



**2013**

**Georgia Court of Appeals**

**R U L E S**

**Last Update: March 15, 2013**

# RULES COURT OF APPEALS OF GEORGIA

These rules are not intended to reiterate all applicable laws. Where the word "counsel" has been used, this will include pro se parties. The latest version of these rules can be found at the Court web site: [www.gaappeals.us](http://www.gaappeals.us).

**This publication contains the rules  
and all amendments thereto made through**

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## I. GENERAL

### Rule 1.

#### **Documents; Communications; General.**

(a)

#### **Requirement for Written and Signed Documents.**

All filings, documents, motions, briefs, requests and communications relating to appeals shall be in writing, shall be filed with the Clerk's office, shall be signed by an attorney of record, an attorney granted courtesy appearance or pro se party, and shall include the mailing address and telephone number of the attorney or pro se party signing the document, and shall show that copies have been furnished to opposing counsel. Documents with conformed or stamped signatures by judges, attorneys, law firm staff, or an attorney's employee shall not be permitted. No signatures by express permission are permitted. All pleadings, including, but not limited to briefs, motions, requests, applications and notices shall be signed by counsel filing the document. All signed documents shall include the State Bar of Georgia membership number of all submitting attorneys.

(b)

#### **Communications with the Court.**

There shall be no communications relating to pending cases to any judge or member of the judge's staff.

(c)

#### **Documents.**

All documents filed with the Court shall be typed or printed on non-transparent, letter size (8 ½" x 11") white paper and bound at the top with staples or fasteners (round head or Acco) except as provided in Rule 46. All documents filed with the Court shall have no less than double spacing between the lines including quotations and footnotes. Letter spacing and type or font size shall be no smaller than 10 characters per inch. Notwithstanding the ten (10) characters per inch requirement, the Court shall accept in lieu thereof Times New Roman Regular 14pt (Western). Any documents that do not comply with the Court rules may be returned to counsel with notice of the defect of the pleading, and/or counsel may be ordered to redact and recast such documents. All paper documents filed with this Court shall have a non-glossy, white back of recyclable paper, heavier than regular stationery-type paper.

(d)

#### **Counsel.**

All reference to counsel in these rules shall include pro se parties.

(e)

#### **Facsimile Filing.**

The Court does not accept facsimile filings.

### Rule 2.

#### **Hours; Filing Fees; Stamped Copies.**

(a)

#### **Clerk's Office Hours of Operation and Location.**

The Clerk's office shall be open Monday through Friday from 8:30 a.m. to 4:30 p.m. E.S.T./E.D.T. The address is: Clerk, Court of Appeals of Georgia, Suite 501, 47 Trinity Avenue, S.W., Atlanta, Georgia 30334. The telephone number is (404) 656-3450.

(b)

**Filing Fees.**

All filings requiring fees must be accompanied by a check or money order, a sufficient pauper's affidavit or a form showing a public defender has been appointed to represent the party. The Clerk is not responsible for cash accompanying a filing.

(c)

**Stamped "Filed" Copy.**

If a return stamped "filed" copy of a filed document is needed, parties filing such documents must include an extra copy and a pre-addressed stamped envelope with sufficient postage to have the document returned.

**Rule 3.**

**Expiration Date.**

When an expiration date falls on Saturday, Sunday, or an official state or national holiday, the time is extended to the next business day.

**Rule 4.**

**Filing and Determination of Filing Date.**

Except as otherwise provided in this rule, a document will be deemed filed in the Court of Appeals on the date it was physically received in the office of the Clerk of the Court of Appeals with sufficient costs, if applicable, and stamped filed. The office of the Clerk generally is open 8:30 a.m. to 4:30 p.m.

(a)

**Drop Box.**

When the office of the Clerk is not open, documents may be deposited in the Court of Appeals drop box for filing. Documents placed in the drop box are removed each morning and clocked to the present time and date, but shall be deemed filed on the prior business day. The drop box is located inside the street level entrance to the 47 Trinity Avenue Building, which generally is open between 7:00 a.m. and 5:00 p.m., although the Georgia Building Authority may change the hours during which the building is open without prior notice.

(b)

**Electronic Filing.**

Attorneys admitted to practice in the Court of Appeals of Georgia are permitted to file certain documents electronically with the Court pursuant to Rule 46 and the Court's electronic filing instructions which are available at [www.gaappeals.us](http://www.gaappeals.us). The filing date of documents filed electronically is determined in accordance with the electronic filing instructions.

(c)

**Filing by Mail or Commercial Delivery.**

A document transmitted to the office of the Clerk by United States Postal Service priority, express, or first-class mail (including certified or registered mail) or by a commercial carrier for overnight delivery shall be deemed filed on the date shown by the official postmark affixed by the United States Postal Service (not a private or commercial postage meter) or the date shown on the commercial carrier's transmittal

form on the envelope or package containing the document, if the envelope or package is properly addressed, postage prepaid, and the postmark or transmittal date is legible. Otherwise, the document will be deemed filed on the date the document was physically received in the office of the Clerk.

**(d) Filings by Pro Se Prisoners.**

In the absence of an official United States Postal Service postmark showing a date on or before the filing deadline, a document submitted by a prisoner who is not represented by an attorney shall be deemed filed on the date the prisoner delivers the document to prison officials for forwarding to the Clerk of the Court of Appeals. Such delivery shall be shown by the date on the certificate of service or on an affidavit submitted by the prisoner with the document stating the date on which the prisoner gave the document to prison officials with sufficient prepaid postage for first-class mail and the name of the prison official to whom the document was delivered. Such certificate or affidavit will give rise to a presumption that the date of filing reflected in the affidavit is accurate, but the State may rebut the presumption with evidence that the document was given to prison officials after the filing deadline or with insufficient postage. If the institution has a system designed for legal mail, the prisoner must use it to rely upon the provisions of this paragraph.

**(e) Motions for Reconsideration.**

Any other provision of these rules notwithstanding, a motion for reconsideration shall be deemed filed only on the date on which it is physically received in the office of the Clerk. See Rule 37.

Banc Meeting of March 21, 2012, Rule effective April 23, 2012

**Rule 5. Costs.**

Costs are \$80 in all criminal cases and \$300 in all civil cases. Costs shall not be required where either a sufficient pauper's affidavit or a form showing a public defender has been appointed to represent the party has been filed with the Court or is contained in the record. Costs shall accrue upon the docketing of an application or direct appeal and shall be paid no later than the filing of the application or filing of the appellant's brief in direct appeals. Appellant and appellant's counsel are liable for costs when the case is docketed. Costs are not required to file an appellant's brief in a direct appeal which is filed pursuant to an order of this Court granting an interlocutory or discretionary application. The Clerk shall not receive a brief of the appellant or an application unless costs have been paid, a sufficient pauper's affidavit has been filed, or a form showing appointment of a public defender to represent the appellant on appeal has been filed or evidence of indigency is contained in the record.

For purposes of this rule, appeals from probation revocation and juvenile delinquency cases shall be deemed criminal cases and the costs for filing an application or a direct appeal in such cases shall be \$80.

Rule Amendments effective April 23, 2012

**Rule 6. Copies and Certificate of Service.**

All documents filed with the Clerk shall include an original and two copies. All documents shall show copies have been furnished to opposing counsel. Service shall be shown by written acknowledgment, certificate of counsel or affidavit of server, to include the name and complete mailing address of all opposing counsel. Service shall be made before filing. Any document without a certificate of service shall not be accepted for filing. The certificate of service shall be signed by counsel and attached to the document filed.

**Rule 7. Contempt.**

Breach of any rule of the Court of Appeals or failure to comply with an order of this Court subjects the offending party and/or attorney to contempt and may subject the appeal to dismissal or cause appellee's brief to be stricken. The Court may, upon a finding of conduct constituting contempt, impose a fine not to exceed \$2,500.00 against each contemner or revoke the license to practice in this Court, or both.

**Rule 8. Notice of Cause for Disqualification or Recusal.**

Cause for disqualification or recusal of a judge of this Court shall be brought to the attention of the Clerk as soon as practicable. See Rule 44.

## II. ATTORNEYS

### Rule 9.

#### Attorneys.

(a)

#### Application and Oath.

Any member of the State Bar of Georgia may be admitted to practice in this Court upon written application, and the certificate of at least two attorneys of this Court, that such member is of good private and professional character. The oath, may be administered by the Clerk, Deputy Clerk or Deputy Administrator. It may be taken in open court, before a judge in chambers, or in the Clerk's office. The oath is as follows:

*I do solemnly swear (or affirm) that I will conduct myself as an attorney or counselor of this Court truly and honestly, justly and uprightly, and according to law; and that I will support the Constitution of the State of Georgia and the Constitution of the United States. So help me God.*

After the oath has been administered, the applicant shall sign the roll of attorneys admitted to practice in the Court.

(b)

#### Fee.

The fee for admission is \$30.00, payable to the Clerk of the Court of Appeals of Georgia, who shall issue a license under the seal of the Court as evidence of applicant's authority to practice.

(c)

#### Appearance by Courtesy.

As a matter of professional courtesy, a visiting attorney from another state, a district, or territory or a resident attorney, who is not a member of the State Bar of Georgia, may petition this Court to be heard as associate counsel or counsel in a single case, without being admitted as a regular practitioner in this Court by showing the attorney is certified in good standing in the Bar of the highest court of another state, district, or territory. A request for courtesy appearance shall be made by motion which shall state the name and address of the attorney seeking to appear by courtesy and contain proof of that attorney's admittance and good standing in the Bar of the highest court of another state, district, or territory and be accompanied by a check or money order in the amount of \$30.00 payable to the Clerk of the Court of Appeals of Georgia. The motion may be made by the attorney requesting courtesy appearance or a member of the Bar of this Court on behalf of the attorney requesting courtesy appearance.

(d)

#### Withdrawal or Substitution of Counsel.

Any withdrawal or substitution of attorneys of record in the Court shall be communicated to the Court by written motion with a copy to substituted counsel, opposing counsel and the withdrawing or substituting attorney's client. A motion to withdraw as counsel shall contain the address of the withdrawing counsel's

client, or if the address is unknown, the motion shall contain a statement that the client's address is unknown and shall contain the client's last known address.

(e) **Change of Address or Telephone Number.**

If during the pendency of any appeal or application counsel for either party has a change of address or telephone number, counsel shall file a notification of change of address or telephone number with the Court, notifying the Court of counsel's correct address and telephone number and the effective date of such change.

The notification of change of address or telephone number shall be filed as a separate document, an original and two copies, with service made to opposing counsel.

Upon receipt of the notification of change of address or telephone number, the Clerk shall enter the change of address or telephone number on the Court's docket and all further notices generated from the Court shall be to counsel's new address.

Failure of counsel to properly notify the Court of any change of address or telephone number, which may result in counsel not receiving notification of court action, shall not be grounds to reinstate or reconsider any matter adverse to counsel or parties because of the failure of counsel to receive notification from the Court.

(f) The Court of Appeals does not recognize, nor grant, leaves of court or leaves of absence.

**Rule 10. Personal Remarks; Judge or Opposing Counsel.**

Personal remarks, whether oral or written, which are discourteous or disparaging to any judge, opposing counsel, or any court, are strictly forbidden.

### III. DOCKETS; CALENDARS

**Rule 11. Appeals, How Entered.**

(a) **Docketing.**

No appeal shall be docketed until the notice of appeal and a record, and transcript, if requested, are filed in the Clerk's office. Each notice of appeal shall be docketed as a separate case.

(b) **Transfer of Cases.**

Whenever an appeal or application filed in this Court is within the jurisdiction of the Supreme Court, such appeal or application shall be transferred by order to that court.

(c) **Transferred Cases.**

Appeals or applications transferred to this Court from the Supreme Court shall be docketed as of the date they are received in this Court.

- (d) **Premature Docketing.**  
Any case docketed prior to the entire record coming to the Court, as requested by the parties, may be remanded to the trial court until such time as the record is so prepared and delivered to the Court.

**Rule 12. Closing of the Dockets.**  
The docket for the January, April, and September terms shall close at noon on the 15th day of December, April and August, respectively. By order, a closed docket may be opened when expedient for the docketing of a case or cases so that a judgment may be rendered by the Court at the earliest practicable date.

**Rule 13. Notice of Docketing.**  
Upon the docketing of every appeal and application for appeal, the Clerk shall mail notice of the docketing date and schedule for briefing to all counsel. The notice of docketing a direct appeal shall include a statement that failure to file the enumeration of errors and appellant's brief within the time required may result in the dismissal of the appeal. The notice shall also state that: Failure to timely file responsive briefs may result in their non-consideration or subject counsel to contempt. Failure of counsel to receive the docketing notice shall not relieve counsel of the responsibility to file briefs timely. See Rule 23.

**Rule 14. Calendar; Conflicts.**  
(a) **Calendars to be Mailed.**  
The Clerk shall mail the calendar to counsel in each appeal to be orally argued at least 14 days prior to the date set for oral argument at the addresses shown on the notice of appeal unless the Court is otherwise advised under Rule 9(e).

(b) **Non-Receipt of Calendar.**  
Counsel not receiving a calendar at least 10 days prior to the tentative oral argument dates should contact the Clerk's office to inquire about oral argument dates.

(c) **Conflicts - State and Federal Court.**  
(1) Counsel shall not be deemed to have a conflict unless such counsel:  
(i) Is lead counsel in two or more of the actions affected; and  
(ii) Certifies that the matters cannot be adequately handled by other counsel.  
(2) When there is an apparent conflict:  
(i) Appellate arguments prevail over trials, hearings and conferences.  
(ii) The action first filed takes precedence.  
(iii) Felony actions prevail over civil actions.  
(iv) Misdemeanors stand on equal footing with civil actions.  
(v) The courts are assigned the following priorities:  
(aa) United States Supreme Court.

- (bb) Supreme Court of the State of Georgia.
- (cc) Federal Courts of Appeal and State Courts of Appeal.
- (dd) United States District Courts and Superior Courts.
- (ee) Federal Magistrate Courts and State Courts.
- (ff) Probate, Juvenile and Magistrate Courts.

- (3) The Clerk shall resolve conflicts so as to accommodate all parties insofar as possible.
- (4) Using the above criteria, the only time a conflict exists is when the actions are in courts of equal priority, are of the same type and were filed on the same day. When such conflict exists, counsel shall give prompt written notice of the conflict to opposing counsel and to the clerk of each court.
- (5) When it is evident that counsel's presence is required in more than one court on the same day and no conflict actually exists under the above criteria, counsel shall nevertheless inform all courts concerned, giving the style of the case and the date of filing.

**Rule 15.**

**No Prosecution, Frivolous Appeals and Penalties.**

- (a) On the call of the case for argument, if the appellant does not appear, and has not filed a brief, the Court may dismiss the appeal for want of prosecution.
- (b) The panel of the Court ruling on a case, with or without motion, may by majority vote impose a penalty not to exceed \$2,500.00 against any party and/or party's counsel in any civil case in which there is a direct appeal, application for discretionary appeal, application for interlocutory appeal, or motion which is determined to be frivolous.
- (c) The imposition of such penalty shall constitute a money judgment, in favor of appellee against appellant or appellant's counsel or in favor of appellant against appellee or appellee's counsel, as the Court directs. Upon filing of the remittitur in the trial court, the penalty may be collected as are other money judgments.

**IV. EXTENSION OF TIME FOR NOTICE OF APPEAL, ETC.**

**Rule 16.**

**Extension of Time for Filing.**

- (a) Pursuant to the provisions of OCGA § 5-6-39, requests for extensions of time, which must be in writing, may be made only upon showing a bona fide effort has been made to obtain the extension from the trial court and the reason it could not be obtained. Any motion for extension of time to file a Notice of Appeal made in this Court shall be made as a Rule 40 (b) motion and shall be accompanied by a filing fee in the amount set out in Rule 5 or a sufficient pauper's affidavit.

- (b) Extensions of time to file briefs must be requested by motion and shall be subject to the Court's discretion. All extensions shall be by written order and no oral extension shall be recognized.

Failure to request an extension of time to file a brief prior to the date the brief is due may result in the non-consideration of the motion and/or the dismissal of the appeal.

- (c) No extension of time shall be granted for filing interlocutory or discretionary applications or filing responses thereto other than permitted under Rule 31(g).

## V. RECORDS AND TRANSCRIPTS

### **Rule 17. Duty of Trial Court Clerks.**

The clerk of the trial court shall certify and transmit to the Clerk of this Court the original transcript and copies of all records as required within the time prescribed by statute. Trial court orders included in the record must contain the signature of the trial court judge. Conformed signatures, stamped signatures, and signatures with permission shall not be permitted. Transmittal shall be made by the clerk or deputy clerk personally or by First Class United States mail, express mail, or commercial courier or delivery service, charges prepaid. Transmittal by a party or attorney is prohibited.

### **Rule 18. Preparation and Arrangement of Records and Transcripts.**

- (a) Records and transcripts, to include depositions, shall be printed on one side of letter-size, white paper of good quality with ample spacing (at least double spaced) and margins so that they may be easily read. The margin at the top shall be of sufficient space so that the transcript may be read when folded over at the top. Type size shall not be smaller than 10 characters per inch. Notwithstanding the 10 characters per inch requirement, the Court shall accept in lieu thereof Times New Roman Regular 14pt. The record shall include an index. The pages of the record shall be numbered consecutively on the bottom of the page.
- (b) Any records or transcripts delivered to this Court from the trial court, and sealed by the trial court, with an order of the trial court attached to the record, shall remain sealed until a motion is made to unseal the record and/or the record is unsealed by this Court. Counsel for any party may move this Court for an order to unseal or seal any record in the Court.

**Rule 19.**

**Transmission of Transcript.**

The original transcript shall be a separate document and not attached to the record. It shall show the style of the case and contain an index, and the pages shall be numbered consecutively. Voluminous transcripts may be bound in separate parts. The court reporter and trial court clerk shall certify each part.

**Rule 20.**

**Objections to Records or Transcripts; Waiver.**

Appellee shall be deemed to have waived any failure of the appellant to comply with the provisions of the Appellate Practice Act relating to the filing of the transcript of the evidence and proceedings or transmittal of the record to this Court, unless objection thereto was made and ruled upon in the trial court prior to transmittal and such order is appealed as provided by law.

**Rule 21.**

**Physical Evidence - Original Evidence.**

Any party relying on physical evidence may include as a part of the transcript or record a photograph, a videotape or an audiotape of the evidence, together with an explanation or description if deemed necessary, in lieu of transmitting the original evidence. No original evidence or exhibits shall be transmitted to the Court unless the Court directs the clerk of the trial court to transmit such original evidence or exhibits, or upon the grant of a written motion of the party or parties desiring such original evidence or exhibits to be transmitted to the Court. The motion shall be specific as to what original evidence or exhibits shall be transmitted to the Court and the reason such original evidence or exhibits are necessary for the determination of the appeal. After the remittitur has been issued from the Court to the trial court, all original evidence or exhibits shall be returned to the clerk of the trial court. In no event, unless directed by this Court, shall physical evidence be transmitted to the Court which is bulky, cumbersome, or expensive to transport, or which, by reason of its nature, is dangerous to handle, or which is contraband. Any video or audio recording of evidence shall be submitted to the Court of Appeals in one of the following formats: VHS, DVD, video or audio CD, or audio cassette tape.

**VI. ENUMERATION OF ERRORS**

**Rule 22.**

**Filing.**

**(a)**

**Time of Filing.**

Pursuant to OCGA §5-6-40, the enumeration of errors, which shall be Part 2 of the appellant's brief, shall be filed within 20 days after the case is docketed. A separate enumeration of errors is not required.

(b) **Jurisdictional Statement.**

The enumeration of errors shall contain a statement of jurisdiction as to why this Court, and not the Supreme Court, has jurisdiction.

## VII. BRIEFS

**Rule 23. Time of Filing; Contempt; Dismissal.**

(a) Appellant's brief, which shall contain as Part 2 an enumeration of errors, shall be filed within 20 days after the appeal is docketed. Failure to file within that time, unless extended upon motion for good cause shown, may result in the dismissal of the appeal, and may subject the offender to contempt. See Rule 7 and Rule 13.

Appellant's motion for extension of time to file brief and enumeration of errors must be filed prior to the date the documents are due or the Court may dismiss the appeal.

(b) Appellee's brief shall be filed within 40 days after the appeal is docketed or 20 days after the filing of appellant's brief, whichever is later. Failure to timely file may result in non-consideration of the brief and may subject counsel to contempt. See Rule 13. A brief shall be filed by the appellee in all criminal appeals when the State is the appellee; and upon failure to file such brief, the State's representative may be subject to contempt.

(c) Appellant may file a reply brief within 20 days from the date of filing of appellee's brief. Appellee has no right to respond to appellant's reply brief except as permitted under Rule 27.

**Rule 24. Preparation.**

(a) Briefs shall be limited to an initial appellant's brief, a responding appellee's brief and a reply brief of the appellant. Other briefs shall be accepted only if filed as an Amicus Curiae brief or a supplemental brief. See Rules 26 and Rule 27. Briefs shall not be accepted unless filed by a pro se party, a member of the State Bar of Georgia admitted to the Court or an attorney granted a courtesy appearance in accordance with Rule 9 (c). Counsel are required to file an original and two copies of their brief for each docketed appeal, including companion cases and cross appeals.

(b) **Paper; Spacing.**

Briefs shall be filed in conformity with Rule 1 (a) and (c) and Rule 6.

(c) **Margins.**

Writing shall be on only one side of each sheet with a margin of not less than two inches at the top and a margin of at least one inch on the sides and bottom of each page.

- (d) **Citations.**  
All citations of cases shall be by name of the case as well as by volume, page and year of the official report. Cases not yet reported shall be cited by the Court of Appeals or Supreme Court case number and date of decision.
- (e) **Pages to be Numbered.**  
The pages of each brief shall be sequentially numbered with Arabic numerals at the bottom of the pages.
- (f) **Limitation as to Length.**  
Briefs and responsive briefs shall be limited to 30 pages in civil cases and 50 pages in criminal cases including exhibits and appendices, except upon written motion directed to the Clerk and approved by the Court. Appellant's reply brief shall be limited to 15 pages. See Rule 27 for additional briefs. With respect to all briefs and responsive briefs, tables of content, tables of citations, cover sheets and certificates of service shall not be counted toward the applicable page limit.  
Rule Amendment effective November 1, 2012
- (g) **Attachments and Exhibits.**  
Documents attached to an appellate brief, which have not been certified by the clerk of the trial court as a part of the appellate record and forwarded to this Court, shall not be considered on appeal.
- (h) **Address of Defendant.**  
Counsel for defendant shall include the address of the defendant in a criminal case on the face of the brief and shall notify the Court of any change of address.

**Rule 25. Structure and Content.**

(a) **Appellant.**

The brief of appellant shall consist of three parts:

- (1) Part One shall contain a succinct and accurate statement of the proceedings below and the material facts relevant to the appeal and the citation of such parts of the record or transcript essential to a consideration of the errors complained of, and a statement of the method by which each enumeration of error was preserved for consideration. Record and transcript citations shall be to the volume or part of the record or transcript and the page numbers that appear on the appellate records or transcript as sent from the trial court.
- (2) Part Two shall consist of the enumeration of errors.
- (3) Part Three shall contain the argument and citation of authorities. It shall also include a concise statement of the applicable standard of review with supporting authority for each issue presented in the brief.

(b) **Appellee.**

The brief of appellee shall be divided in the following manner:

- (1) Part One shall point out any material inaccuracy or incompleteness of appellant's statement of facts and any additional statement of facts deemed necessary, plus such additional parts of the record or transcript deemed material. Failure to do so shall constitute consent to a decision based on the appellant's statement of facts. Except as controverted, appellant's statement of facts may be accepted by this Court as true.
- (2) Part Two shall contain appellee's argument and the citation of authorities as to each enumeration of error. It shall also include the standard of review if different from that contended by the appellant.

(c) **General Provisions.**

(1) **Sequence of Argument.**

The sequence of arguments in the briefs shall follow the order of the enumeration of errors, and shall be numbered accordingly.

(2) **Unsupported Claim of Error; References to Record and Transcripts.**

Any enumeration of error which is not supported in the brief by citation of authority or argument may be deemed abandoned.

(i) Each enumerated error shall be supported in the brief by specific reference to the record or transcript. In the absence of such reference, the Court will not search for or consider such enumeration.

(ii) A contention that certain matters are not supported by the record may be answered by reference to particular pages where they appear.

(iii) Reference to the record should be indicated by specific volume or part of the record and by (R-Page Number of the Record). Reference to the transcript should be indicated by specific volume or part of the transcript and by (T-Page Number of the Transcript). Reference to a motion transcript shall be indicated by (MT-Page Number of the Transcript and date of the hearing).

(3) **Sealing Briefs or Motions.**

No briefs or motions shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.

**Rule 26. Amicus Curiae Briefs.**

Amicus curiae briefs may be filed without leave of Court, disclosing the identity and interest of the person or group on whose behalf the brief is filed and limited to issues properly raised by the parties. Only members of the Bar of this Court or attorneys appearing by courtesy may file amicus curiae briefs. Amicus curiae briefs shall conform to Rule 24(b)-(g).

**Rule 27. Supplemental Briefs.**

- (a) Briefs of the parties shall be limited to an appellant's brief, an appellee's brief, and an appellant's reply brief. Supplemental briefs may be filed only by leave of the Court. Counsel may file a motion for permission to file supplemental briefs. Counsel may not file a supplemental brief contemporaneously with the motion, but may include a copy of the supplemental brief with the motion for permission to file as an exhibit. Counsel shall file a supplemental brief with an original and two copies, not to exceed 15 pages only after permission to file is granted. A certificate of service must be attached to the supplemental brief and service must be made to opposing counsel.
- (b) Parties are not permitted to file letter briefs nor letter cites. Any communication with the Court regarding recent authority which comes to the attention of a party subsequent to the filing of such party's brief or after oral argument, but before decision, must be filed in compliance with Rule 27 (a) above as a supplemental brief. Any response shall be made promptly and in accordance with this rule.

**VIII. ARGUMENT**

**Rule 28. Oral Argument.**

**(a) Request and Time.**

- (1) Unless expressly ordered by the Court, oral argument is never mandatory and argument may be submitted by briefs only. A case shall be placed on the calendar for oral argument only upon the granting of the request of either party. Oral argument is not permitted for applications or motions.
- (2) A request for oral argument shall be filed within 20 days from the date the case is docketed in this Court. An extension of time to file brief and enumeration of errors does not extend the time to request oral argument.
- (3) The request must be a separate document, an original and two copies, directed to the Clerk, certifying that opposing counsel has been notified of the request and that opposing counsel desires, or does not desire, to argue orally. The request shall identify counsel who is scheduled to argue, and any change shall be communicated to the Clerk as soon as practicable.
- (4) A request shall contain a brief statement describing specifically how the decisional process will be significantly aided by oral argument. The request should be self-

contained and should convey the specific reason or reasons oral argument would be beneficial to the Court. Counsel should not assume the brief shall be considered in ruling on the request for oral argument.

**(b) Waiver.**

After either side has been granted oral argument, it may be waived by either side, but waiver by the requester does not remove the case from the oral argument calendar. If either counsel decides to waive oral argument after it has been granted, waiving counsel must notify opposing counsel and the Court of that fact.

Argument shall not be allowed on behalf of any party whose brief has not been timely filed, unless permission is granted by the Court. Counsel requesting extension of time to file briefs waive oral argument if the extension is beyond the end of the term.

Oral argument is waived if counsel is not actually inside the courtroom when the case is formally called in its order for argument.

**(c) Time of Oral Argument.**

Postponements of oral argument are not favored, and no postponement shall be granted under any circumstances that would allow oral argument to take place during a term of the Court subsequent to the term for which the case was docketed.

**(d) Length.**

Argument is limited to 30 minutes for each case, 15 minutes on each side, unless by special leave an enlargement of time is granted. On the day of the argument, counsel may request 5, 10, or 15 minutes for argument. If counsel do not agree on the length of oral argument, the longer time requested shall prevail and each counsel shall be given the same amount of time. Ordinarily, cases shall be argued in the following order: first, 5 minute cases; second, 10 minute cases; and third, 15 minute cases.

No additional time shall be granted for argument except on motion made in writing at least 5 days before the date set for the call of the case. If additional time is granted, the case shall be placed at the end of the calendar unless otherwise ordered by the Court. Appeals, cross appeals, companion cases, and related cases shall be considered to be one case for purpose of oral argument. In the discretion of the Court, a companion case may be treated as a separate case for oral argument if counsel so requests by written motion at least 5 days before the date set for oral argument and the motion is granted by the Court. Where there are third parties or additional parties with divergent interests, additional time may be requested and granted as set out above.

**(e) Number of Counsel Arguing.**

Ordinarily, when both sides of an appeal are argued, only two counsel on each side shall be heard. When only one side of an appeal is argued, or when arguments are to be made on behalf of more than two parties, no more than one counsel per party shall be heard. For exception, see paragraph 28(j).

- (f) **Opening and Concluding; Rebuttal.**  
Appellant has the right to open and conclude the arguments.
- (g) **Courtroom Decorum.**
  - (1) Counsel appearing for oral argument shall check in with the Clerk in the courtroom at 9:30 a.m. on the date of oral argument specifying who shall argue and for how long.
  - (2) Talking, reading newspapers or other material, and audibly studying briefs and arranging papers are prohibited in the courtroom. The lawyers' lounge has been provided for this purpose.
  - (3) All counsel appearing before the Court must be properly attired.
- (h) **Recording.**  
Oral argument shall be recorded only for the use and benefit of the Court.
- (i) **Oral Argument Open to the Public.**  
Counsel may move the Court to exclude the public for a good cause shown. Such motion shall be filed not later than 24 hours prior to oral argument. News media may be granted permission to photograph or videotape oral argument in accordance with the Court's standing order regarding media in the courtroom.
- (j) **Procedural Questions.**  
The Presiding Judge shall decide all questions or issues arising at oral argument.

**Rule 29. Hearing by Quorum.**  
Whenever a Division of the Court is on the bench for the purpose of hearing oral argument, and a quorum (two judges) is present, the Division shall proceed with the call of the docket.

## IX. APPLICATION FOR INTERLOCUTORY APPEALS

- Rule 30. Interlocutory Applications.**
- (a) An application for leave to appeal an interlocutory order shall be granted only when it appears from the documents submitted that:
    - (1) The issue to be decided appears to be dispositive of the case; or
    - (2) The order appears erroneous and will probably cause a substantial error at trial or will adversely affect the rights of the appealing party until entry of final judgment in which case the appeal will be expedited; or

- (3) The establishment of precedent is desirable.
- (b) Applications for interlocutory appeal shall contain a jurisdictional statement and have attached a stamped “filed” copy of the trial court's order to be appealed and a stamped “filed” copy of the certificate of immediate review. The trial court's order and certificate of immediate review must contain the signature of the trial court judge. Neither conformed signatures nor stamped signatures shall be permitted.
- (c) The Clerk is prohibited from receiving the application without the filing fee, a sufficient pauper’s affidavit, or a public defender’s appointment to represent the party on appeal. See OCGA §5-6-4. The filing fee shall be in the amount set out in Rule 5.
- (d) The applicant shall include a copy of any petition or motion which led directly to the order or judgment being appealed and a copy of any responses to the petition or motion with the application.
- (e) Applications for interlocutory appeals pursuant to OCGA § 5-6-34 (b) shall have copies of all submitted materials from the record tabbed and indexed and shall be securely bound at the top with staples or fasteners (round head or ACCO). If not tabbed, indexed and securely bound at the top, the application is subject to dismissal or return for preparation according to the Court's rules. The materials must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced. Failure to submit sufficient material to apprise the Court of the issues and support the argument shall result in denial of the application. Applications and responses to applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of attached exhibits and parts of the record, and shall follow the general format of briefs as to margins. Tables of content, tables of citations, cover sheets and certificates of service shall not be counted toward the applicable page limit for interlocutory appeal applications and responses.
- Rule Amendment effective November 1, 2012
- (f) No application for interlocutory appeal shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.
- (g) No extension of time shall be granted for filing of interlocutory applications or responses to interlocutory applications.
- (h) Responses are due within 10 days of docketing. No response is required, unless ordered by the Court.
- (i) If an interlocutory application is granted, appellant must file a notice of appeal in the trial court within 10 days of the date of the order granting the application.
- (j) No pleadings will be accepted on an application for interlocutory appeal which are filed more than 30 days after the date of the order granting, denying or dismissing the

application or the order granting, denying or dismissing the motion for reconsideration filed on the application.

## X. APPLICATION FOR DISCRETIONARY APPEAL

### Rule 31.

#### **Discretionary Applications.**

(a) An application for leave to appeal a final judgment in cases subject to appeal under OCGA § 5-6-35 shall be granted only when:

- (1) Reversible error appears to exist; or
- (2) The establishment of a precedent is desirable.

(b) The applicant shall include a copy of any petition or motion which led directly to the order or judgment being appealed and a copy of any responses to the petition or motion with the application.

(c) Applications for discretionary appeal pursuant to OCGA § 5-6-35 shall have copies of all submitted material from the record tabbed and indexed and shall be securely bound at the top with staples or fasteners (round head or ACCO). If not tabbed, indexed and securely bound at the top, the application is subject to dismissal or return for preparation according to the Court's rules. The material must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced. Failure to submit sufficient material to apprise the Court of the issues and support the argument shall result in denial of the application. Applications and responses to applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of attached exhibits and parts of the record, and should follow the general format of briefs as to margins. Tables of content, tables of citations, cover sheets and certificates of service shall not be counted toward the applicable page limit for discretionary appeal applications and responses.

Rule Amendment effective November 1, 2012

(d) The Clerk is prohibited from receiving the application without the filing fee, a sufficient pauper's affidavit, or a public defender's appointment to represent the party on appeal. See OCGA § 5-6-4. The filing fee shall be in the amount set out in Rule 5.

(e) Discretionary applications must contain a stamped "filed" copy of the trial court's order or judgment from which the appeal is sought. The stamped "filed" copy of the trial court's order or judgment must contain the signature of the trial court judge. Neither conformed signatures nor stamped signatures are permitted.

(f) No application for discretionary appeal shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.

- (g) No extensions of time shall be granted in filing a discretionary application unless the motion for extension is filed on or before the due date of the discretionary application. No extension of time shall be granted to file a response to a discretionary application.  
Rule Amendment effective August 1, 2012
- (h) Responses are due within 10 days of docketing. No response is required, unless ordered by the Court.
- (i) If the discretionary application is granted, appellant must file a notice of appeal in the trial court within 10 days of the date of the order granting the application.
- (j) No pleadings will be accepted on an application for discretionary appeal which are filed more than 30 days after the date of the order granting, denying, or dismissing the application or the order granting, denying or dismissing the motion for reconsideration filed on the application.

## XI. TIME FOR FILING APPLICATIONS

### Rule 32.

#### **Time for Filing.**

- (a) An application for interlocutory appeal shall be filed in this Court within 10 days of the entry of the trial court's order granting the certificate for immediate review. Entry of the trial court's order shall be the date it is filed with the trial court clerk.
- (b) An application for discretionary appeal shall be filed in this Court generally within 30 days of the date of the entry of the trial court's order being appealed. Pursuant to OCGA § 44-7-56, a discretionary application involving a dispossessory action must be filed within 7 days of the entry of the trial court's order. Entry of the trial court's order shall be the date it is filed with the trial court clerk.
- (c) Applications to appeal interlocutory or discretionary orders of which the Supreme Court has jurisdiction shall be transferred to that Court.

## XII. OPINIONS AND JUDGMENTS

### Rule 33.

#### **Showing of Concurrence or Dissent.**

The judgment line on an opinion shall show on its face, the vote or non-participation of each judge.

(a)

#### **Judgment as Precedent.**

If an appeal is decided by a Division, a judgment in which all three judges fully concur is a binding precedent; provided, however, an opinion is physical precedent only with respect to any Division of the opinion for which there is a concurrence in the judgment

only or a special concurrence without a statement of agreement with all that is said. If the appeal is decided by a seven or twelve-judge Court, a full concurrence by a majority of judges is a binding precedent; provided, however, an opinion is physical precedent only with respect to any Division of the opinion for which there are concurrences in the judgment only or special concurrences without a statement of agreement with all that is said in the Division, resulting in a general concurrence by less than a majority of the judges with respect to the Division. The opinion of a case which is physical precedent shall be marked as such.

**(b) Unreported Opinion.**

An unreported opinion is neither a physical nor binding precedent but establishes the law of the case as provided by OCGA § 9-11-60 (h).

**Rule 34. Reporting of Opinions.**

Opinions are reported except as otherwise designated by the Court. The official reports shall list the cases in which opinions were written but not officially reported and shall indicate the authors and participants in the opinions.

**Rule 35. Copies of Opinions.**

As soon as practicable after judgment, the Clerk shall furnish, without charge, a copy of the opinion to counsel for each party and to the trial judge. Additional copies cost \$1.50 page.

**Rule 36. Affirmance without Opinion, When Rendered.**

Cases in which:

- (1) The evidence supports the judgment;
- (2) No reversible error of law appears and an opinion would have no precedential value;
- (3) The judgment of the court below adequately explains the decision; and/or
- (4) The issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief may be affirmed without opinion. Rule 36 cases have no precedential value.

### **XIII. RECONSIDERATION**

**Rule 37. Motions for Reconsideration.**

**(a) Physical Preparation.**

Motions for reconsideration shall be prepared in accordance with Rule 24.

- (b) **Time of Filing.**  
Motions for reconsideration shall be filed within 10 days from the rendition of the judgment or dismissal. Motions for reconsideration must be physically received in the Court for filing within 10 days of the order or judgment for which reconsideration is sought. See Rule 4 (b). No extension of time shall be granted except for providential cause on written motion made before the expiration of 10 days. No response to a motion for reconsideration is required, but any party wishing to respond must do so expeditiously.
- (c) **Time May Be Limited.**  
The Court may by special order in any case direct that the remittitur be transmitted to the clerk of the trial court immediately after the rendition of the decision and judgment, or at any other time, without awaiting the expiration of 10 days, and may by special order limit the time within which a motion for reconsideration may be filed to any period less than 10 days.
- (d) **Second Motion.**  
No party shall file a second motion for reconsideration unless permitted by order of the Court. The filing of a motion for permission to file a second motion for reconsideration does not toll the 10 days for filing a notice of intent to apply for certiorari with the Supreme Court of Georgia.
- (e) **Basis for Granting.**  
A reconsideration shall be granted on motion of the requesting party, only when it appears that the Court overlooked a material fact in the record, a statute or a decision which is controlling as authority and which would require a different judgment from that rendered, or has erroneously construed or misapplied a provision of law or a controlling authority.
- (f) **Opinion May Be Revised without Grant of Motion.**  
If, upon the consideration of a motion for reconsideration, the Court decides its judgment as rendered is correct, but that some revision of the opinion is appropriate, it may revise the opinion accordingly, without granting reconsideration.
- (g) **Voting on Motions, Effect.**  
A motion for reconsideration shall be voted on by the judges who voted on the original opinion. If there is a dissent on the motion for reconsideration on a three-judge case, the motion shall be voted on by seven judges, or should the Court deem it appropriate, 12 judges.
- (h) **No Oral Argument.**  
Oral argument is not permitted on a motion for reconsideration.

#### XIV. CERTIORARI

**Rule 38.                   Petition for Writ of Certiorari.  
(a)                        Supreme Court of Georgia.**

(1) Notice of intention to petition for a writ of certiorari shall be filed with the Clerk of this Court within 10 days after the judgment or, if motion for reconsideration is filed, within 10 days after the order ruling on reconsideration. Filing a motion for reconsideration is not a prerequisite for filing a petition for writ of certiorari.

(2) Petition for writ of certiorari to the Supreme Court of Georgia is governed by the rules of that Court. Notice of filing a petition for writ of certiorari shall be filed in this Court simultaneously with the filing of the petition in the Supreme Court.

**(b)                        Supreme Court of the United States.**

(1) Notice of intention to petition for writ of certiorari to the Supreme Court of the United States shall be filed with the Clerk of this Court within 20 days after denial of a petition for writ of certiorari by the Supreme Court of Georgia.

(2) Notice of filing a petition for a writ of certiorari shall be filed in this Court simultaneously with the filing of a petition in the Supreme Court of the United States.

**XV. REMITTITUR**

**Rule 39.                   Transmittal.**

(a) Remittiturs shall be transmitted to the clerk of the trial court as soon as practicable after the expiration of 10 days from the date of the judgment unless otherwise ordered or unless a motion for reconsideration or notice of intention to apply to the Supreme Court of Georgia for writ of certiorari has been filed.

(b) Notice of intention to apply to the Supreme Court of the United States for writ of certiorari generally will not stay the remittitur.

**XVI. SUPERSEDEAS**

**Rule 40.                   Supersedeas.  
(a)                        Civil Cases.**

The notice of appeal filed as provided in OCGA §§ 5-6-34(a), 5-6-37, and 5-6-38 shall serve as supersedeas upon payment of all costs in the trial court by the appellant. See OCGA § 5-6-46. Upon motion by the appellee, made in the trial court before or after the appeal is docketed in the appellate court, the trial court may require supersedeas bond to be given with such surety and in such amount as the trial court may require. The filing of an application for discretionary appeal shall act as a supersedeas to the extent that a notice of appeal acts as a supersedeas. See OCGA § 5-6-35 (h).

(b)

**Emergencies.**

In the exercise of its inherent power this Court may issue such orders or 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 power shall be exercised sparingly. Generally, no order shall be made or direction given in an appeal until it has been docketed in this Court.

A Rule 40 (b) motion shall:

- (1) Contain an explanation why an order of this Court is necessary and why the action requested is time sensitive;
- (2) Contain a stamped "filed" copy of the order being appealed;
- (3) Contain a stamped "filed" copy of the notice of appeal, if such has been filed in the trial court;
- (4) Show that service has been perfected upon the opposing party before filing the motion with the Court; and
- (5) Be accompanied by a filing fee, a sufficient pauper's affidavit, or a form showing a public defender has been appointed to represent the party, unless the motion is filed in a pending case already docketed with the Court. The filing fee shall be in the amount set out in Rule 5.

**XVII. MOTIONS AND RESPONSES**

**Rule 41.**

**Preparation and Filing.**

(a)

**Filing in Triplicate.**

Motions and responses to motions shall be filed as an original and two copies as set out in Rule 6. Motions, not letters, shall be filed whenever counsel wish the Court to take any action.

(b)

**Form and Physical Preparation.**

All motions and responses to motions shall be filed as separate documents, and shall not be filed as joint, compound or alternative motions. No motions or responses to motions shall be filed in the body of briefs, applications, or responses to applications. Motions and responses shall be prepared in accordance with Rule 24. Parties may cite to the record, but shall not attach to the motion or response to a motion exhibits that are included in the trial court record. Failure to comply with this rule may result in non-consideration of such motions or responses.

(c)

**Motion to Supplement the Record.**

In a motion to supplement the record, counsel shall describe the material to be

supplemented; but shall not attach the supplemental materials to the motion filed with the Court unless directed to do so by the Court. If the motion is granted, the Clerk of Court will obtain the supplemental record from the trial court clerk.

**(d) Motion to Dismiss.**

Notice of a motion to dismiss and of the grounds thereof shall be given in writing to counsel for the appellant by service made and shown as required in Rule 6. If such notice cannot be given, the motion shall be entertained and the Court in its discretion shall give such direction as may seem proper. Whenever it appears that the Court has no jurisdiction of a pending appeal, it shall be dismissed or transferred to the Supreme Court, as the facts and/or law require.

**(e) Response Time to Motions.**

Responses to motions shall be made as soon as possible since the Court generally acts on motions quickly. There is no 10 day rule for time to respond to motions.

**(f) Reconsideration.**

See Rule 37.

**(g) Motion to Withdraw Appeal.**

(1) Whenever appellant decides not to pursue an appeal, such party shall promptly file a motion for permission to withdraw the appeal.

(2) In a criminal case, unless the state is the appellant, the motion shall include an affidavit from the defendant agreeing to the withdrawal of the appeal. Should the defendant refuse to provide such affidavit, that fact shall be made known to the Court and the grounds for the withdrawal of the appeal shall be stated in the motion.

## **XVIII. OFFICE PAPERS**

**Rule 42. Access and Retention of Office Papers.**

**(a)** Papers shall not be taken from the Clerk's office without leave of Court. When leave is granted, the party receiving the paper shall receipt the Clerk therefore. The Clerk may deliver records to the Clerk of the Supreme Court.

**(b)** One year after the remittitur has issued, the party paying for the record and transcript may claim them. Otherwise, all records, record appendices and transcripts shall be recycled, unless the parties notify the Clerk, in writing, that the record should be maintained, and the reason therefore.

**(c)** If the parties anticipate that the case will return to the Court or be appealed to the United States Supreme Court, the parties must notify the Clerk, in writing, to hold the record.

## XIX. PARTIES

### Rule 43.

#### **Parties, How Made.**

(a) **Suggestion of Death of Party.**

The death of a party in a pending appeal may be suggested by counsel for either side at any time.

(b) **Legal Representative May Volunteer.**

The legal representative of the deceased party may voluntarily become a party to the appeal at any time.

(c) **Temporary Administrator.**

A temporary administrator is regarded as a competent party.

(d) **Substituted Party.**

Whenever a party is substituted, counsel for the substituting party shall notify the Clerk and opposing counsel of such substitution.

## XX. DISQUALIFICATIONS AND RECUSALS

### Rule 44. Disqualifications and Recusals.

- (a) Any motion to disqualify or recuse a judge in a particular case shall be filed in writing, and shall contain such evidence and affidavits which shall fully assert the facts upon which the motion is founded. Such motion shall be filed within 20 days of the date of docketing, unless good cause is shown for failure to meet such time requirements.
- (b) The affidavit shall clearly state the facts and reasons for the belief that bias or prejudice exists, being definite and specific as to time, place, persons and circumstances which demonstrate either bias in favor of any adverse party or prejudice against the moving party or a systematic pattern of prejudicial conduct. Allegations consisting of conclusions and opinions are not legally sufficient to support the motion or warrant further proceedings.
- (c) The determination of the motion to disqualify or recuse shall be made upon the written record, and no hearing or oral argument shall be permitted.
- (d) A motion to disqualify or recuse shall be decided by the remaining two judges on the Division and the presiding judge of the next Division. A judge may, however, voluntarily disqualify himself or herself prior to the matter being decided by the other judges. The criteria for disqualification are set forth in statutory law, case law and the Code of Judicial Conduct.
- (e) If the three judges designated to determine a motion to disqualify or recuse a judge do not agree on the decision, the matter shall be decided by a majority of the other judges on the Court not named in the motion to disqualify or recuse.
- (f) Any motion for disqualification or recusal of multiple judges in which the above process will be unsuitable will be dealt with by the Court as required in a particular situation.

Rule Amended June 15, 2011

## XXI. EXPEDITED APPEALS UNDER THE PARENTAL NOTIFICATION ACT

### Rule 45. Parental Notification Act.

- (a) This rule is adopted under the authority of the Georgia Constitution, Article VI, § I, Para. IV (1983); OCGA §§ 15-1-5 and 15-11-114 (e) to provide for the expedited consideration of appeals under the “Parental Notification Act.” (OCGA § 15-11-110 et seq.)
- (b) Any minor to whom a juvenile court has denied a waiver of notice under OCGA § 15-11-114 (d) may obtain an expedited appeal to this Court. For the purpose of this rule, in computing time, Saturdays, Sundays and holidays shall be included. Rule 3 shall govern in the event an expiration date falls on such a date.
- (c) A minor seeking an expedited appeal shall file a notice of appeal and a certified copy of the order denying waiver of notice with the Clerk of this Court. A copy of the notice of appeal shall also be filed with the juvenile court. The name, address and telephone number of the Guardian Ad Litem and any Counsel of Record shall be included with the notice of appeal. Upon receipt of the notice of appeal, this Court shall issue an order to the juvenile court directing that the record and transcript of the hearing be transmitted to and received by this Court within 5 days from the date of filing the notice of appeal with this Court. An enumeration of error shall be filed within the time period for the filing of the record. If a brief is desired, it shall also be filed within the time period for the filing of the record. No filing fee is required.
- (d) The record of the juvenile court shall be certified by the clerk of the juvenile court and transmitted to this Court under seal.
- (e) The Clerk shall assign the appeal to a Division of this Court, which shall take the matter under consideration and shall issue its decision within 5 days of receipt of the record.
- (f) In order to expedite further appellate review, a motion for reconsideration shall not be required. However, if the decision of this Court affirms the judgment of the juvenile court, the minor may file a motion for reconsideration and the same shall be governed by Rule 37, except that such a motion shall be filed within 5 days from the date of the decision of this Court and may be filed out of term. Any motion for reconsideration shall be decided by the Court within 5 days of filing thereof.
- (g) If the decision of this Court reverses the judgment of the juvenile court, the remittitur shall be forwarded to the clerk of the juvenile court immediately after the rendition of the decision. If the decision of this Court affirms the judgment of the juvenile court, the remittitur shall be transmitted to the clerk of the juvenile court as soon as practicable after the expiration of 5 days from the date of the judgment unless otherwise ordered or unless a motion for reconsideration or notice of intention to apply to the Supreme Court for writ of certiorari has been filed.

- (h) Upon good cause shown, the Court shall enter such orders as shall further expedite the processing of these cases.
- (i) In order to invoke the foregoing special procedures, the notice of appeal must be filed within 5 days of receipt by the minor of the juvenile court's order.
- (j) All pleadings, briefs, orders, transcripts, exhibits and any other written or recorded material that are part of the record shall be considered and treated by the Court as confidential. Upon conclusion of the appellate proceedings, the record shall be sealed, and the contents of the record shall not be disclosed, except upon order of this Court or the Supreme Court of Georgia.

## XXII. ELECTRONIC FILING OF DOCUMENTS

### Rule 46.

#### **Electronic Filing.**

Counsel shall be permitted to file documents with the Court by using the Court's electronic filing system. Counsel must agree to the terms of use and comply with the instructions of the Court's e-filing system. Counsel must also comply with all Rules of the Court except as modified by the electronic filing system terms of use or instructions.

## IOM Chapter I

- g. Appoints Special Prosecutors in bar disciplinary matters.
- h. Supervises preparation of an annual statistical analysis report reflecting caseload of the court, and such other periodic reports deemed necessary by the court.
- i. Performs such other administrative duties as may be required and which are not otherwise provided for by law or rule.

### B. EXECUTIVE COUNCIL

1. Shall be composed of the Chief Judge and the four Presiding Judges and shall act on all matters referred to the Chief Judge and Council as provided by committee assignments. (Source: Minutes September 1999 Banc Meeting.)
2. If not otherwise provided, shall determine which administrative matters should be presented to the full court.
3. Advise and counsel the Chief Judge on matters relating to the court.
4. If a tie vote occurs on a matter under consideration by the Chief Judge and Council, the matter shall be referred to the full court.
5. Purchases of \$1,000 or more shall be submitted to the Executive Council for consideration and approval. (Source: November 18, 2009 Banc Meeting)

### C. BUDGET COMMITTEE

The Chief Judge in consultation with the Fiscal Officer:

1. Prepares response to audit, if necessary, for consideration of the court and signature of the Chief Judge.
2. Conducts such internal or external audits as deemed necessary.
3. Periodically examines fiscal officer's journal, ledger, or similar records to see that postings are current; examines expenditures for supporting documents, and checks any fiscal record deemed necessary.
4. Makes all reports and recommendations directly to the full court.
5. The clerk/court administrator shall be responsible for preparation of drafting amendments on sections pertaining to the Budget Committee of the Internal Operations Manual.

## K. MANUAL FOR INTERNAL OPERATIONS

The clerk/court administrator shall be responsible for drafting and keeping current a loose leaf manual for internal operations, Court of Appeals of Georgia, by:

1. Reviewing all previous minutes of the court.
2. Reviewing any constitutional or statutory enactment that could be construed to pertain to the internal operation of the court.
3. Conferring with each judge on the court to ascertain and reduce to writing the oral policies and procedures now in existence.
4. Conferring with each presiding judge for policies peculiar to each panel with view of striving for uniformity.
5. Review similar rules and manuals of other courts, ABA, and other organizations for new ideas to improve the operation of this court.
6. The table of contents and each section or part prepared for inclusion in the Manual shall be circulated to the court and receive a majority vote before being placed in the Manual for observance by the court.

## L. COURT PERSONNEL COMMITTEE

The Court Personnel Committee shall be responsible for hearing appeals from Clerk's Office personnel pursuant to disciplinary action taken against such personnel by the clerk/court administrator under the Clerk's Office Policies and Procedures Manual. (Source: Minutes, June 1995 Banc Meeting)

## **X. APPLICATION FOR DISCRETIONARY APPEAL**

### **Rule 31. Discretionary Applications.**

(g) No extensions of time shall be granted in filing a discretionary application unless the motion for extension is filed on or before the due date of the discretionary application. No extension of time shall be granted to file a response to a discretionary application.

Rule amended August 1, 2012.

Correction made to Rule 16 for consistency with Rule 31(g).

## **IV. EXTENSION OF TIME FOR NOTICE OF APPEAL, ETC.**

### **Rule 16. Extension of Time for Filing.**

(c) No extension of time shall be granted for filing interlocutory or discretionary applications or filing responses thereto other than permitted under Rule 31 (g).

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

Wednesday, May 15, 2013

10:30 a.m.

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

**A G E N D A**

- |      |  |   |
|------|--|---|
| I.   | Call Meeting to Order - Ascertainment of Quorum          | Chief Judge Ellington                               |
| II.  | Approval of January Banc Meeting Minutes                 | Chief Judge Ellington                               |
| III. | Old Business   | Chief Judge Ellington                               |
|      | Status of FY2013-FY2014 Budgets                          | Jan Kelley  |
|      | Update to IT System Projects                             | Presiding Judge Barnes<br>and John Ruggeri          |
|      | Personnel Issue  | Presiding Judge Doyle                               |
| IV.  | New Business   | Chief Judge Ellington                               |
|      | Change to Court Policy - Family<br>and Medical Leave Act | Presiding Judge Phipps<br>and Presiding Judge Doyle |
|      | Use of Presiding Judge Title                             | Chief Judge Ellington                               |
| V.   | Announcements  | Chief Judge Ellington                               |
|      | Investiture of New Chief Judge                           | Chief Judge Ellington                               |
|      | Strategic Planning Committee                             | Chief Judge Ellington                               |
|      | IOM Committee  | Presiding Judge Doyle                               |
|      | 40(b) Motions Filed on Direct Appeals<br>or Applications | Chief Judge Ellington                               |
|      | Correction to Rule 16                                    | Holly Sparrow                                       |
| VI.  | Adjournment  | Chief Judge Ellington                               |

certification when the employee is able to return to duty. Such release or certification shall indicate the extent to which the employee is able to perform the essential functions of the employee's position and may be required as a precondition to the employee's return to duty.

Sick leave may be taken as necessary and is charged in 15 minute increments. It cannot be taken until earned. Annual leave can be used as sick leave. However, sick leave cannot be used as annual leave. If an employee suffers a lengthy sickness and uses all accumulated sick leave, it is up to the discretion of the employee's judge or immediate supervisor, whether additional days will be charged against forfeited leave or the current annual leave.

At the discretion of the supervisor, forfeited leave may be restored and used as sick leave if the employee needs it for an extended illness or injury. Satisfactory evidence as to the illness or disability shall be provided to the supervisor.

#### 4. FAMILY MEDICAL LEAVE ACT

All employees of the Court of Appeals of Georgia are subject to the United States Family Medical Leave Act (FMLA) and have the benefits thereof. An absence of up to twelve weeks of unpaid leave may be taken in accordance with FMLA for one or more of the following reasons: (1) the birth of the employee's child; (2) placement of a child with the employee for adoption or foster care; (3) to care for a child, spouse, or parent who has a serious health condition; (4) when the employee is unable to perform the essential functions of his or her position because of a serious health condition; or (5) for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or reserves in support of a contingency operation.

To be eligible for leave under FMLA, an employee must have been employed for a total of twelve months and must have worked at least 1250 hours during the twelve-month period preceding the commencement of the leave.

If the employee is entitled to paid leave under another policy, which includes short-term disability, unused paid vacation, sick, family or personal leave, the employee must take the paid leave first. Such paid leave will not be counted against the FMLA unpaid leave entitlement.

An employee may take a total of 12 workweeks of unpaid leave for the reasons specified above during a rolling, 12-month period measured backward from the date an employee uses any FMLA leave. An eligible employee who is a spouse, son, daughter, parent or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness covered

under the military family leave amendments to FMLA up to a total of 26 workweeks of unpaid leave during a 12-month period to care for the service member.

To request family and/or medical leave, the employee must complete, sign, and submit a Request for Family and Medical Leave form (which is available from the Fiscal Office) to his or her supervisor. If the need for the FMLA leave is foreseeable, the employee must submit the FMLA leave form thirty (30) calendar days in advance of the effective date of the leave. When the need for FMLA leave is not foreseeable, the form should be submitted within the time prescribed by the Court's usual and customary leave notice requirements

An employee requesting leave due to a serious health condition of the employee or a family member, will be required to provide medical certification of that serious health condition. Failure to provide such certification may result in denial of family medical leave. The employee will be notified in writing within five business days of the submission of the request and medical certification that the leave will or will not be counted as FMLA leave.

The employee may be required to provide periodic recertification of the serious health condition of the family member or himself or herself. If the FMLA leave was due to the employee's own serious health condition then prior to returning to work, the Court may require a certification that the employee is medically able to return to his or her job. Employees returning from FMLA leave will be restored to the same or an equivalent job.

## 5. DONATED LEAVE

The purpose of donated leave is to provide income protection for employees who, because of a catastrophic illness or accident, are temporarily disabled and absent from work for an extended length of time. Under no circumstance, shall donated leave be utilized for non catastrophic sick leave.

Leave donation shall be from employee to employee and shall be strictly voluntary. The identity of donors shall be confidential and shall not be provided to the recipient or to any other individual unless necessary to administer the donation or if it is required by law.

- a. An employee shall not be eligible to solicit leave donations for:
  - i. Any occupationally related accident or illness which is compensable under Workers' Compensation benefits or
  - ii. Disability incurred in the course of committing a felony or assault.

## IOM Chapter I

- g. Appoints Special Prosecutors in bar disciplinary matters.
- h. Supervises preparation of an annual statistical analysis report reflecting caseload of the court, and such other periodic reports deemed necessary by the court.
- i. Performs such other administrative duties as may be required and which are not otherwise provided for by law or rule.

### B. EXECUTIVE COUNCIL

1. Shall be composed of the Chief Judge and the four Presiding Judges and shall act on all matters referred to the Chief Judge and Council as provided by committee assignments. (Source: Minutes September 1999 Banc Meeting.)
2. If not otherwise provided, shall determine which administrative matters should be presented to the full court.
3. Advise and counsel the Chief Judge on matters relating to the court.
4. If a tie vote occurs on a matter under consideration by the Chief Judge and Council, the matter shall be referred to the full court.
5. Purchases of \$1,000 or more shall be submitted to the Executive Council for consideration and approval. (Source: November 18, 2009 Banc Meeting)

### C. BUDGET COMMITTEE

The Chief Judge in consultation with the Fiscal Officer:

1. Prepares response to audit, if necessary, for consideration of the court and signature of the Chief Judge.
2. Conducts such internal or external audits as deemed necessary.
3. Periodically examines fiscal officer's journal, ledger, or similar records to see that postings are current; examines expenditures for supporting documents, and checks any fiscal record deemed necessary.
4. Makes all reports and recommendations directly to the full court.
5. The clerk/court administrator shall be responsible for preparation of drafting amendments on sections pertaining to the Budget Committee of the Internal Operations Manual.

## K. MANUAL FOR INTERNAL OPERATIONS

The clerk/court administrator shall be responsible for drafting and keeping current a loose leaf manual for internal operations, Court of Appeals of Georgia, by:

1. Reviewing all previous minutes of the court.
2. Reviewing any constitutional or statutory enactment that could be construed to pertain to the internal operation of the court.
3. Conferring with each judge on the court to ascertain and reduce to writing the oral policies and procedures now in existence.
4. Conferring with each presiding judge for policies peculiar to each panel with view of striving for uniformity.
5. Review similar rules and manuals of other courts, ABA, and other organizations for new ideas to improve the operation of this court.
6. The table of contents and each section or part prepared for inclusion in the Manual shall be circulated to the court and receive a majority vote before being placed in the Manual for observance by the court.

## L. COURT PERSONNEL COMMITTEE

The Court Personnel Committee shall be responsible for hearing appeals from Clerk's Office personnel pursuant to disciplinary action taken against such personnel by the clerk/court administrator under the Clerk's Office Policies and Procedures Manual. (Source: Minutes, June 1995 Banc Meeting)

under the military family leave amendments to FMLA up to a total of 26 workweeks of unpaid leave during a 12-month period to care for the service member.

To request family and/or medical leave, the employee must complete, sign, and submit a Request for Family and Medical Leave form (which is available from the Fiscal Office) to his or her supervisor. If the need for the FMLA leave is foreseeable, the employee must submit the FMLA leave form thirty (30) calendar days in advance of the effective date of the leave. When the need for FMLA leave is not foreseeable, the form should be submitted within the time prescribed by the Court's usual and customary leave notice requirements

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- a. An employee shall not be eligible to solicit leave donations for:
  - i. Any occupationally related accident or illness which is compensable under Workers' Compensation benefits or
  - ii. Disability incurred in the course of committing a felony or assault.

certification when the employee is able to return to duty. Such release or certification shall indicate the extent to which the employee is able to perform the essential functions of the employee's position and may be required as a precondition to the employee's return to duty.

Sick leave may be taken as necessary and is charged in 15 minute increments. It cannot be taken until earned. Annual leave can be used as sick leave. However, sick leave cannot be used as annual leave. If an employee suffers a lengthy sickness and uses all accumulated sick leave, it is up to the discretion of the employee's judge or immediate supervisor, whether additional days will be charged against forfeited leave or the current annual leave.

At the discretion of the supervisor, forfeited leave may be restored and used as sick leave if the employee needs it for an extended illness or injury. Satisfactory evidence as to the illness or disability shall be provided to the supervisor.

#### 4. FAMILY MEDICAL LEAVE ACT

All employees of the Court of Appeals of Georgia are subject to the United States Family Medical Leave Act (FMLA) and have the benefits thereof. An absence of up to twelve weeks of unpaid leave may be taken in accordance with FMLA for one or more of the following reasons: (1) the birth of the employee's child; (2) placement of a child with the employee for adoption or foster care; (3) to care for a child, spouse, or parent who has a serious health condition; (4) when the employee is unable to perform the essential functions of his or her position because of a serious health condition; or (5) for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or reserves in support of a contingency operation.

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## **X. APPLICATION FOR DISCRETIONARY APPEAL**

### **Rule 31. Discretionary Applications.**

(g) No extensions of time shall be granted in filing a discretionary application unless the motion for extension is filed on or before the due date of the discretionary application. No extension of time shall be granted to file a response to a discretionary application.

Rule amended August 1, 2012.

Correction made to Rule 16 for consistency with Rule 31(g).

## **IV. EXTENSION OF TIME FOR NOTICE OF APPEAL, ETC.**

### **Rule 16. Extension of Time for Filing.**

(c) No extension of time shall be granted for filing interlocutory or discretionary applications or filing responses thereto other than permitted under Rule 31 (g).

*not Dillard  
Barnes 219*



# Court of Appeals

## Memorandum

**To:** Chief Judge John J. Ellington  
Presiding Judge Herbert E. Phipps

**From:** Holly Sparrow

**Subject:** Items on Draft Agenda for May 15, 2013 Banc Meeting

**Date:** May 8, 2013

*Minutes send back to J. Ellington*

### Old Business

1. **Budget** - Chief Judge Ellington to present status of expenditures on Budget FY2013 and the approved FY2014 Budget.
2. **Updates of IT Projects for Court** - Presiding Judge <sup>*Barnes*</sup> Phipps and John Ruggeri. This includes changes to docket system, the trial court records project, etc.

### New Business

3. **Use of Presiding Judge Title - Chief Judge Ellington.** Formerly, the words "Presiding Judge" meant an office with a Term from January 1 through December 31 of a year. The Presiding Judges were the Executive Council which provided advice and counsel to the Chief Judge and approved all purchases more than \$1000 (See IOM, Chapter I, B. page 7) and the Presiding Judges presided over a panel at oral argument. The Presiding Judge of each panel conferred with the Clerk to provide uniformity in practice among the panels through the policy of the IOM. (See IOM, Chapter I, K. page 12). Traditionally, the Presiding Judges were the four most senior judges on the Court, but in 2006 when Judge John Ruffin was Chief Judge, he named a Presiding Judge who was not one of the four most senior judges and that practice has continued. At times, opinions issued with no presiding judge listed when there was a transfer or after the term of office of the Presiding Judge expired.

Most recently "Presiding Judge" has been treated as a title on the opinion that applies to the person named Presiding Judge for the term the appeal was docketed or the most senior judge on the panel for the term the

appeal was docketed when there is no named Presiding Judge on a panel due to a transfer.

The Banc needs to determine how the term Presiding Judge will apply in the future so that there will be consistency in application of that term. The IOM, *macros and docket* would then be changed as necessary.

4. **Change Family and Medical Leave Act Policy in Employee's Handbook** - Presiding Judges Phipps and Doyle. Change would be to no longer stack FLMA leave on top of accrued leave. Most companies do not permit you to use all your accrued leave and then get 12 weeks of FLMA leave. You are not required to stack by the federal act. Instead, the employee would use accrued leave and FMLA leave at the same time. If there was still FMLA leave after the use of all accrued leave, the employee could remain on leave (but without pay) for the full term of FMLA.

#### Announcements

5. **Date for Investiture of Chief Judge** - Chief Judge Ellington
6. **Update to Strategic Plan and Setting Priorities for the 2014 Legislative Session** - Presiding Judges Phipps and Doyle. Use the Strategic Planning committee and include Judges Ellington, Phipps and Doyle to create a draft update of plan including legislative priorities. Other Judges would be invited to send ideas to committee. Once the draft plan was prepared, it would be discussed, finalized and approved by the whole court.
7. **IOM Committee** - Presiding Judge Doyle. Announcement that the Internal Operations Committee which has invited Joe Chandler, Ann Kelley, and Glenna Stone to assist the committee is reviewing the IOM to make sure that it is updated to be consistent with current practices and to clarify the policies.
8. **Emergency Motions, 40 (b) motions filed on pending direct appeals and applications** - Chief Judge Ellington. Reminder that these motions should be reviewed quickly to determine if they are truly emergencies. Recently, we have had an emergency motion filed more frequently in cases in which there is already a discretionary application filed. In one instance, the order was not issued on the motion for almost 3 weeks. These motions are sent to central staff by the Clerk's office and central staff is alerted that the party has titled their motion a 40(b) motion. The Clerk's office asks Central staff to expedite review. Although ultimately the motion may not be an emergency as determined by chambers, the clerk's office needs a fairly quick response since many of these motions relate to pro se litigants in foreclosures or evictions who are seeking Court stays. Sometimes, we are called with the Sheriff waiting on the doorstep to evict.
9. **Housekeeping Correction to Rule 16** - Holly Sparrow. Amendment to Rule 16 to make it consistent with Rule 31 concerning Extensions on Discretionary Applications.
10. Announcement about Clerk - Chief Judge Ellington

add?

Judge Mandatory CJE

12 hours

require again

add to Agenda

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

Wednesday, May 15, 2013

10:30 a.m.

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

**D R A F T   A G E N D A**

- |      |  |   |
|------|--|---|
| I.   | Call Meeting to Order - Ascertainment of Quorum          | Chief Judge Ellington                           |
| II.  | Approval of January Banc Meeting Minutes                 | Chief Judge Ellington                           |
| III. | Old Business   | Chief Judge Ellington                           |
|      | Status of FY2013-FY2014 Budgets                          | Jan Kelley                                      |
|      | Update to IT System Projects                             | Presiding Judge Phipps<br>and John Ruggeri      |
| IV.  | New Business   | Chief Judge Ellington                           |
|      | Use of Presiding Judge Title                             | Chief Judge Ellington                           |
|      | Change to Court Policy - Family<br>and Medical Leave Act | Presiding Judge Phipps<br>Presiding Judge Doyle |
| V.   | Announcements  | Chief Judge Ellington                           |
|      | Investiture of New Chief Judge                           | Chief Judge Ellington                           |
|      | Strategic Planning Committee                             | Chief Judge Ellington                           |
|      | IOM Committee  | Presiding Judge Doyle                           |
|      | 40(b) Motions Filed on Direct Appeals<br>or Applications | Chief Judge Ellington                           |
|      | Correction to Rule 16                                    | Holly Sparrow                                   |
| VI.  | Adjournment  | Chief Judge Ellington                           |

**COURT OF APPEALS OF GEORGIA  
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|      | ✓ Status of FY2013-FY2014 Budgets                          | Jan Kelley  |
|      | Update to IT System Projects                               | Presiding Judge Barnes<br>and John Ruggeri          |
|      | ✓ Personnel Issue  | Presiding Judge Doyle                               |
| IV.  | New Business   | Chief Judge Ellington                               |
|      | ✓ Change to Court Policy - Family<br>and Medical Leave Act | Presiding Judge Phipps<br>and Presiding Judge Doyle |
|      | ✓ Use of Presiding Judge Title                             | Chief Judge Ellington                               |
| V.   | Announcements  | Chief Judge Ellington                               |
|      | ✓ Investiture of New Chief Judge                           | Chief Judge Ellington                               |
|      | ✓ Strategic Planning Committee                             | Chief Judge Ellington                               |
|      | ✓ IOM Committee  | Presiding Judge Doyle                               |
|      | 40(b) Motions Filed on Direct Appeals<br>or Applications   | Chief Judge Ellington                               |
|      | Correction to Rule 16                                      | Holly Sparrow                                       |
| VI.  | Adjournment  | Chief Judge Ellington                               |

*Change lang used Rule about DVD or CD etc Rule 21*

*Committees to Replace - Doyle Ellington  
- Phipps McMillian  
Public June 1  
announcement  
job description  
resumes to com*

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

Wednesday, May 15, 2013

10:30 a.m.

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

**D R A F T   A G E N D A**

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|      | Status of FY2013-FY2014 Budgets                           | Jan Kelley  |
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|      | Correction to Rule 16                                     | Holly Sparrow                                       |
| VI.  | Adjournment   | Chief Judge Ellington                               |

## Holly Sparrow - Possible Banc Meeting April 17, 2013

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**From:** Holly Sparrow  
**To:** Herbert Phipps; J Ellington  
**Date:** 4/8/2013 5:03 PM  
**Subject:** Possible Banc Meeting April 17, 2013  
**CC:** Cindy Harden; Debbie Zimmerman  
**Attachments:** possible items for banc meet 42013.wpd

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Dear Judge Ellington and Judge Phipps:

I am attaching a memorandum which contains the items that I have that might be placed on the Banc Meeting Agenda if we are to have a Banc Meeting next week. Please look at it and let me know if you think we should have a Banc Meeting. If we are to have a Banc Meeting, please let me know if you approve of these agenda items, and whether you have additional items to include on the agenda so I can finalize an agenda this week and can distribute it to the judges.

Holly

*Add finalization  
of Phipps  
becoming  
Chief Judge*

**Holly Sparrow - Fwd: A13I0084, Kessler v. Multibank 2009-1 CRE Venture**

**From:** Holly Sparrow  
**To:** Judy Mayer; Keri Avera  
**Subject:** Fwd: A13I0084, Kessler v. Multibank 2009-1 CRE Venture

*Need addition to IOM majority  
of panel grant  
MFR - single  
judge can then  
grant application  
ever  
assigned  
judge vote  
deny*

Judge Boggs is OK with granting MFR and granting application on Judge McFadden's vote. Since he is assigned Judge, his chambers will issue order. I do not believe anything else will be needed from Judge McFadden like another order. We will see how the entry works in the new docket. We may need to include a note about his vote.

>>> Keri Avera 2/1/2013 8:44 AM >>>

>>> Judy Mayer 1/31/2013 5:18 PM >>>  
Hi.

I'm copying Sabrina on this so Judge Boggs will know what's going on.

This application was originally dismissed on Dec. 11, 2012. MFR was filed. Judge Boggs circulated an order granting the MFR, vacating the 12/11 order and denying the application on its merits. Central Staff recommended granting the application and Judge McFadden wants to grant the application. My question is: how do we grant Judge McFadden's granting the application? We don't have a pink sheet, and since Judge McFadden is the authoring judge, I don't think it's proper for us to do an order.

Thanks for your help.

Judy

Judy Mayer  
Judicial Assistant  
Judge Christopher  
Georgia Court of App.  
404.656.3452

*Next  
Panel  
Banc Meet  
Whole CRT Photo*

*Presiding  
Judge*

From: Debbie Zimmerman  
To: Holly Sparrow  
Date: 2/14/2013 11:04 AM  
Subject: IOM

Holly,

Betty asked me a question this morning about a procedure and I was about to refer her to the court's IOM for the answer. I think that the question she asked me (about reporting Judge Miller's CLE for 2012) is adequately answered by the court's IOM; however, I also think that the IOM is out of date in some ways now that we are electronically docketing and disposing of our cases, and I wondered if it is still being used? Have we been told not to use it? I don't remember any memo about it when we switched to the efast system, but maybe I wasn't paying attention.

For instance, the IOM still says that "After all the necessary judges have initialed the draft and it is returned to the assigned judge, the administrative assistant shall prepare the final opinion, photocopy eleven copies, put a brad in the original, staple remaining copies, complete the judgment line, and take the record with the original and nine copies to the clerk's office to be disseminated."

I don't know whether new AA's are being trained using the IOM or not, but it seems like they would be very confused, if so.

Debbie

**4. Use of Presiding Judge Title.** Formerly, a Presiding Judge was an office with a Term from January 1 through December 1 of a year. The Presiding Judges were the executive Council to provide advice and counsel to the Chief Judge and approve all purchases over \$1000 (See IOM, Chapter I, B. page 7) and to preside over a panel at oral argument. The clerk was to confer with the Presiding Judge of each panel to strive for uniformity in practice through the policy of the IOM. (See IOM, Chapter I, K. page 12). Traditionally, the Presiding Judges were the four most senior judges on the Court, but in 2006 when Judge John Ruffin was Chief Judge, he named a Presiding Judge who was not one of the four most senior judges and that practice has continued. At times, opinions did issue with no presiding judge when there was a transfer or after the term of office of the Presiding Judge expired.

Most recently Presiding Judge has been treated as a title on the opinion that applies to the person named Presiding Judge for the term the appeal was docketed or the most senior judge on the panel for the term the appeal was docketed when there is no named Presiding Judge on a panel do to a transfer.

The Banc needs to determine how the term Presiding Judge will apply in the future so that there will be consistency in policy.

**5. Emergency Motions Filed on Applications.** Recently, we have had emergency motions filed in cases in which there is already a discretionary application filed, when the order was not issued on the motion for almost 3 weeks. These motions are sent to central staff by the clerk's office and central staff is alerted that the party has titled their motion a 40(b) motion and asked to expedite review. Although ultimately the motion may not be a emergency as determined by chambers, the clerk's office does need a response fairly quickly. Many of these motions relate to foreclosures and evictions.

**6. Housekeeping - Rule 16 correction.** Makes the information about extensions in discretionary applications consistent with Rule 31 (g) extensions in Discretionary applications.

**3. Change Family and Medical Leave Act policy in employee's handbook.** FLMA will no longer stack on top of accrued leave. Most companies do not permit you to use all your accrued leave and then get 12 weeks of FLMA leave and you are not required to do so by the federal act. Instead, the employee would use accrued leave and FMLA leave at the same time. If there was still FMLA leave after the use of all accrued leave, the employee could still be on leave without pay for the full term of FMLA. - Judge Doyle?

**1. Budget -** Chief Judge Ellington present outcome of Budget FY2013 and FY2014 after legislative session.

**2. Setting Priorities for the Next 2014 Legislative Session.** Update Strategic Plan - create a committee to create draft update of plan including legislative priorities - Judges Doyle and Phipps?

**From:** Debbie Zimmerman  
**To:** COA\_AA  
**CC:** Herbert Phipps; Holly Sparrow; John Ruggeri  
**Date:** 2/14/2013 11:39 AM  
**Subject:** IOM and E-Fast Manual

Hello AA's,

In a conversation today with our Clerk of Court Holly Sparrow I agreed to try to start up a committee of judges' AA's to begin working on a project to help the court. I'm sure many of you have noticed that parts of the court's internal operating manual, especially those sections having to do with processing and disposing of our cases, are outdated now that we are using the E-Fast system exclusively to handle our cases. And many of you will remember the E-Fast operating manual that Crystal pulled together for us just before the system became operational.

Now that we have been working with the E-Fast system for almost a year, and our tech staff has the kinks worked out to a large extent, it is time to create a users manual that reflects how we actually use the system to process and dispose of our cases - - a manual that includes all of our "best practices" and shares the "tips and tricks" that we have figured out to make our work go smoothly. At the same time, it would be helpful to the judges' IOM Committee and the Clerk if we could make suggestions for updating any parts of the IOM having to do with the circulation of cases.

I am writing to all the judges' AA's even though some of you are very new to the Court and this request may be more properly addressed to the "older" AA's. But I don't want to leave out anyone who is willing to help!

If you would like to help with this project in any way, please let me know. I'll be out of town for the next few days (visiting my grandbaby in NYC!!) so please take a few days to think about it and we'll start talking about it next week, ok?

Thanks!

Debbie Zimmerman  
Administrative Assistant to Presiding Judge Herbert E. Phipps

## Holly Sparrow - Verify

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**From:** Crystal James  
**To:** Holly Sparrow  
**Date:** 3/21/2013 12:12 PM  
**Subject:** Verify

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Holly,

It is my understanding that there is a New Rule (not yet voted in Banc) in place that says if there isn't a Presiding Judge on a panel to make the most senior the P. J. when issuing opinions.

I have a whole court case that has Miller on it and I don't see a point in calling her a Presiding Judge since it is a whole court case and there are two pj's on the case already. What's the rule on that? Is there a new rule for issuing whole court?

IV. EXTENSION OF TIME FOR NOTICE OF APPEAL, ETC.

Rule 16. Extension of Time for Filing.

- (a) Pursuant to the provisions of OCGA § 5-6-39, requests for extensions of time, which must be in writing, may be made only upon showing a bona fide effort has been made to obtain the extension from the trial court and the reason it could not be obtained. Any motion for extension of time to file a Notice of Appeal made in this Court shall be made as a Rule 40 (b) motion and shall be accompanied by a filing fee in the amount set out in Rule 5 or a sufficient pauper's affidavit.
- (b) Extensions of time to file briefs must be requested by motion and shall be subject to the Court's discretion. All extensions shall be by written order and no oral extension shall be recognized.

extension of time to file a brief prior to the motion and/or the di

ited for filing interlocutory appeal permitted under Ru

FCMA change policy  
 prospectively  
 Presiding Judge

Bona Mot on  
 Emergency Motion <sup>to be</sup> ~~filed~~ <sup>filed</sup>  
 Application - <sup>or appeal</sup> ~~Need~~ <sup>Need</sup> to Review  
 Quickly Assigned to Judge  
 in case  
 Reviewed to Determine if Real  
 Emergency  
 Presiding Judge

Vincent Terry  
A 13 D 0292

VTERRY @ TERRY LEARNING  
• Com

April 4 -

\$ 5.97

~~11.99~~  
\$ 199 patient

April 5

\$ 649.24 provider

\$ 216.41

49

A 12 A 24 48

260-70-6533  
405-74 6088

# For Holly

HB 639

Legislation  
of Interest  
COA  
Passed

HB 142

HB 143

HB 212

Juv  
code

SB 104

Child  
Custody  
app =  
limit  
an. app

HB 349

ann. case  
st. app.

Inc. Sapp

Cobb

Cobb Spe

Cut Juv

Y At rank

Juv CO

Sal

supp

tu

F

HB 519

Juv. Reformat

app. to

COA?

- (b) Extensions of time to file briefs must be requested by motion and shall be subject to the Court's discretion. All extensions shall be by written order and no oral extension shall be recognized.

Failure to request an extension of time to file a brief prior to the date the brief is due may result in the non-consideration of the motion and/or the dismissal of the appeal.

- (c) No extension of time shall be granted for filing interlocutory or discretionary applications or filing responses thereto other than permitted under Rule 31(g).

## V. RECORDS AND TRANSCRIPTS

### **Rule 17. Duty of Trial Court Clerks.**

The clerk of the trial court shall certify and transmit to the Clerk of this Court the original transcript and copies of all records as required within the time prescribed by statute. Trial court orders included in the record must contain the signature of the trial court judge. Conformed signatures, stamped signatures, and signatures with permission shall not be permitted. Transmittal shall be made by the clerk or deputy clerk personally or by First Class United States mail, express mail, or commercial courier or delivery service, charges prepaid. Transmittal by a party or attorney is prohibited.

### **Rule 18. Preparation and Arrangement of Records and Transcripts.**

- (a) Records and transcripts, to include depositions, shall be printed on one side of letter-size, white paper of good quality with ample spacing (at least double spaced) and margins so that they may be easily read. The margin at the top shall be of sufficient space so that the transcript may be read when folded over at the top. Type size shall not be smaller than 10 characters per inch. Notwithstanding the 10 characters per inch requirement, the Court shall accept in lieu thereof Times New Roman Regular 14pt. The record shall include an index. The pages of the record shall be numbered consecutively on the bottom of the page.

- (b) Any records or transcripts delivered to this Court from the trial court, and sealed by the trial court, with an order of the trial court attached to the record, shall remain sealed until a motion is made to unseal the record and/or the record is unsealed by this Court. Counsel for any party may move this Court for an order to unseal or seal any record in the Court.



**2012**

**Georgia Court of Appeals**

**RULES**

**Last Update: July 10, 2012**

# RULES COURT OF APPEALS OF GEORGIA

These rules are not intended to reiterate all applicable laws. Where the word "counsel" has been used, this will include pro se parties. The latest version of these rules can be found at the Court web site: [www.gaappeals.us](http://www.gaappeals.us).

**This publication contains the rules  
and all amendments thereto made through July 10, 2012**

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## I. GENERAL

### Rule 1.

#### **Documents; Communications; General.**

##### **(a) Requirement for Written and Signed Documents.**

All filings, documents, motions, briefs, requests and communications relating to appeals shall be in writing, shall be filed with the Clerk's office, shall be signed by an attorney of record, an attorney granted courtesy appearance or pro se party, and shall include the mailing address and telephone number of the attorney or pro se party signing the document, and shall show that copies have been furnished to opposing counsel. Documents with conformed or stamped signatures by judges, attorneys, law firm staff, or an attorney's employee shall not be permitted. No signatures by express permission are permitted. All pleadings, including, but not limited to briefs, motions, requests, applications and notices shall be signed by counsel filing the document. All signed documents shall include the State Bar of Georgia membership number of all submitting attorneys.

##### **(b) Communications with the Court.**

There shall be no communications relating to pending cases to any judge or member of the judge's staff.

##### **(c) Documents.**

All documents filed with the Court shall be typed or printed on non-transparent, letter size (8 ½" x 11") white paper and bound at the top with staples or fasteners (round head or Acco) except as provided in Rule 46. All documents filed with the Court shall have no less than double spacing between the lines including quotations and footnotes. Letter spacing and type or font size shall be no smaller than 10 characters per inch. Notwithstanding the ten (10) characters per inch requirement, the Court shall accept in lieu thereof Times New Roman Regular 14pt (Western). Any documents that do not comply with the Court rules may be returned to counsel with notice of the defect of the pleading, and/or counsel may be ordered to redact and recast such documents. All paper documents filed with this Court shall have a non-glossy, white back of recyclable paper, heavier than regular stationery-type paper.

##### **(d) Counsel.**

All reference to counsel in these rules shall include pro se parties.

##### **(e) Facsimile Filing.**

The Court does not accept facsimile filings.

### Rule 2.

#### **Hours; Filing Fees; Stamped Copies.**

##### **(a) Clerk's Office Hours of Operation and Location.**

The Clerk's office shall be open Monday through Friday from 8:30 a.m. to 4:30 p.m. E.S.T./E.D.T. The address is: Clerk, Court of Appeals of Georgia, Suite 501, 47 Trinity Avenue, S.W., Atlanta, Georgia 30334. The telephone number is (404) 656-3450.

(b) **Filing Fees.**  
All filings requiring fees must be accompanied by a check or money order, a sufficient pauper's affidavit or a form showing a public defender has been appointed to represent the party. The Clerk is not responsible for cash accompanying a filing.

(c) **Stamped "Filed" Copy.**  
If a return stamped "filed" copy of a filed document is needed, parties filing such documents must include an extra copy and a pre-addressed stamped envelope with sufficient postage to have the document returned.

**Rule 3. Expiration Date.**  
When an expiration date falls on Saturday, Sunday, or an official state or national holiday, the time is extended to the next business day.

**Rule 4. Filing and Determination of Filing Date.**  
Except as otherwise provided in this rule, a document will be deemed filed in the Court of Appeals on the date it was physically received in the office of the Clerk of the Court of Appeals with sufficient costs, if applicable, and stamped filed. The office of the Clerk generally is open 8:30 a.m. to 4:30 p.m.

(a) **Drop Box.**  
When the office of the Clerk is not open, documents may be deposited in the Court of Appeals drop box for filing. Documents placed in the drop box are removed each morning and clocked to the present time and date, but shall be deemed filed on the prior business day. The drop box is located inside the street level entrance to the 47 Trinity Avenue Building, which generally is open between 7:00 a.m. and 5:00 p.m., although the Georgia Building Authority may change the hours during which the building is open without prior notice.

(b) **Electronic Filing.**  
Attorneys admitted to practice in the Court of Appeals of Georgia are permitted to file certain documents electronically with the Court pursuant to Rule 46 and the Court's electronic filing instructions which are available at [www.gaappeals.us](http://www.gaappeals.us). The filing date of documents filed electronically is determined in accordance with the electronic filing instructions.

(c) **Filing by Mail or Commercial Delivery.**  
A document transmitted to the office of the Clerk by United States Postal Service priority, express, or first-class mail (including certified or registered mail) or by a commercial carrier for overnight delivery shall be deemed filed on the date shown by the official postmark affixed by the United States Postal Service (not a private or commercial postage meter) or the date shown on the commercial carrier's transmittal

form on the envelope or package containing the document, if the envelope or package is properly addressed, postage prepaid, and the postmark or transmittal date is legible. Otherwise, the document will be deemed filed on the date the document was physically received in the office of the Clerk.

**(d) Filings by Pro Se Prisoners.**

In the absence of an official United States Postal Service postmark showing a date on or before the filing deadline, a document submitted by a prisoner who is not represented by an attorney shall be deemed filed on the date the prisoner delivers the document to prison officials for forwarding to the Clerk of the Court of Appeals. Such delivery shall be shown by the date on the certificate of service or on an affidavit submitted by the prisoner with the document stating the date on which the prisoner gave the document to prison officials with sufficient prepaid postage for first-class mail and the name of the prison official to whom the document was delivered. Such certificate or affidavit will give rise to a presumption that the date of filing reflected in the affidavit is accurate, but the State may rebut the presumption with evidence that the document was given to prison officials after the filing deadline or with insufficient postage. If the institution has a system designed for legal mail, the prisoner must use it to rely upon the provisions of this paragraph.

**(e) Motions for Reconsideration.**

Any other provision of these rules notwithstanding, a motion for reconsideration shall be deemed filed only on the date on which it is physically received in the office of the Clerk. See Rule 37.

Banc Meeting of March 21, 2012, Rule effective April 23, 2012

**Rule 5. Costs.**

Costs are \$80 in all criminal cases and \$300 in all civil cases. Costs shall not be required where either a sufficient pauper's affidavit or a form showing a public defender has been appointed to represent the party has been filed with the Court or is contained in the record. Costs shall accrue upon the docketing of an application or direct appeal and shall be paid no later than the filing of the application or filing of the appellant's brief in direct appeals. Appellant and appellant's counsel are liable for costs when the case is docketed. Costs are not required to file an appellant's brief in a direct appeal which is filed pursuant to an order of this Court granting an interlocutory or discretionary application. The Clerk shall not receive a brief of the appellant or an application unless costs have been paid, a sufficient pauper's affidavit has been filed, or a form showing appointment of a public defender to represent the appellant on appeal has been filed or evidence of indigency is contained in the record.

For purposes of this rule, appeals from probation revocation and juvenile delinquency cases shall be deemed criminal cases and the costs for filing an application or a direct appeal in such cases shall be \$80.

Rule Amendments effective April 23, 2012

**Rule 6.**

**Copies and Certificate of Service.**

All documents filed with the Clerk shall include an original and two copies. All documents shall show copies have been furnished to opposing counsel. Service shall be shown by written acknowledgment, certificate of counsel or affidavit of server, to include the name and complete mailing address of all opposing counsel. Service shall be made before filing. Any document without a certificate of service shall not be accepted for filing. The certificate of service shall be signed by counsel and attached to the document filed.

**Rule 7.**

**Contempt.**

Breach of any rule of the Court of Appeals or failure to comply with an order of this Court subjects the offending party and/or attorney to contempt and may subject the appeal to dismissal or cause appellee's brief to be stricken. The Court may, upon a finding of conduct constituting contempt, impose a fine not to exceed \$2,500.00 against each contemner or revoke the license to practice in this Court, or both.

**Rule 8.**

**Notice of Cause for Disqualification or Recusal.**

Cause for disqualification or recusal of a judge of this Court shall be brought to the attention of the Clerk as soon as practicable. See Rule 44.

## II. ATTORNEYS

### Rule 9.

#### Attorneys.

(a)

#### Application and Oath.

Any member of the State Bar of Georgia may be admitted to practice in this Court upon written application, and the certificate of at least two attorneys of this Court, that such member is of good private and professional character. The oath, may be administered by the Clerk, Deputy Clerk or Deputy Administrator. It may be taken in open court, before a judge in chambers, or in the Clerk's office. The oath is as follows:

*I do solemnly swear (or affirm) that I will conduct myself as an attorney or counselor of this Court truly and honestly, justly and uprightly, and according to law; and that I will support the Constitution of the State of Georgia and the Constitution of the United States. So help me God.*

After the oath has been administered, the applicant shall sign the roll of attorneys admitted to practice in the Court.

(b)

#### Fee.

The fee for admission is \$30.00, payable to the Clerk of the Court of Appeals of Georgia, who shall issue a license under the seal of the Court as evidence of applicant's authority to practice.

(c)

#### Appearance by Courtesy.

As a matter of professional courtesy, a visiting attorney from another state, a district, or territory or a resident attorney, who is not a member of the State Bar of Georgia, may petition this Court to be heard as associate counsel or counsel in a single case, without being admitted as a regular practitioner in this Court by showing the attorney is certified in good standing in the Bar of the highest court of another state, district, or territory. A request for courtesy appearance shall be made by motion which shall state the name and address of the attorney seeking to appear by courtesy and contain proof of that attorney's admittance and good standing in the Bar of the highest court of another state, district, or territory and be accompanied by a check or money order in the amount of \$30.00 payable to the Clerk of the Court of Appeals of Georgia. The motion may be made by the attorney requesting courtesy appearance or a member of the Bar of this Court on behalf of the attorney requesting courtesy appearance.

(d)

#### Withdrawal or Substitution of Counsel.

Any withdrawal or substitution of attorneys of record in the Court shall be communicated to the Court by written motion with a copy to substituted counsel, opposing counsel and the withdrawing or substituting attorney's client. A motion to withdraw as counsel shall contain the address of the withdrawing counsel's

client, or if the address is unknown, the motion shall contain a statement that the client's address is unknown and shall contain the client's last known address.

**(e) Change of Address or Telephone Number.**

If during the pendency of any appeal or application counsel for either party has a change of address or telephone number, counsel shall file a notification of change of address or telephone number with the Court, notifying the Court of counsel's correct address and telephone number and the effective date of such change.

The notification of change of address or telephone number shall be filed as a separate document, an original and two copies, with service made to opposing counsel.

Upon receipt of the notification of change of address or telephone number, the Clerk shall enter the change of address or telephone number on the Court's docket and all further notices generated from the Court shall be to counsel's new address.

Failure of counsel to properly notify the Court of any change of address or telephone number, which may result in counsel not receiving notification of court action, shall not be grounds to reinstate or reconsider any matter adverse to counsel or parties because of the failure of counsel to receive notification from the Court.

**(f) The Court of Appeals does not recognize, nor grant, leaves of court or leaves of absence.**

**Rule 10. Personal Remarks; Judge or Opposing Counsel.**

Personal remarks, whether oral or written, which are discourteous or disparaging to any judge, opposing counsel, or any court, are strictly forbidden.

### III. DOCKETS; CALENDARS

**Rule 11. Appeals, How Entered.**

**(a) Docketing.**

No appeal shall be docketed until the notice of appeal and a record, and transcript, if requested, are filed in the Clerk's office. Each notice of appeal shall be docketed as a separate case.

**(b) Transfer of Cases.**

Whenever an appeal or application filed in this Court is within the jurisdiction of the Supreme Court, such appeal or application shall be transferred by order to that court.

**(c) Transferred Cases.**

Appeals or applications transferred to this Court from the Supreme Court shall be docketed as of the date they are received in this Court.

(d)

**Premature Docketing.**

Any case docketed prior to the entire record coming to the Court, as requested by the parties, may be remanded to the trial court until such time as the record is so prepared and delivered to the Court.

**Rule 12.**

**Closing of the Dockets.**

The docket for the January, April, and September terms shall close at noon on the 15th day of December, April and August, respectively. By order, a closed docket may be opened when expedient for the docketing of a case or cases so that a judgment may be rendered by the Court at the earliest practicable date.

**Rule 13.**

**Notice of Docketing.**

Upon the docketing of every appeal and application for appeal, the Clerk shall mail notice of the docketing date and schedule for briefing to all counsel. The notice of docketing a direct appeal shall include a statement that failure to file the enumeration of errors and appellant's brief within the time required may result in the dismissal of the appeal. The notice shall also state that: Failure to timely file responsive briefs may result in their non-consideration or subject counsel to contempt. Failure of counsel to receive the docketing notice shall not relieve counsel of the responsibility to file briefs timely. See Rule 23.

**Rule 14.**

**Calendar; Conflicts.**

(a)

**Calendars to be Mailed.**

The Clerk shall mail the calendar to counsel in each appeal to be orally argued at least 14 days prior to the date set for oral argument at the addresses shown on the notice of appeal unless the Court is otherwise advised under Rule 9(e).

(b)

**Non-Receipt of Calendar.**

Counsel not receiving a calendar at least 10 days prior to the tentative oral argument dates should contact the Clerk's office to inquire about oral argument dates.

(c)

**Conflicts - State and Federal Court.**

(1) Counsel shall not be deemed to have a conflict unless such counsel:

- (i) Is lead counsel in two or more of the actions affected; and
- (ii) Certifies that the matters cannot be adequately handled by other counsel.

(2) When there is an apparent conflict:

- (i) Appellate arguments prevail over trials, hearings and conferences.
- (ii) The action first filed takes precedence.
- (iii) Felony actions prevail over civil actions.
- (iv) Misdemeanors stand on equal footing with civil actions.
- (v) The courts are assigned the following priorities:
  - (aa) United States Supreme Court.

- (bb) Supreme Court of the State of Georgia.
- (cc) Federal Courts of Appeal and State Courts of Appeal.
- (dd) United States District Courts and Superior Courts.
- (ee) Federal Magistrate Courts and State Courts.
- (ff) Probate, Juvenile and Magistrate Courts.

- (3) The Clerk shall resolve conflicts so as to accommodate all parties insofar as possible.
- (4) Using the above criteria, the only time a conflict exists is when the actions are in courts of equal priority, are of the same type and were filed on the same day. When such conflict exists, counsel shall give prompt written notice of the conflict to opposing counsel and to the clerk of each court.
- (5) When it is evident that counsel's presence is required in more than one court on the same day and no conflict actually exists under the above criteria, counsel shall nevertheless inform all courts concerned, giving the style of the case and the date of filing.

**Rule 15. No Prosecution, Frivolous Appeals and Penalties.**

- (a) On the call of the case for argument, if the appellant does not appear, and has not filed a brief, the Court may dismiss the appeal for want of prosecution.
- (b) The panel of the Court ruling on a case, with or without motion, may by majority vote impose a penalty not to exceed \$2,500.00 against any party and/or party's counsel in any civil case in which there is a direct appeal, application for discretionary appeal, application for interlocutory appeal, or motion which is determined to be frivolous.
- (c) The imposition of such penalty shall constitute a money judgment, in favor of appellee against appellant or appellant's counsel or in favor of appellant against appellee or appellee's counsel, as the Court directs. Upon filing of the remittitur in the trial court, the penalty may be collected as are other money judgments.

**IV. EXTENSION OF TIME FOR NOTICE OF APPEAL, ETC.**

**Rule 16. Extension of Time for Filing.**

- (a) Pursuant to the provisions of OCGA § 5-6-39, requests for extensions of time, which must be in writing, may be made only upon showing a bona fide effort has been made to obtain the extension from the trial court and the reason it could not be obtained. Any motion for extension of time to file a Notice of Appeal made in this Court shall be made as a Rule 40 (b) motion and shall be accompanied by a filing fee in the amount set out in Rule 5 or a sufficient pauper's affidavit.

- (b) Extensions of time to file briefs must be requested by motion and shall be subject to the Court's discretion. All extensions shall be by written order and no oral extension shall be recognized.

Failure to request an extension of time to file a brief prior to the date the brief is due may result in the non-consideration of the motion and/or the dismissal of the appeal.

(c)

No extension of time shall be granted for filing interlocutory or discretionary applications or filing responses thereto. *other than permitted under Rule 31(g).*

## V. RECORDS AND TRANSCRIPTS

### Rule 17.

#### **Duty of Trial Court Clerks.**

The clerk of the trial court shall certify and transmit to the Clerk of this Court the original transcript and copies of all records as required within the time prescribed by statute. Trial court orders included in the record must contain the signature of the trial court judge. Conformed signatures, stamped signatures, and signatures with permission shall not be permitted. Transmittal shall be made by the clerk or deputy clerk personally or by First Class United States mail, express mail, or commercial courier or delivery service, charges prepaid. Transmittal by a party or attorney is prohibited.

### Rule 18.

#### **Preparation and Arrangement of Records and Transcripts.**

- (a) Records and transcripts, to include depositions, shall be printed on one side of letter-size, white paper of good quality with ample spacing (at least double spaced) and margins so that they may be easily read. The margin at the top shall be of sufficient space so that the transcript may be read when folded over at the top. Type size shall not be smaller than 10 characters per inch. Notwithstanding the 10 characters per inch requirement, the Court shall accept in lieu thereof Times New Roman Regular 14pt. The record shall include an index. The pages of the record shall be numbered consecutively on the bottom of the page.

- (b) Any records or transcripts delivered to this Court from the trial court, and sealed by the trial court, with an order of the trial court attached to the record, shall remain sealed until a motion is made to unseal the record and/or the record is unsealed by this Court. Counsel for any party may move this Court for an order to unseal or seal any record in the Court.

**Rule 19. Transmission of Transcript.**

The original transcript shall be a separate document and not attached to the record. It shall show the style of the case and contain an index, and the pages shall be numbered consecutively. Voluminous transcripts may be bound in separate parts. The court reporter and trial court clerk shall certify each part.

**Rule 20. Objections to Records or Transcripts; Waiver.**

Appellee shall be deemed to have waived any failure of the appellant to comply with the provisions of the Appellate Practice Act relating to the filing of the transcript of the evidence and proceedings or transmittal of the record to this Court, unless objection thereto was made and ruled upon in the trial court prior to transmittal and such order is appealed as provided by law.

**Rule 21. Physical Evidence - Original Evidence.**

Any party relying on physical evidence may include as a part of the transcript or record a photograph, a videotape or an audiotape of the evidence, together with an explanation or description if deemed necessary, in lieu of transmitting the original evidence. No original evidence or exhibits shall be transmitted to the Court unless the Court directs the clerk of the trial court to transmit such original evidence or exhibits, or upon the grant of a written motion of the party or parties desiring such original evidence or exhibits to be transmitted to the Court. The motion shall be specific as to what original evidence or exhibits shall be transmitted to the Court and the reason such original evidence or exhibits are necessary for the determination of the appeal. After the remittitur has been issued from the Court to the trial court, all original evidence or exhibits shall be returned to the clerk of the trial court. In no event, unless directed by this Court, shall physical evidence be transmitted to the Court which is bulky, cumbersome, or expensive to transport, or which, by reason of its nature, is dangerous to handle, or which is contraband. Any video or audio recording of evidence shall be submitted to the Court of Appeals in one of the following formats: VHS, DVD, video or audio CD, or audio cassette tape.

## **VI. ENUMERATION OF ERRORS**

**Rule 22. Filing.**

**(a) Time of Filing.**

Pursuant to OCGA §5-6-40, the enumeration of errors, which shall be Part 2 of the appellant's brief, shall be filed within 20 days after the case is docketed. A separate enumeration of errors is not required.

**(b) Jurisdictional Statement.**

The enumeration of errors shall contain a statement of jurisdiction as to why this Court, and not the Supreme Court, has jurisdiction.

## VII. BRIEFS

**Rule 23. Time of Filing; Contempt; Dismissal.**

**(a)** Appellant's brief, which shall contain as Part 2 an enumeration of errors, shall be filed within 20 days after the appeal is docketed. Failure to file within that time, unless extended upon motion for good cause shown, may result in the dismissal of the appeal, and may subject the offender to contempt. See Rule 7 and Rule 13.

Appellant's motion for extension of time to file brief and enumeration of errors must be filed prior to the date the documents are due or the Court may dismiss the appeal.

**(b)** Appellee's brief shall be filed within 40 days after the appeal is docketed or 20 days after the filing of appellant's brief, whichever is later. Failure to timely file may result in non-consideration of the brief and may subject counsel to contempt. See Rule 13. A brief shall be filed by the appellee in all criminal appeals when the State is the appellee; and upon failure to file such brief, the State's representative may be subject to contempt.

**(c)** Appellant may file a reply brief within 20 days from the date of filing of appellee's brief. Appellee has no right to respond to appellant's reply brief except as permitted under Rule 27.

**Rule 24. Preparation.**

**(a)** Briefs shall be limited to an initial appellant's brief, a responding appellee's brief and a reply brief of the appellant. Other briefs shall be accepted only if filed as an Amicus Curiae brief or a supplemental brief. See Rules 26 and Rule 27. Briefs shall not be accepted unless filed by a pro se party, a member of the State Bar of Georgia admitted to the Court or an attorney granted a courtesy appearance in accordance with Rule 9 (c). Counsel are required to file an original and two copies of their brief for each docketed appeal, including companion cases and cross appeals.

**(b) Paper; Spacing.**

Briefs shall be filed in conformity with Rule 1 (a) and (c) and Rule 6.

**(c) Margins.**

Writing shall be on only one side of each sheet with a margin of not less than two inches at the top and a margin of at least one inch on the sides and bottom of each page.

- (d) **Citations.**  
All citations of cases shall be by name of the case as well as by volume, page and year of the official report. Cases not yet reported shall be cited by the Court of Appeals or Supreme Court case number and date of decision.
- (e) **Pages to be Numbered.**  
The pages of each brief shall be sequentially numbered with Arabic numerals at the bottom of the pages.
- (f) **Limitation as to Length.**  
Briefs and responsive briefs shall be limited to 30 pages in civil cases and 50 pages in criminal cases including certificates of services, indexes, exhibits and appendices, except upon written motion directed to the Clerk and approved by the Court. Appellant's reply brief shall be limited to 15 pages. See Rule 27 for additional briefs.
- (g) **Attachments and Exhibits.**  
Documents attached to an appellate brief, which have not been certified by the clerk of the trial court as a part of the appellate record and forwarded to this Court, shall not be considered on appeal.
- (h) **Address of Defendant.**  
Counsel for defendant shall include the address of the defendant in a criminal case on the face of the brief and shall notify the Court of any change of address.

**Rule 25. Structure and Content.**

(a) **Appellant.**

The brief of appellant shall consist of three parts:

- (1) Part One shall contain a succinct and accurate statement of the proceedings below and the material facts relevant to the appeal and the citation of such parts of the record or transcript essential to a consideration of the errors complained of, and a statement of the method by which each enumeration of error was preserved for consideration. Record and transcript citations shall be to the volume or part of the record or transcript and the page numbers that appear on the appellate records or transcript as sent from the trial court.
- (2) Part Two shall consist of the enumeration of errors.
- (3) Part Three shall contain the argument and citation of authorities. It shall also include a concise statement of the applicable standard of review with supporting authority for each issue presented in the brief.

(b) **Appellee.**

The brief of appellee shall be divided in the following manner:

- (1) Part One shall point out any material inaccuracy or incompleteness of appellant's statement of facts and any additional statement of facts deemed necessary, plus such additional parts of the record or transcript deemed material. Failure to do so shall constitute consent to a decision based on the appellant's statement of facts. Except as controverted, appellant's statement of facts may be accepted by this Court as true.
- (2) Part Two shall contain appellee's argument and the citation of authorities as to each enumeration of error. It shall also include the standard of review if different from that contended by the appellant.

(c) **General Provisions.**

(1) **Sequence of Argument.**

The sequence of arguments in the briefs shall follow the order of the enumeration of errors, and shall be numbered accordingly.

(2) **Unsupported Claim of Error; References to Record and Transcripts.**

Any enumeration of error which is not supported in the brief by citation of authority or argument may be deemed abandoned.

(i) Each enumerated error shall be supported in the brief by specific reference to the record or transcript. In the absence of such reference, the Court will not search for or consider such enumeration.

(ii) A contention that certain matters are not supported by the record may be answered by reference to particular pages where they appear.

(iii) Reference to the record should be indicated by specific volume or part of the record and by (R-Page Number of the Record). Reference to the transcript should be indicated by specific volume or part of the transcript and by (T-Page Number of the Transcript). Reference to a motion transcript shall be indicated by (MT-Page Number of the Transcript and date of the hearing).

(3) **Sealing Briefs or Motions.**

No briefs or motions shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.

**Rule 26. Amicus Curiae Briefs.**

Amicus curiae briefs may be filed without leave of Court, disclosing the identity and interest of the person or group on whose behalf the brief is filed and limited to issues properly raised by the parties. Only members of the Bar of this Court or attorneys appearing by courtesy may file amicus curiae briefs. Amicus curiae briefs shall conform to Rule 24(b)-(g).

**Rule 27. Supplemental Briefs.**

- (a) Briefs of the parties shall be limited to an appellant's brief, an appellee's brief, and an appellant's reply brief. Supplemental briefs may be filed only by leave of the Court. Counsel may file a motion for permission to file supplemental briefs. Counsel may not file a supplemental brief contemporaneously with the motion, but may include a copy of the supplemental brief with the motion for permission to file as an exhibit. Counsel shall file a supplemental brief with an original and two copies, not to exceed 15 pages only after permission to file is granted. A certificate of service must be attached to the supplemental brief and service must be made to opposing counsel.
- (b) Parties are not permitted to file letter briefs nor letter cites. Any communication with the Court regarding recent authority which comes to the attention of a party subsequent to the filing of such party's brief or after oral argument, but before decision, must be filed in compliance with Rule 27 (a) above as a supplemental brief. Any response shall be made promptly and in accordance with this rule.

**VIII. ARGUMENT**

**Rule 28. Oral Argument.**

(a) **Request and Time.**

- (1) Unless expressly ordered by the Court, oral argument is never mandatory and argument may be submitted by briefs only. A case shall be placed on the calendar for oral argument only upon the granting of the request of either party. Oral argument is not permitted for applications or motions.
- (2) A request for oral argument shall be filed within 20 days from the date the case is docketed in this Court. An extension of time to file brief and enumeration of errors does not extend the time to request oral argument.
- (3) The request must be a separate document, an original and two copies, directed to the Clerk, certifying that opposing counsel has been notified of the request and that opposing counsel desires, or does not desire, to argue orally. The request shall identify counsel who is scheduled to argue, and any change shall be communicated to the Clerk as soon as practicable.
- (4) A request shall contain a brief statement describing specifically how the decisional process will be significantly aided by oral argument. The request should be self-

contained and should convey the specific reason or reasons oral argument would be beneficial to the Court. Counsel should not assume the brief shall be considered in ruling on the request for oral argument.

**(b) Waiver.**

After either side has been granted oral argument, it may be waived by either side, but waiver by the requester does not remove the case from the oral argument calendar. If either counsel decides to waive oral argument after it has been granted, waiving counsel must notify opposing counsel and the Court of that fact.

Argument shall not be allowed on behalf of any party whose brief has not been timely filed, unless permission is granted by the Court. Counsel requesting extension of time to file briefs waive oral argument if the extension is beyond the end of the term.

Oral argument is waived if counsel is not actually inside the courtroom when the case is formally called in its order for argument.

**(c) Time of Oral Argument.**

Postponements of oral argument are not favored, and no postponement shall be granted under any circumstances that would allow oral argument to take place during a term of the Court subsequent to the term for which the case was docketed.

**(d) Length.**

Argument is limited to 30 minutes for each case, 15 minutes on each side, unless by special leave an enlargement of time is granted. On the day of the argument, counsel may request 5, 10, or 15 minutes for argument. If counsel do not agree on the length of oral argument, the longer time requested shall prevail and each counsel shall be given the same amount of time. Ordinarily, cases shall be argued in the following order: first, 5 minute cases; second, 10 minute cases; and third, 15 minute cases.

No additional time shall be granted for argument except on motion made in writing at least 5 days before the date set for the call of the case. If additional time is granted, the case shall be placed at the end of the calendar unless otherwise ordered by the Court. Appeals, cross appeals, companion cases, and related cases shall be considered to be one case for purpose of oral argument. In the discretion of the Court, a companion case may be treated as a separate case for oral argument if counsel so requests by written motion at least 5 days before the date set for oral argument and the motion is granted by the Court. Where there are third parties or additional parties with divergent interests, additional time may be requested and granted as set out above.

**(e) Number of Counsel Arguing.**

Ordinarily, when both sides of an appeal are argued, only two counsel on each side shall be heard. When only one side of an appeal is argued, or when arguments are to be made on behalf of more than two parties, no more than one counsel per party shall be heard. For exception, see paragraph 28(j).

- (f) **Opening and Concluding; Rebuttal.**  
Appellant has the right to open and conclude the arguments.
- (g) **Courtroom Decorum.**
  - (1) Counsel appearing for oral argument shall check in with the Clerk in the courtroom at 9:30 a.m. on the date of oral argument specifying who shall argue and for how long.
  - (2) Talking, reading newspapers or other material, and audibly studying briefs and arranging papers are prohibited in the courtroom. The lawyers' lounge has been provided for this purpose.
  - (3) All counsel appearing before the Court must be properly attired.
- (h) **Recording.**  
Oral argument shall be recorded only for the use and benefit of the Court.
- (i) **Oral Argument Open to the Public.**  
Counsel may move the Court to exclude the public for a good cause shown. Such motion shall be filed not later than 24 hours prior to oral argument. News media may be granted permission to photograph or videotape oral argument in accordance with the Court's standing order regarding media in the courtroom.
- (j) **Procedural Questions.**  
The Presiding Judge shall decide all questions or issues arising at oral argument.

**Rule 29. Hearing by Quorum.**  
Whenever a Division of the Court is on the bench for the purpose of hearing oral argument, and a quorum (two judges) is present, the Division shall proceed with the call of the docket.

## IX. APPLICATION FOR INTERLOCUTORY APPEALS

- Rule 30. Interlocutory Applications.**
- (a) An application for leave to appeal an interlocutory order shall be granted only when it appears from the documents submitted that:
    - (1) The issue to be decided appears to be dispositive of the case; or
    - (2) The order appears erroneous and will probably cause a substantial error at trial or will adversely affect the rights of the appealing party until entry of final judgment in which case the appeal will be expedited; or

- (3) The establishment of precedent is desirable.
- (b) Applications for interlocutory appeal shall contain a jurisdictional statement and have attached a stamped “filed” copy of the trial court's order to be appealed and a stamped “filed” copy of the certificate of immediate review. The trial court's order and certificate of immediate review must contain the signature of the trial court judge. Neither conformed signatures nor stamped signatures shall be permitted.
- (c) The Clerk is prohibited from receiving the application without the filing fee, a sufficient pauper’s affidavit, or a public defender’s appointment to represent the party on appeal. See OCGA §5-6-4. The filing fee shall be in the amount set out in Rule 5.
- (d) The applicant shall include a copy of any petition or motion which led directly to the order or judgment being appealed and a copy of any responses to the petition or motion with the application.
- (e) Applications for interlocutory appeals pursuant to OCGA § 5-6-34 (b) shall have copies of all submitted materials from the record tabbed and indexed and shall be securely bound at the top with staples or fasteners (round head or ACCO). If not tabbed, indexed and securely bound at the top, the application is subject to dismissal or return for preparation according to the Court's rules. The materials must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced. Failure to submit sufficient material to apprise the Court of the issues and support the argument shall result in denial of the application. Applications and responses to applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of attached exhibits and parts of the record, and shall follow the general format of briefs as to margins.
- (f) No application for interlocutory appeal shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.
- (g) No extension of time shall be granted for filing of interlocutory applications or responses to interlocutory applications.
- (h) Responses are due within 10 days of docketing. No response is required, unless ordered by the Court.
- (i) If an interlocutory application is granted, appellant must file a notice of appeal in the trial court within 10 days of the date of the order granting the application.
- (j) No pleadings will be accepted on an application for interlocutory appeal which are filed more than 30 days after the date of the order granting, denying or dismissing the application or the order granting, denying or dismissing the motion for reconsideration filed on the application.

## X. APPLICATION FOR DISCRETIONARY APPEAL

### **Rule 31. Discretionary Applications.**

- (a) An application for leave to appeal a final judgment in cases subject to appeal under OCGA § 5-6-35 shall be granted only when:
- (1) Reversible error appears to exist; or
  - (2) The establishment of a precedent is desirable.
- (b) The applicant shall include a copy of any petition or motion which led directly to the order or judgment being appealed and a copy of any responses to the petition or motion with the application.
- (c) Applications for discretionary appeal pursuant to OCGA § 5-6-35 shall have copies of all submitted material from the record tabbed and indexed and shall be securely bound at the top with staples or fasteners (round head or ACCO). If not tabbed, indexed and securely bound at the top, the application is subject to dismissal or return for preparation according to the Court's rules. The material must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced. Failure to submit sufficient material to apprise the Court of the issues and support the argument shall result in denial of the application. Applications and responses to applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of attached exhibits and parts of the record, and should follow the general format of briefs as to margins.
- (d) The Clerk is prohibited from receiving the application without the filing fee, a sufficient pauper's affidavit, or a public defender's appointment to represent the party on appeal. See OCGA § 5-6-4. The filing fee shall be in the amount set out in Rule 5.
- (e) Discretionary applications must contain a stamped "filed" copy of the trial court's order or judgment from which the appeal is sought. The stamped "filed" copy of the trial court's order or judgment must contain the signature of the trial court judge. Neither conformed signatures nor stamped signatures are permitted.
- (f) No application for discretionary appeal shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.
- (g) No extensions of time shall be granted in filing a discretionary application unless the motion for extension is filed on or before the due date of the discretionary application. No extension of time shall be granted to file a response to a discretionary application.
- Rule Amendment effective August 1, 2012
- (h) Responses are due within 10 days of docketing. No response is required, unless ordered by the Court.

- (i) If the discretionary application is granted, appellant must file a notice of appeal in the trial court within 10 days of the date of the order granting the application.
- (j) No pleadings will be accepted on an application for discretionary appeal which are filed more than 30 days after the date of the order granting, denying, or dismissing the application or the order granting, denying or dismissing the motion for reconsideration filed on the application.

## **XI. TIME FOR FILING APPLICATIONS**

### **Rule 32. Time for Filing.**

- (a) An application for interlocutory appeal shall be filed in this Court within 10 days of the entry of the trial court's order granting the certificate for immediate review. Entry of the trial court's order shall be the date it is filed with the trial court clerk.
- (b) An application for discretionary appeal shall be filed in this Court generally within 30 days of the date of the entry of the trial court's order being appealed. Pursuant to OCGA § 44-7-56, a discretionary application involving a dispossessory action must be filed within 7 days of the entry of the trial court's order. Entry of the trial court's order shall be the date it is filed with the trial court clerk.
- (c) Applications to appeal interlocutory or discretionary orders of which the Supreme Court has jurisdiction shall be transferred to that Court.

## **XII. OPINIONS AND JUDGMENTS**

### **Rule 33. Showing of Concurrence or Dissent.**

The judgment line on an opinion shall show on its face, the vote or non-participation of each judge.

- (a) **Judgment as Precedent.**

If an appeal is decided by a Division, a judgment in which all three judges fully concur is a binding precedent; provided, however, an opinion is physical precedent only with respect to any Division of the opinion for which there is a concurrence in the judgment only or a special concurrence without a statement of agreement with all that is said. If the appeal is decided by a seven or twelve-judge Court, a full concurrence by a majority of judges is a binding precedent; provided, however, an opinion is physical precedent only with respect to any Division of the opinion for which there are concurrences in the judgment only or special concurrences without a statement of agreement with all that is said in the Division, resulting in a general concurrence by less than a majority of the judges with respect to the Division. The opinion of a case which is physical precedent shall be marked as such.

- (b) **Unreported Opinion.**  
An unreported opinion is neither a physical nor binding precedent but establishes the law of the case as provided by OCGA § 9-11-60 (h).

**Rule 34. Reporting of Opinions.**  
Opinions are reported except as otherwise designated by the Court. The official reports shall list the cases in which opinions were written but not officially reported and shall indicate the authors and participants in the opinions.

**Rule 35. Copies of Opinions.**  
As soon as practicable after judgment, the Clerk shall furnish, without charge, a copy of the opinion to counsel for each party and to the trial judge. Additional copies cost \$1.50 page.

**Rule 36. Affirmance without Opinion, When Rendered.**  
Cases in which:  
(1) The evidence supports the judgment;  
(2) No reversible error of law appears and an opinion would have no precedential value;  
(3) The judgment of the court below adequately explains the decision; and/or  
(4) The issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief may be affirmed without opinion. Rule 36 cases have no precedential value.

### **XIII. RECONSIDERATION**

**Rule 37. Motions for Reconsideration.**  
(a) **Physical Preparation.**  
Motions for reconsideration shall be prepared in accordance with Rule 24.

(b) **Time of Filing.**  
Motions for reconsideration shall be filed within 10 days from the rendition of the judgment or dismissal. Motions for reconsideration must be physically received in the Court for filing within 10 days of the order or judgment for which reconsideration is sought. See Rule 4 (b). No extension of time shall be granted except for providential cause on written motion made before the expiration of 10 days. No response to a motion for reconsideration is required, but any party wishing to respond must do so expeditiously.

- (c) **Time May Be Limited.**  
The Court may by special order in any case direct that the remittitur be transmitted to the clerk of the trial court immediately after the rendition of the decision and judgment, or at any other time, without awaiting the expiration of 10 days, and may by special order limit the time within which a motion for reconsideration may be filed to any period less than 10 days.
- (d) **Second Motion.**  
No party shall file a second motion for reconsideration unless permitted by order of the Court. The filing of a motion for permission to file a second motion for reconsideration does not toll the 10 days for filing a notice of intent to apply for certiorari with the Supreme Court of Georgia.
- (e) **Basis for Granting.**  
A reconsideration shall be granted on motion of the requesting party, only when it appears that the Court overlooked a material fact in the record, a statute or a decision which is controlling as authority and which would require a different judgment from that rendered, or has erroneously construed or misapplied a provision of law or a controlling authority.
- (f) **Opinion May Be Revised without Grant of Motion.**  
If, upon the consideration of a motion for reconsideration, the Court decides its judgment as rendered is correct, but that some revision of the opinion is appropriate, it may revise the opinion accordingly, without granting reconsideration.
- (g) **Voting on Motions, Effect.**  
A motion for reconsideration shall be voted on by the judges who voted on the original opinion. If there is a dissent on the motion for reconsideration on a three-judge case, the motion shall be voted on by seven judges, or should the Court deem it appropriate, 12 judges.
- (h) **No Oral Argument.**  
Oral argument is not permitted on a motion for reconsideration.

#### XIV. CERTIORARI

**Rule 38.**  
(a) **Petition for Writ of Certiorari.**  
**Supreme Court of Georgia.**

(1) Notice of intention to petition for a writ of certiorari shall be filed with the Clerk of this Court within 10 days after the judgment or, if motion for reconsideration is filed, within 10 days after the order ruling on reconsideration. Filing a motion for reconsideration is not a prerequisite for filing a petition for writ of certiorari.

(2) Petition for writ of certiorari to the Supreme Court of Georgia is governed by the rules of that Court. Notice of filing a petition for writ of certiorari shall be filed in this Court simultaneously with the filing of the petition in the Supreme Court.

**(b) Supreme Court of the United States.**

(1) Notice of intention to petition for writ of certiorari to the Supreme Court of the United States shall be filed with the Clerk of this Court within 20 days after denial of a petition for writ of certiorari by the Supreme Court of Georgia.

(2) Notice of filing a petition for a writ of certiorari shall be filed in this Court simultaneously with the filing of a petition in the Supreme Court of the United States.

## **XV. REMITTITUR**

**Rule 39. Transmittal.**

(a) Remittiturs shall be transmitted to the clerk of the trial court as soon as practicable after the expiration of 10 days from the date of the judgment unless otherwise ordered or unless a motion for reconsideration or notice of intention to apply to the Supreme Court of Georgia for writ of certiorari has been filed.

(b) Notice of intention to apply to the Supreme Court of the United States for writ of certiorari generally will not stay the remittitur.

## **XVI. SUPERSEDEAS**

**Rule 40. Supersedeas.**

**(a) Civil Cases.**

The notice of appeal filed as provided in OCGA §§ 5-6-34(a), 5-6-37, and 5-6-38 shall serve as supersedeas upon payment of all costs in the trial court by the appellant. See OCGA § 5-6-46. Upon motion by the appellee, made in the trial court before or after the appeal is docketed in the appellate court, the trial court may require supersedeas bond to be given with such surety and in such amount as the trial court may require. The filing of an application for discretionary appeal shall act as a supersedeas to the extent that a notice of appeal acts as a supersedeas. See OCGA § 5-6-35 (h).

**(b) Emergencies.**

In the exercise of its inherent power this Court may issue such orders or 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 power shall be exercised sparingly. Generally, no order shall be made or direction given in an appeal until it has been docketed in this Court.

A Rule 40 (b) motion shall:

- (1) Contain an explanation why an order of this Court is necessary and why the action requested is time sensitive;
- (2) Contain a stamped "filed" copy of the order being appealed;
- (3) Contain a stamped "filed" copy of the notice of appeal, if such has been filed in the trial court;
- (4) Show that service has been perfected upon the opposing party before filing the motion with the Court; and
- (5) Be accompanied by a filing fee, a sufficient pauper's affidavit, or a form showing a public defender has been appointed to represent the party, unless the motion is filed in a pending case already docketed with the Court. The filing fee shall be in the amount set out in Rule 5.

## **XVII. MOTIONS AND RESPONSES**

### **Rule 41.**

#### **Preparation and Filing.**

##### **(a) Filing in Triplicate.**

Motions and responses to motions shall be filed as an original and two copies as set out in Rule 6. Motions, not letters, shall be filed whenever counsel wish the Court to take any action.

##### **(b) Form and Physical Preparation.**

All motions and responses to motions shall be filed as separate documents, and shall not be filed as joint, compound or alternative motions. No motions or responses to motions shall be filed in the body of briefs, applications, or responses to applications. Motions and responses shall be prepared in accordance with Rule 24. Parties may cite to the record, but shall not attach to the motion or response to a motion exhibits that are included in the trial court record. Failure to comply with this rule may result in non-consideration of such motions or responses.

##### **(c) Motion to Supplement the Record.**

In a motion to supplement the record, counsel shall describe the material to be supplemented; but shall not attach the supplemental materials to the motion filed with the Court unless directed to do so by the Court. If the motion is granted, the Clerk of Court will obtain the supplemental record from the trial court clerk.

##### **(d) Motion to Dismiss.**

Notice of a motion to dismiss and of the grounds thereof shall be given in writing to counsel for the appellant by service made and shown as required in Rule 6. If such

notice cannot be given, the motion shall be entertained and the Court in its discretion shall give such direction as may seem proper. Whenever it appears that the Court has no jurisdiction of a pending appeal, it shall be dismissed or transferred to the Supreme Court, as the facts and/or law require.

(e) **Response Time to Motions.**

Responses to motions shall be made as soon as possible since the Court generally acts on motions quickly. There is no 10 day rule for time to respond to motions.

(f) **Reconsideration.**

See Rule 37.

(g) **Motion to Withdraw Appeal.**

(1) Whenever appellant decides not to pursue an appeal, such party shall promptly file a motion for permission to withdraw the appeal.

(2) In a criminal case, unless the state is the appellant, the motion shall include an affidavit from the defendant agreeing to the withdrawal of the appeal. Should the defendant refuse to provide such affidavit, that fact shall be made known to the Court and the grounds for the withdrawal of the appeal shall be stated in the motion.

## XVIII. OFFICE PAPERS

**Rule 42. Access and Retention of Office Papers.**

(a) Papers shall not be taken from the Clerk's office without leave of Court. When leave is granted, the party receiving the paper shall receipt the Clerk therefore. The Clerk may deliver records to the Clerk of the Supreme Court.

(b) One year after the remittitur has issued, the party paying for the record and transcript may claim them. Otherwise, all records, record appendices and transcripts shall be recycled, unless the parties notify the Clerk, in writing, that the record should be maintained, and the reason therefore.

(c) If the parties anticipate that the case will return to the Court or be appealed to the United States Supreme Court, the parties must notify the Clerk, in writing, to hold the record.

## XIX. PARTIES

### Rule 43.

#### **Parties, How Made.**

(a)

#### **Suggestion of Death of Party.**

The death of a party in a pending appeal may be suggested by counsel for either side at any time.

(b)

#### **Legal Representative May Volunteer.**

The legal representative of the deceased party may voluntarily become a party to the appeal at any time.

(c)

#### **Temporary Administrator.**

A temporary administrator is regarded as a competent party.

(d)

#### **Substituted Party.**

Whenever a party is substituted, counsel for the substituting party shall notify the Clerk and opposing counsel of such substitution.

## XX. DISQUALIFICATIONS AND RECUSALS

### Rule 44. Disqualifications and Recusals.

- (a) Any motion to disqualify or recuse a judge in a particular case shall be filed in writing, and shall contain such evidence and affidavits which shall fully assert the facts upon which the motion is founded. Such motion shall be filed within 20 days of the date of docketing, unless good cause is shown for failure to meet such time requirements.
- (b) The affidavit shall clearly state the facts and reasons for the belief that bias or prejudice exists, being definite and specific as to time, place, persons and circumstances which demonstrate either bias in favor of any adverse party or prejudice against the moving party or a systematic pattern of prejudicial conduct. Allegations consisting of conclusions and opinions are not legally sufficient to support the motion or warrant further proceedings.
- (c) The determination of the motion to disqualify or recuse shall be made upon the written record, and no hearing or oral argument shall be permitted.
- (d) A motion to disqualify or recuse shall be decided by the remaining two judges on the Division and the presiding judge of the next Division. A judge may, however, voluntarily disqualify himself or herself prior to the matter being decided by the other judges. The criteria for disqualification are set forth in statutory law, case law and the Code of Judicial Conduct.
- (e) If the three judges designated to determine a motion to disqualify or recuse a judge do not agree on the decision, the matter shall be decided by a majority of the other judges on the Court not named in the motion to disqualify or recuse.
- (f) Any motion for disqualification or recusal of multiple judges in which the above process will be unsuitable will be dealt with by the Court as required in a particular situation.

Rule Amended June 15, 2011

## XXI. EXPEDITED APPEALS UNDER THE PARENTAL NOTIFICATION ACT

### Rule 45.

#### Parental Notification Act.

- (a) This rule is adopted under the authority of the Georgia Constitution, Article VI, § I, Para. IV (1983); OCGA §§ 15-1-5 and 15-11-114 (e) to provide for the expedited consideration of appeals under the “Parental Notification Act.” (OCGA § 15-11-100 et seq.)
- (b) Any minor to whom a juvenile court has denied a waiver of notice under OCGA § 15-11-114 (d) may obtain an expedited appeal to this Court. For the purpose of this rule, in computing time, Saturdays, Sundays and holidays shall be included. Rule 3 shall govern in the event an expiration date falls on such a date.
- (c) A minor seeking an expedited appeal shall file a notice of appeal and a certified copy of the order denying waiver of notice with the Clerk of this Court. A copy of the notice of appeal shall also be filed with the juvenile court. The name, address and telephone number of the Guardian Ad Litem and any Counsel of Record shall be included with the notice of appeal. Upon receipt of the notice of appeal, this Court shall issue an order to the juvenile court directing that the record and transcript of the hearing be transmitted to and received by this Court within 5 days from the date of filing the notice of appeal with this Court. An enumeration of error shall be filed within the time period for the filing of the record. If a brief is desired, it shall also be filed within the time period for the filing of the record. No filing fee is required.
- (d) The record of the juvenile court shall be certified by the clerk of the juvenile court and transmitted to this Court under seal.
- (e) The Clerk shall assign the appeal to a Division of this Court, which shall take the matter under consideration and shall issue its decision within 5 days of receipt of the record.
- (f) In order to expedite further appellate review, a motion for reconsideration shall not be required. However, if the decision of this Court affirms the judgment of the juvenile court, the minor may file a motion for reconsideration and the same shall be governed by Rule 37, except that such a motion shall be filed within 5 days from the date of the decision of this Court and may be filed out of term. Any motion for reconsideration shall be decided by the Court within 5 days of filing thereof.
- (g) If the decision of this Court reverses the judgment of the juvenile court, the remittitur shall be forwarded to the clerk of the juvenile court immediately after the rendition of the decision. If the decision of this Court affirms the judgment of the juvenile court, the remittitur shall be transmitted to the clerk of the juvenile court as soon as practicable after the expiration of 5 days from the date of the judgment unless otherwise ordered or unless a motion for reconsideration or notice of intention to apply to the Supreme Court for writ of certiorari has been filed.

- (h) Upon good cause shown, the Court shall enter such orders as shall further expedite the processing of these cases.
- (i) In order to invoke the foregoing special procedures, the notice of appeal must be filed within 5 days of receipt by the minor of the juvenile court's order.
- (j) All pleadings, briefs, orders, transcripts, exhibits and any other written or recorded material that are part of the record shall be considered and treated by the Court as confidential. Upon conclusion of the appellate proceedings, the record shall be sealed, and the contents of the record shall not be disclosed, except upon order of this Court or the Supreme Court of Georgia.

## **XXII. ELECTRONIC FILING OF DOCUMENTS**

### **Rule 46.**

#### **Electronic Filing.**

Counsel shall be permitted to file documents with the Court by using the Court's electronic filing system. Counsel must agree to the terms of use and comply with the instructions of the Court's e-filing system. Counsel must also comply with all Rules of the Court except as modified by the electronic filing system terms of use or instructions.