Record Appendices and any other memoranda related to the Record Appendix issues prepared by the Court be distributed to former State Bar President Bryan Cavan, Representative Wendell Willard, and Atlanta Bar Association President Michael Terry. With Presiding Judge Smith's consent, Judge Johnson proposed an amendment to Presiding Judge Smith's motion to include the members of the Judiciary and Special Judiciary Committees of the Georgia House of Representatives and Georgia Senate. The amended motion was seconded by Judge Ellington and the motion was approved unanimously.

#### IX. OLD BUSINESS

No old business was discussed.

#### X. NEW BUSINESS

Election of the Next Chief Judge

Presiding Judge Andrews proposed that the new Chief Judge (for the term of office beginning January 1, 2011) be elected at this time and made a motion to select Judge Ellington. Chief Judge Miller seconded the motion and the motion was approved unanimously.

XI. ANNOUNCEMENTS

Chief Judge Miller announced that the clerk's office has filled the Intake Clerk position with Ms. Bonnie Rayburn and the File Librarian position with Mr. Will Moore. She also announced that a new Orders Clerk, Ms. Ranee Zilton, would begin work with the clerk's office on Monday, September 20, 2010. She commended Ms. Sparrow on filling these positions quickly and with capable applicants.

The clerk's employees were then invited into the Banc Meeting. Chief Judge Miller introduced Ms. Rayburn and Mr. Moore to the judges and commended the whole staff on its hard work and loyalty to the Court during the recent difficult times.

XII. ADJOURNMENT

There being no further business, the Banc Meeting was adjourned at 11:45 a.m.

Respectfully submitted,

Minutes approved by the Court  
En Banc on the \_\_\_\_\_ day of  
\_\_\_\_\_, 2010

---

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

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

**Wednesday, September 15, 2010, 10:30 a.m.**

A Banc Meeting of the Court of Appeals was called and held in the Court of Appeals Banc Room, Suite 501, 47 Trinity Avenue, S. W., Atlanta, Georgia at 10:30 a.m. on Wednesday, September 15, 2010. Those present were:

Chief Judge M. Yvette Miller  
Presiding Judge Gary B. Andrews  
Presiding Judge J. D. Smith  
Presiding Judge Anne Elizabeth Barnes  
Presiding Judge Herbert E. Phipps  
Judge Edward H. Johnson  
Judge John J. Ellington  
Judge Charles B. Mikell  
Judge A. Harris Adams  
Judge Sara L. Doyle

Also attending were:

Ms. Holly Sparrow, Clerk and Court Administrator  
Ms. Jan Kelley, Fiscal Officer  
Mr. John Ruggeri, Director, Information Technology

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

Chief Judge Miller called the meeting to order at 10:35 a.m. noting that all the judges were in attendance so a quorum was present.

**II. APPROVAL OF BANC MEETING MINUTES**

Chief Judge Miller asked whether the judges had an opportunity to review the Minutes and accepted a motion made by Judge Ellington to approve the Minutes of the May 19, 2010, June 9, 2010 and August 18, 2010 Banc Meetings. The motion was seconded by Presiding Judge Barnes. All of the Minutes were approved by a unanimous vote.

### III. BUDGETS - FY2011

At the request of Chief Judge Miller, Jan Kelley, Fiscal Officer, presented the current status of the Court budget for FY2011. She described the changes since the Court's last review of the budget at the May 2010 Banc Meeting and the information she had about the Supreme Court of Georgia furlough plans. After a discussion of the current budget status, a motion was made by Presiding Judge Andrews to adopt the operational cuts to the information technology and printing budgets presented to the judges by Ms. Kelley. Judge Ellington seconded the motion and it was approved unanimously.

A second motion was presented by Judge Mikell that the Court set one furlough day a month for all months in the fiscal year excluding December 2010 until the furlough days are not needed to balance the budget. Judge Johnson seconded Judge Mikell's motion. The motion passed unanimously.

In discussing the furlough days, the judges decided to set the specific dates for the months of October and November so that those dates could be announced. Presiding Judge Andrews moved to set the remaining two furlough dates for FY2010 on Friday, October 8, 2010 and Friday, November 12. The motion was seconded by Judge Ellington. The motion was approved upon a unanimous vote. Following the adoption of the motion for October and November furlough days, it was proposed that Jan Kelley suggest a furlough date for January 2011 and a memorandum be circulated for a vote of the judges. Ms. Kelley promised to circulate promptly a memorandum to the judges with a voting block for the January furlough.

### IV. INFORMATION TECHNOLOGY REPORT

Chief Judge Miller noted that the Court had made excellent progress in accepting e-filed documents and issuing orders on e-filed motions. Chief Judge Miller stated that the Court must have a docket that incorporates modern technology in order to advance. She said it has come time to replace the old COBOL technology. The Chief Judge pointed out the problem of depending on outdated technology by referring to an article provided to her by Presiding Judge Barnes. The article described the problems the California unemployment department had in issuing unemployment checks from an old technology COBOL system when the Federal Government passed several extensions of unemployment benefits.

Chief Judge Miller stated that she, along with Holly Sparrow and John Ruggeri, met with Britt Courtney of TriVir, the Court's vendor for the docket project, about a week ago to consider the next steps for the Court. She said she would like to meet with Representative Chuck Martin and introduce him to the Court's vendor to explain the importance of the new docket and the progress the Court has made to date.

Chief Judge Miller explained that the Court is initiating the design and development of the new docket which is scheduled to be completed by the end of the current fiscal year. She referred to the timetable chart included in the Banc Meeting materials and explained the Court should be testing the preliminary release by November and subject to change, the preliminary release should be completed by the end of December.

Chief Judge Miller then asked Presiding Judge Phipps and John Ruggeri whether they had any other information for the judges. Presiding Judge Phipps asked Mr. Ruggeri to comment. Mr. Ruggeri explained that the final E-FAST changes will be made by the end of the next week and work will then begin on the new docket. The target is for the preliminary version of the docket, the Pivot Release to be in operation no later than January or February 2011. After this initial release, there will be several iterations to make the new system as efficient as possible. A final release is scheduled for the end of fiscal year 2011.

Presiding Judge Barnes asked upon what language would the new docket be based. Mr. Ruggeri stated that it would be JAVA and that the system would take advantage of open source technology as much as possible.

Judge Ellington stated that he wanted to thank Chief Judge Miller and Mr. Ruggeri as well as retired clerk, William L. Martin, III, for the work that has already been done on the e-filing application. He also noted that as the Court moves forward with its new technology plans, it will probably have to consider changes in the Rules, as well as, the technology. As an example, he pointed out the inequity when an attorney e-files a motion for reconsideration, but serves the opposing counsel by snail mail.

## V. SCREENING APPLICANTS FOR CLERK/COURT ADMINISTRATOR

Chief Judge Miller asked the judges to consider the next item on the agenda, Screening Applicants for the Clerk/Court Administrator position. She stated that she thought all the judges should participate in determining the applicants to be interviewed.

Presiding Judge Barnes suggested that only three or four applicants be interviewed and made her recommendations. After further discussion, it was decided that the following

five applicants would be interviewed: Holly Sparrow, Ann Kelley, Miguel Cortez, Deborah Craytor and Wendy Jenkins.

The judges also discussed the advertised salary. Judge Ellington proposed that the recommended applicants be interviewed and if the right candidate was not found among these applicants, the position be re-advertised. Presiding Judge Barnes' recommendation was adopted by the judges.

#### VI. PLAN FOR JUDICIAL OFFICE MOVES

Chief Judge Miller asked Judge Ellington to explain the plan for judicial office moves. Judge Ellington stated all the judges were very responsive to his inquiry about office moves. He said he hopes the plan will address equity issues that have not been addressed in years because there had not been so many open judicial positions. Judge Ellington explained his chart stating that the planned moves involve major changes and that he will continue to address a few small requests, such as, the use of certain desks as that is needed until the moves are completed.

#### VII. MINOR AMENDMENT TO INTERNAL OPERATIONS MANUAL

Presiding Judge Smith presented a small change in the Internal Operations Manual to Chapter XXXIII, (A) (2) changing who is required to be present at the selection of a judge to replace a judge who is recusing or is disqualified. This change, he explained, is required because of the reduction in positions in the clerk's office. The motion by Presiding Judge Smith to adopt the suggested IOM change was seconded by Judge Adams and approved unanimously.

#### VIII. IMPACT OF RECORD APPENDIX ON COURT

Chief Judge Miller introduced this subject by reminding the judges that the Record Appendix was a creation of the trial bar and the Supreme Court of Georgia as a solution to the increase in the appellate preparation fee from \$1.50 per page to \$10.00 per page resulting from the passage of House Bill 1055 by the 2010 General Assembly. Judge Ellington then noted that Ms. Sparrow had brought to his attention the difficulties the Record Appendix has caused for the clerk's office in her memorandum of September 8, 2010. He asked Ms. Sparrow to describe some of these problems.

After describing the problems and the additional work the Record Appendix has caused the clerk's office, Ms. Sparrow pointed out that several groups including the State Bar and Judicial Council are seeking the Court's view of what permanent solution to HB1055

should be proposed. She also mentioned that as a result of HB1055, Justice Melton's information technology group has recommended electronic transmission of trial court records to the appellate courts as its highest priority for new technology in the judicial branch.

Judge Ellington suggested that the Court determine its position on HB1055. Judge Mikell proposed that the statutory record preparation fee be changed from \$10.00 per page to \$2.00 per page and the Record Appendix be abandoned. After discussion of the motion and with Judge Mikell's consent, the motion was amended by Presiding Judge Smith to repeal HB1055 so that the record preparation fee would return to \$1.50 and so the Court need not accept Record Appendices from the parties. The motion was seconded by Judge Johnson and approved unanimously.

Following the adoption of the motion, Chief Judge Miller suggested that one or more of the judges work with Ms. Sparrow to determine a policy on how the Court should treat Record Appendices that do not strictly conform to Rule 17 and the Court of Appeals Record Appendix guidelines. Presiding Judges Smith and Phipps volunteered to assist Ms. Sparrow.

Presiding Judge Smith also proposed a motion that Ms. Sparrow's memorandum on Record Appendices and any other memoranda related to the Record Appendix issues prepared by the Court be distributed to former State Bar President Bryan Cavan, Representative Wendell Willard, and Atlanta Bar Association President Michael Terry. With Presiding Judge Smith's consent, Judge Johnson proposed an amendment to Presiding Judge Smith's motion to include the members of the Judiciary and Special Judiciary Committees of the Georgia House of Representatives and Georgia Senate. The amended motion was seconded by Judge Ellington and the motion was approved unanimously.

#### IX. OLD BUSINESS

No old business was discussed.

#### X. NEW BUSINESS

Election of the Next Chief Judge

Presiding Judge Andrews proposed that the new Chief Judge (for the term of office beginning January 1, 2011) be elected at this time and made a motion to select Judge Ellington. Chief Judge Miller seconded the motion and the motion was approved unanimously.

XI. ANNOUNCEMENTS

Chief Judge Miller announced that the clerk's office has filled the Intake Clerk position with Ms. Bonnie Rayburn and the File Librarian position with Mr. Will Moore. She also announced that a new Orders Clerk, Ms. Raneë Zilton, would begin work with the clerk's office on Monday, September 20, 2010. She commended Ms. Sparrow on filling these positions quickly and with capable applicants.

The clerk's employees were then invited into the Banc Meeting. Chief Judge Miller introduced Ms. Rayburn and Mr. Moore to the judges and commended the whole staff on its hard work and loyalty to the Court during the recent difficult times.

XII. ADJOURNMENT

There being no further business, the Banc Meeting was adjourned at 11:45 a.m.

Respectfully submitted,

Minutes approved by the Court  
En Banc on the \_\_\_\_\_ day of  
\_\_\_\_\_, 2010

---

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

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

**Wednesday, September 15, 2010, 10:30 a.m.**

A Banc Meeting of the Court of Appeals was called and held in the Court of Appeals Banc Room, Suite 501, 47 Trinity Avenue, S. W., Atlanta, Georgia at 10:30 a.m. on Wednesday, September 15, 2010. Those present were:

Chief Judge M. Yvette Miller  
Presiding Judge Gary B. Andrews  
Presiding Judge J. D. Smith  
Presiding Judge Anne Elizabeth Barnes  
Presiding Judge Herbert E. Phipps  
Judge Edward H. Johnson  
Judge John J. Ellington  
Judge Charles B. Mikell  
Judge A. Harris Adams  
Judge Sara L. Doyle

Also attending were:

Ms. Holly Sparrow, Clerk and Court Administrator  
Ms. Jan Kelley, Fiscal Officer  
Mr. John Ruggeri, Director, Information Technology

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

Chief Judge Miller called the meeting to order at 10:35 a.m. noting that all the judges were in attendance so a quorum was present.

**II. APPROVAL OF BANC MEETING MINUTES**

Chief Judge Miller asked whether the judges had an opportunity to review the Minutes and accepted a motion made by Judge Ellington to approve the Minutes of the May 19, 2010, June 9, 2010 and August 18, 2010 Banc Meetings. The motion was seconded by Presiding Judge Barnes. All of the Minutes were approved by a unanimous vote.

### III. BUDGETS - FY2011

At the request of Chief Judge Miller, Jan Kelley, Fiscal Officer, presented the current status of the Court budget for FY2011. She described the changes since the Court's last review of the budget at the May 2010 Banc Meeting and the information she had about the Supreme Court of Georgia furlough plans. After a discussion of the current budget status, a motion was made by Presiding Judge Andrews to adopt the operational cuts to the information technology and printing budgets presented to the judges by Ms. Kelley. Judge Ellington seconded the motion and it was approved unanimously.

A second motion was presented by Judge Mikell that the Court set one furlough day a month for all months in the fiscal year excluding December 2010 until the furlough days are not needed to balance the budget. Judge Johnson seconded Judge Mikell's motion. The motion passed unanimously.

In discussing the furlough days, the judges decided to set the specific dates for the months of October and November so that those dates could be announced. Presiding Judge Andrews moved to set the remaining two furlough dates for FY2010 on Friday, October 8, 2010 and Friday, November 12. The motion was seconded by Judge Ellington. The motion was approved upon a unanimous vote. Following the adoption of the motion for October and November furlough days, it was proposed that Jan Kelley suggest a furlough date for January 2011 and a memorandum be circulated for a vote of the judges. Ms. Kelley promised to circulate promptly a memorandum to the judges with a voting block for the January furlough.

### IV. INFORMATION TECHNOLOGY REPORT

Chief Judge Miller noted that the Court had made excellent progress in accepting e-filed documents and issuing orders on e-filed motions. Chief Judge Miller stated that the Court must have a docket that incorporates modern technology in order to advance. She said it has come time to replace the old COBOL technology. The Chief Judge pointed out the problem of depending on outdated technology by referring to an article provided to her by Presiding Judge Barnes. The article described the problems the California unemployment department had in issuing unemployment checks from an old technology COBOL system when the Federal Government passed several extensions of unemployment benefits.

Chief Judge Miller stated that she, along with Holly Sparrow and John Ruggeri, met with Britt Courtney of TriVir, the Court's vendor for the docket project, about a week ago to consider the next steps for the Court. She said she would like to meet with Representative Chuck Martin and introduce him to the Court's vendor to explain the importance of the new docket and the progress the Court has made to date.

Chief Judge Miller explained that the Court is initiating the design and development of the new docket which is scheduled to be completed by the end of the current fiscal year. She referred to the timetable chart included in the Banc Meeting materials and explained the Court should be testing the preliminary release by November and subject to change, the preliminary release should be completed by the end of December.

Chief Judge Miller then asked Presiding Judge Phipps and John Ruggeri whether they had any other information for the judges. Presiding Judge Phipps asked Mr. Ruggeri to comment. Mr. Ruggeri explained that the final E-FAST changes will be made by the end of the next week and work will then begin on the new docket. The target is for the preliminary version of the docket, the Pivot Release to be in operation no later than January or February 2011. After this initial release, there will be several iterations to make the new system as efficient as possible. A final release is scheduled for the end of fiscal year 2011.

Presiding Judge Barnes asked upon what language would the new docket be based. Mr. Ruggeri stated that it would be JAVA and that the system would take advantage of open source technology as much as possible.

Judge Ellington stated that he wanted to thank Chief Judge Miller and Mr. Ruggeri as well as retired clerk, William L. Martin, III, for the work that has already been done on the e-filing application. He also noted that as the Court moves forward with its new technology plans, it will probably have to consider changes in the Rules, as well as, the technology. As an example, he pointed out the inequity when an attorney e-files a motion for reconsideration, but serves the opposing counsel by snail mail.

## **V. SCREENING APPLICANTS FOR CLERK/COURT ADMINISTRATOR**

Chief Judge Miller asked the judges to consider the next item on the agenda, Screening Applicants for the Clerk/Court Administrator position. She stated that she thought all the judges should participate in determining the applicants to be interviewed.

Presiding Judge Barnes suggested that only three or four applicants be interviewed and made her recommendations. After further discussion, it was decided that the following

five applicants would be interviewed: Holly Sparrow, Ann Kelley, Miguel Cortez, Deborah Craytor and Wendy Jenkins.

The judges also discussed the advertised salary. Judge Ellington proposed that the recommended applicants be interviewed and if the right candidate was not found among these applicants, the position be re-advertised. Presiding Judge Barnes' recommendation was adopted by the judges.

#### **VI. PLAN FOR JUDICIAL OFFICE MOVES**

Chief Judge Miller asked Judge Ellington to explain the plan for judicial office moves. Judge Ellington stated all the judges were very responsive to his inquiry about office moves. He said he hopes the plan will address equity issues that have not been addressed in years because there had not been so many open judicial positions. Judge Ellington explained his chart stating that the planned moves involve major changes and that he will continue to address a few small requests, such as, the use of certain desks as that is needed until the moves are completed.

#### **VII. MINOR AMENDMENT TO INTERNAL OPERATIONS MANUAL**

Presiding Judge Smith presented a small change in the Internal Operations Manual to Chapter XXXIII, (A) (2) changing who is required to be present at the selection of a judge to replace a judge who is recusing or is disqualified. This change, he explained, is required because of the reduction in positions in the clerk's office. The motion by Presiding Judge Smith to adopt the suggested IOM change was seconded by Judge Adams and approved unanimously.

#### **VIII. IMPACT OF RECORD APPENDIX ON COURT**

Chief Judge Miller introduced this subject by reminding the judges that the Record Appendix was a creation of the trial bar and the Supreme Court of Georgia as a solution to the increase in the appellate preparation fee from \$1.50 per page to \$10.00 per page resulting from the passage of House Bill 1055 by the 2010 General Assembly. Judge Ellington then noted that Ms. Sparrow had brought to his attention the difficulties the Record Appendix has caused for the clerk's office in her memorandum of September 8, 2010. He asked Ms. Sparrow to describe some of these problems.

After describing the problems and the additional work the Record Appendix has caused the clerk's office, Ms. Sparrow pointed out that several groups including the State Bar and Judicial Council are seeking the Court's view of what permanent solution to HB1055

should be proposed. She also mentioned that as a result of HB1055, Justice Melton's information technology group has recommended electronic transmission of trial court records to the appellate courts as its highest priority for new technology in the judicial branch.

Judge Ellington suggested that the Court determine its position on HB1055. Judge Mikell proposed that the statutory record preparation fee be changed from \$10.00 per page to \$2.00 per page and the Record Appendix be abandoned. After discussion of the motion and with Judge Mikell's consent, the motion was amended by Presiding Judge Smith to repeal HB1055 so that the record preparation fee would return to \$1.50 and so the Court need not accept Record Appendices from the parties. The motion was seconded by Judge Johnson and approved unanimously.

Following the adoption of the motion, Chief Judge Miller suggested that one or more of the judges work with Ms. Sparrow to determine a policy on how the Court should treat Record Appendices that do not strictly conform to Rule 17 and the Court of Appeals Record Appendix guidelines. Presiding Judges Smith and Phipps volunteered to assist Ms. Sparrow.

Presiding Judge Smith also proposed a motion that Ms. Sparrow's memorandum on Record Appendices and any other memoranda related to the Record Appendix issues prepared by the Court be distributed to former State Bar President Bryan Cavan, Representative Wendell Willard, and Atlanta Bar Association President Michael Terry. With Presiding Judge Smith's consent, Judge Johnson proposed an amendment to Presiding Judge Smith's motion to include the members of the Judiciary and Special Judiciary Committees of the Georgia House of Representatives and Georgia Senate. The amended motion was seconded by Judge Ellington and the motion was approved unanimously.

#### IX. OLD BUSINESS

No old business was discussed.

#### X. NEW BUSINESS

Election of the Next Chief Judge

Presiding Judge Andrews proposed that the new Chief Judge (for the term of office beginning January 1, 2011) be elected at this time and made a motion to select Judge Ellington. Chief Judge Miller seconded the motion and the motion was approved unanimously.

XI. ANNOUNCEMENTS

Chief Judge Miller announced that the clerk's office has filled the Intake Clerk position with Ms. Bonnie Rayburn and the File Librarian position with Mr. Will Moore. She also announced that a new Orders Clerk, Ms. Raneé Zilton, would begin work with the clerk's office on Monday, September 20, 2010. She commended Ms. Sparrow on filling these positions quickly and with capable applicants.

The clerk's employees were then invited into the Banc Meeting. Chief Judge Miller introduced Ms. Rayburn and Mr. Moore to the judges and commended the whole staff on its hard work and loyalty to the Court during the recent difficult times.

XII. ADJOURNMENT

There being no further business, the Banc Meeting was adjourned at 11:45 a.m.

Respectfully submitted,

Minutes approved by the Court  
En Banc on the \_\_\_\_\_ day of  
\_\_\_\_\_, 2010

---

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