

# Court of Appeals

## Memorandum

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To: Holly K.O. Sparrow

From: William L. Martin, III

Subject: Clerk File for Banc Meeting Notes

Date: July 8, 2010

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These are some files from the Banc Meetings from the past year. I keep these for a while in case I have to go back and reference something from an earlier meeting. I keep all of my raw notes filed away. After a while I will shred most of this.

I tend to keep it longer than I use to because Judge Ruffin, Judge Barnes and Chief Judge Miller would sometimes like to go back to materials at an earlier Banc Meeting.

Also, it is good to keep because Chief Judge Miller will change the Minutes from what actually occurred to what she wants to have occurred. Also, whenever she makes those changes on the Minutes submitted to her, I suggest you keep a copy of your original submission without changes.

Thank you.

/ld

Banc Meeting October or November 2011 - potential subjects for agenda

Budget

New Docket - Judgment Lines

Record Appendix

McFadden memo - vote on dismiss disagreement of panel; vacating grant of app and regrant

Discuss communications with attorneys on orders?

Appeals filed by non-attorney for corporation - see Kathryn's memo

Proper service of corporations - acceptance of filing

Reminder to give reciprocations quickly in transfer cases

Appointment for Judge Smith's position will we have it by January 2012 or what is our plan.

March 31, 2006

# Court of Appeals of the State of Georgia

ATLANTA, November 14, 2011

*The Court of Appeals hereby passes the following order:*

## OATH OF CHIEF JUDGE

Pursuant to the action of the Court of Appeals of Georgia en Banc on October 19, 2011, the clerk of this Court is hereby ordered and directed to place a copy of the Oath of Chief Judge of the Court of Appeals of Georgia, the same having been signed by John J. Ellington, Chief Judge, who administered the Oath, and Charles B. Mikell, Chief Judge of the Court of Appeals of Georgia, who swore the Oath, in the Administrative Orders of this Court. Said Oath is attached hereto and incorporated herein by reference.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **November 14, 2011**

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

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

 Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, January 5, 2011

*The Court of Appeals hereby passes the following order:*

## OATH OF CHIEF JUDGE

Pursuant to the action of the Court of Appeals of Georgia en Banc on September 15, 2010, the clerk of this Court is hereby ordered and directed to place a copy of the Oath of Chief Judge of the Court of Appeals of Georgia, the same having been signed by Herbert E. Phipps, Presiding Judge, who administered the Oath, and John J. Ellington, Chief Judge of the Court of Appeals of Georgia, who swore the Oath, in the Administrative Orders of this Court. Said Oath is attached hereto and incorporated herein by reference.

*Court of Appeals of the State of Georgia*

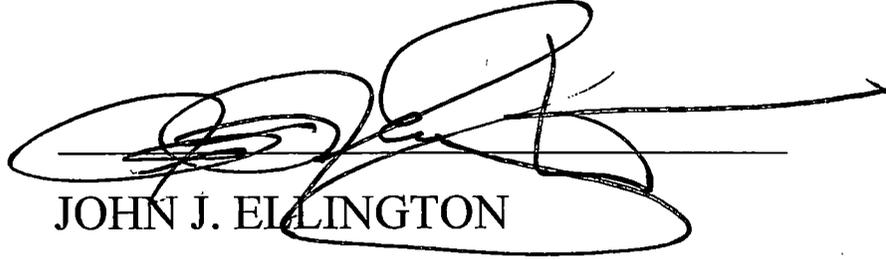
*Clerk's Office, Atlanta*      **January 5, 2011**

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

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

*Halley K. O. Sparrow* Clerk.

faithfully and impartially discharge and perform all of the duties incumbent upon me as a chief judge of the Court of Appeals of Georgia, and will to the best of my ability preserve, protect, and defend the Constitution of the State of Georgia and the Constitution of the United States, so help me God.

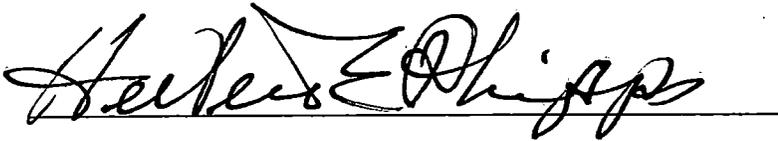


JOHN J. ELLINGTON

Chief Judge

Court of Appeals of Georgia

Sworn to and subscribed before me  
this the 5th day of January, 2011.



Herbert E. Phipps

Presiding Judge

Court of Appeals of Georgia

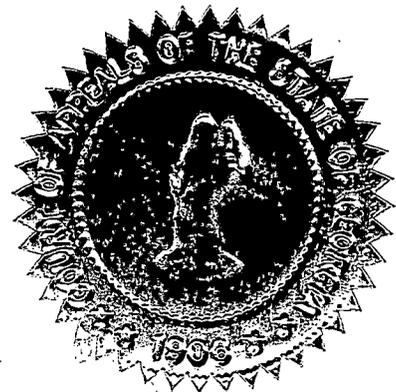
Attest:



HOLLY K.O. SPARROW

Clerk

Court of Appeals of Georgia



SEAL

of the

Court of Appeals of Georgia



# Court of Appeals

## Memorandum

To: Chief Judge Ellington, Presiding Judges Smith, Barnes, Miller and Phipps, Judge Andrews, and ~~Holly Sparrow~~

From: Judge McFadden *MF*

Subject: Reflecting Disagreeing Votes to Orders

Date: August 18, 2011

*ask Tee about this + dismissals she will send examples*

Last term, I disagreed with the dismissal of the appeal in A11A0348, a case in which a notice of intent to the Georgia Supreme Court has been filed. The dismissal was effected by way of an order issued under the name of the Clerk of Court. So the order implicitly represented that the assigned panel had voted unanimously to dismiss the appeal, and there is no way for the parties or the Supreme Court to know that there was a disagreeing vote on that decision. The Supreme Court reflects dissenting votes to its unpublished orders (e.g., orders on petitions for certiorari, orders on motions for reconsideration, and orders on motions for frivolous appeal penalties). Our IOM, however, appears silent on the issue of how disagreement to an order may be reflected thereon.

*yes*

*yes*

*yes*

*on opinions 100%*

This issue may arise again this term, with respect to an order in A11D0465 (on which Presiding Judge Phipps, Judge Andrews and I comprise the panel). I currently am the

disagreeing vote on that order. If my view does not prevail, the order should reflect that it was not an unanimous decision and I should have the opportunity to set out in writing my reasons for disagreeing. I welcome your thoughts on how this can be accomplished consistent with the IOM.

**Holly Sparrow - Your memorandum of August 18, 2011 - A11D0465**

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**From:** Holly Sparrow  
**To:** Chris McFadden  
**Date:** 8/30/2011 5:03 PM  
**Subject:** Your memorandum of August 18, 2011 - A11D0465  
**CC:** J Ellington

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Dear Judge McFadden:

I am responding to your memorandum of August 18, 2011 regarding recording votes on orders of dismissal. The IOM currently states that, "If the order of dismissal is approved by a majority of the judges voting on either a seven judge or 12-judge panel, it will be issued without the names of the judges voting and their vote, but the vote will be maintained as a part of the case file until the case file is recycled."

Therefore, it would seem that a change in the IOM policy would be required to issue an order including the vote of the judges. To change the IOM policy, the issue would need to be either circulated to all 12 judges for a vote or voted upon at an administrative banc meeting. At this time, there is no banc meeting scheduled. I believe you should address your request for a policy change to the Chief Judge and request he either circulate the request or set a banc meeting for that purpose. Seven judges would be required to approve the policy change.

I spoke with Tee Barnes, the Supreme Court Clerk, and she indicated that the Supreme Court does from time to time issue orders with judgement lines showing the vote and occasionally having a written dissent attached. These type of orders are not particularly common for dismissals, but are more frequently issued on motions for reconsideration on opinions. Tee provided an example from S10A1982 to me regarding a dismissal.

If I can provide any further information, please do not hesitate to contact me.

Holly Sparrow



**SUPREME COURT OF GEORGIA**  
Case No. S10A1982

Atlanta October 18, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**SHERMAN et al. v. FULTON COUNTY BOARD OF ASSESSORS et al.**

Appellants in the above-styled case filed a direct appeal seeking review of an order granting a motion to stay the judicial proceedings, and Appellees have filed a motion to dismiss the appeal for failure to comply with the interlocutory appeal procedures of OCGA § 5-6-34. Trial court “orders granting or denying motions to stay judicial proceedings . . . should be certified for interlocutory review. . . .” Phillips Constr. Co. v. Cowart Iron Works, 250 Ga. 488, 490 (1983). The trial court denied a request for certificate of immediate review, and the notice of direct appeal filed by Appellants was improper. Accordingly, the motion to dismiss the above-styled appeal is granted, and said appeal is hereby dismissed.

All the Justices concur, except Thompson, Hines, and Nahmias, JJ., who dissent.

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk’s Office, Atlanta

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

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

 Chief Deputy Clerk

S10A1982. SHERMAN et al. v. FULTON COUNTY BOARD OF TAX  
ASSESSORS et al.

NAHMIAS, Justice, dissenting.

The order dismissing this appeal fails to identify any basis for this Court's jurisdiction to rule on this case, and I believe there is none. Accordingly, the appeal should be transferred to the Court of Appeals.

“This Court has a duty to resolve any questions about its jurisdiction over any given case where doubt may exist.” Reeves v. Newman, 287 Ga. 317, 317-318 (695 SE2d 626) (2010). This is a direct appeal seeking review of the trial court's order staying the appellants' declaratory judgment action pending this Court's decision in a related case, Sherman v. Fulton County Bd. of Assessors, Case No. S10A0924. The appellants seek to invoke this Court's jurisdiction over constitutional questions and equity cases. However, while the lawsuit clearly raised a constitutional challenge to OCGA § 36-80-16.1 (e), the trial court has not yet ruled on that issue and the appeal therefore does not invoke this Court's constitutional question jurisdiction. See City of Decatur v. DeKalb County, 284 Ga. 434, 436 (668 SE2d 247) (2008) (“[T]his court will never pass upon constitutional questions unless it clearly appears in the record that the point was directly and properly made in the [trial] court below and

distinctly passed upon by the trial judge.’” (quoting City of Atlanta v. Columbia Pictures Corp., 218 Ga. 714, 719 (130 SE2d 490) (1963)); Marr v. Ga. Dept. of Education, 264 Ga. 841, 841 (452 SE2d 112) (1995) (same). Nor does the granting of a stay of a declaratory judgment action, in order to allow a related case to be decided on appeal, present any issue properly invoking our equity jurisdiction. See Redfearn v. Huntcliff Homes Assn., 271 Ga. 745, 746-747 (524 SE2d 464) (1999) (holding that whether an appeal invokes our equity jurisdiction depends upon the issues raised on appeal and that equity jurisdiction does not exist where the equitable relief sought or denied is ancillary to underlying issues of law).

Looking beyond appellants’ stated jurisdictional bases fares no better. Unlike in the related case pending before this Court, in this action the appellants did not seek mandamus or injunctive relief that could vest us with jurisdiction. Nor does this case properly come within our certiorari jurisdiction, even broadly construed. See State v. Murray, 286 Ga. 258, 266-272 (687 SE2d 790) (2009) (Nahmias, J., dissenting).

In the absence of any apparent authority under the Georgia Constitution for this Court to render a decision in this case, we should transfer the appeal to the Court of Appeals. See Ga. Const. of 1983, Art. VI, Sec. V, Para. III (“The

Court of Appeals . . . shall exercise appellate and certiorari jurisdiction in all cases not reserved to the Supreme Court or conferred on other courts by law.”).

For this reason, I respectfully dissent. I am authorized to state that Justice Thompson and Justice Hines join in this dissent.



SUPREME COURT OF GEORGIA

Case No. S11D0546

Atlanta January 6, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

REGINALD DEKEITH MIMS v. THE STATE

From the Superior Court of Muscogee County.

On December 10, 2010, Reginald Dekeith Mims filed a “Notice” challenging certain trial court orders. However, notices of appeal must be filed in the trial court, not this Court. Compare OCGA § 5-6-37 (“Unless otherwise provided by law, an appeal may be taken . . . by filing with the clerk of the court wherein the case was determined a notice of appeal.”), with OCGA § 5-6-35 (b) (“All appeals taken in cases specified in subsection (a) of this Code section shall be by application in the nature of a petition enumerating the errors to be urged on appeal . . .”). We therefore construe Mims’s filing as an application for discretionary appeal.

The application mentions three orders, but only two were attached as exhibits as required by statute. See OCGA § 5-6-35 (b) (“The applicant shall include as exhibits to the petition a copy of the order or judgment being appealed.”). Moreover, only one is a file-stamped copy showing the date of filing in the trial court. See Supreme Court Rule 33 (“Applications for discretionary appeal shall . . . have attached a stamped copy of the trial court’s order to be appealed, showing the date of filing.”). Thus, the only matter properly before us for decision at this time is Mims’s application for discretionary appeal of the November 10, 2010 order denying his request for reconsideration of an order denying an earlier motion to vacate as void his sentence on drug convictions.

The application cites no basis for this Court to exercise jurisdiction. See OCGA § 5-6-35 (b) (requiring applications to “stat[e] why the appellate court has jurisdiction”); Supreme Court Rule 33 (“Applications for discretionary appeal shall contain a jurisdictional statement . . .”). This is not a murder case, and no other jurisdictional basis is evident to us in this criminal case. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. II-IV (delimiting jurisdiction of this Court). Jurisdiction therefore lies in the Court of Appeals instead of this Court, see Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (“The Court of Appeals shall be a court of review and shall exercise appellate and certiorari jurisdiction in all cases not reserved to the Supreme Court or conferred on other courts by law.”), and we will transfer the discretionary application to the Court of Appeals.

We also address one other matter. The second order attached to the application for discretionary appeal is dated November 9, 2010. That order denied filing of Mims’s petition for mandamus because the trial court found that the pleading showed on its face such a complete absence of justiciable issues of law or fact that it could not reasonably be believed that the court could grant relief. Pre-filing judicial review is mandated by statute, but regardless of the outcome, the judge is required to sign and file an order reflecting the disposition. See OCGA § 9-15-2 (d) (“[I]f the judge determines that the pleading shows on its face such a complete absence of any justiciable issue of law or fact that it cannot be reasonably believed that the court could grant any relief against any party named in the pleading, then the judge shall enter an order denying filing of the pleading. If the judge does not so find, then the judge shall enter an order allowing filing and shall return the pleading to the clerk for filing as in other cases.” (emphasis added)). Moreover, “[a]n order denying filing shall be appealable in the same manner as an order dismissing an action,” *id.*, and this Court has appellate jurisdiction over “[a]ll judgments or orders granting or refusing to grant mandamus,” OCGA § 5-6-34 (a) (7). However, we do not have jurisdiction to rule on a discretionary appeal from the November 9, 2010 order, because “both a written judgment and its entry by filing the writing with the clerk are essential prerequisites to an appeal,” Titelman v. Stedman, 277 Ga. 460, 461 (591 SE2d 774) (2004), and, as noted above, the order denying filing was not filed with the clerk.

For these reasons, we direct the trial court to file with the clerk of the trial court its order denying filing of Mims's petition for mandamus and to provide Mims with a file-stamped copy. The discretionary application regarding the November 10, 2010 order is transferred to the Court of Appeals.

Transferred to the Court of Appeals. All the Justices concur, except Carley, P.J., and Benham, J., who dissent.

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

I certify that the above is a true extract from the Minutes of the Supreme Court of Georgia.

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

 Lynn M. Stinson, Chief Deputy Clerk



SUPREME COURT OF GEORGIA  
Case No. S10A1773

Atlanta, June 13, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

**GWINNETT COUNTY SCHOOL DISTRICT et al. v. KATHY COX et al.**

**Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.**

**All the Justices concur, except Carley, P.J., Melton and Nahmias, JJ. who dissent.**

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from  
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Witness my signature and the seal of said court  
hereto affixed the day and year last above written.

*Theresa A. Barnes*, Clerk



SUPREME COURT OF GEORGIA  
Case No. S10C0043

Atlanta, January 11, 2010

The Honorable Supreme Court met pursuant to adjournment. The following order was passed.

**RUSSEL BAKER v. WELLSTAR HEALTH SYSTEM, INC., d/b/a  
WELLSTAR KENNESTONE HOSPITAL**

Upon consideration of the Petition for Certiorari to review the judgment of the Court of Appeals in this case, it is ordered that it be hereby granted.

It is further ordered that the application for appeal is hereby granted. Notice of Appeal directed to the Supreme Court should be filed in the trial court within 10 days from the date of this order, timely enumeration of errors and briefs to be filed in this Court after the record is docketed here. The case will be automatically assigned to an oral argument calendar upon docketing. Oral argument is mandatory in granted certiorari cases. All the Justices concur, except Hines and Melton, JJ., who dissent.

The Court is particularly concerned with the following:

Whether the protective order entered in this case comports with *Moreland v. Austin*, 284 Ga. 730 (2008) and the requirements of the Health Insurance Portability and Accountability Act.

Court of Appeals Case No. A09I0296

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

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

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

*Theresa A. Barnes*, Clerk



SUPREME COURT OF GEORGIA  
Case No. S09H1632

Atlanta, January 11, 2010

The Honorable Supreme Court met pursuant to adjournment. The following order was passed.

**WILLIAM CONKLIN-MORDWIN v. THE STATE**

**From the Superior Court of Chatham County.**

**Upon consideration of the Application for Certificate of Probable Cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied.**

**All the Justices concur, except Hunstein, C.J., who dissents.**

Trial Court Case No. CV081331AB

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

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

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

*Theresa A. Barnes*, Clerk

OATH FOR CHIEF JUDGE, COURT OF APPEALS OF GEORGIA

I ( say your name ) do solemnly swear that I will fulfill my duties as  
Chief Judge of the Court of Appeals of Georgia to the best of my ability,  
and will I work to help each judge and each employee of the Court of  
Appeals to help them fulfill their duty to the people of Georgia.

SO HELP ME GOD.



C. B. Mitchell

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incumbent upon me as a chief judge of the Court of Appeals of Georgia, and will to the best of my ability preserve, protect, and defend the Constitution of the State of Georgia and the Constitution of the United States, so help me God.

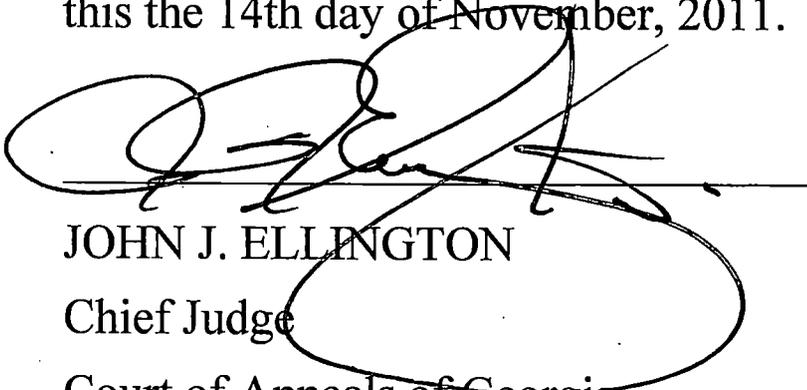


CHARLES B. MIKELL

Chief Judge

Court of Appeals of Georgia

Sworn to and subscribed before me  
this the 14th day of November, 2011.

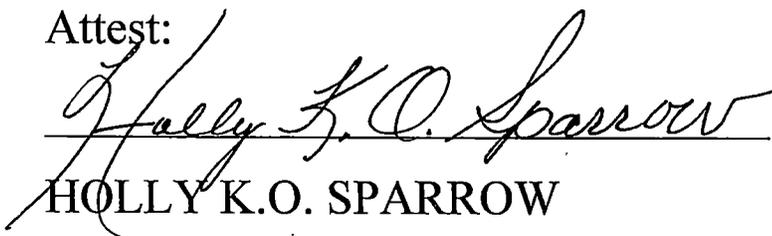


JOHN J. ELLINGTON

Chief Judge

Court of Appeals of Georgia

Attest:



HOLLY K.O. SPARROW

Clerk

Court of Appeals of Georgia

SEAL

of the

Court of Appeals of Georgia