

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

Wednesday, January 19, 2011, 10:30 a.m.

A Banc Meeting of the Court of Appeals was called and held in the Court of Appeals Banc Room, Suite 501, 47 Trinity Avenue, S. W., Atlanta, Georgia at 10:30 a.m. on Wednesday, January 19, 2011. Those present were:

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

Also attending were: Ms. Holly Sparrow, Clerk and Court Administrator
Ms. Jan Kelley, Fiscal Officer

I. CALL MEETING TO ORDER - ASCERTAINMENT OF QUORUM

Chief Judge Ellington called the meeting to order at 10:37 a.m. He announced that a quorum was present.

II. APPROVAL OF BANC MEETING MINUTES

Chief Judge Ellington asked for a motion to approve the October 20, 2010 Banc Meeting Minutes. The motion was made by Presiding Judge Miller and seconded by Presiding Judge Phipps. The Minutes were unanimously approved.

III. RECOGNITIONS

Chief Judge Ellington recognized Judges Blackwell, Dillard and McFadden as attending their first Banc Meeting. The Chief Judge then recognized Presiding Judge Miller and saluted her service to the Court as Chief Judge for the last two years. He presented Presiding Judge Miller with a gift from the Court in honor of her service.

IV. BUDGET UPDATE

Ms. Kelley provided a budget update for the judges at the request of Chief Judge Ellington. The Court will continue furlough days once a month until the Court can be sure that it will meet its budget for the year. Presiding Judge Phipps made a motion to adopt the tentative furlough date schedule submitted by Ms. Kelley. The motion was seconded by Presiding Judge Smith and approved unanimously.

There was also discussion of the need to fill the current position in Central Staff which was left vacant when one of the Central Staff attorneys took a position as Staff Attorney to Judge McFadden at the first of the year and the vacancy's effect on the Court's budget. Presiding Judge Miller made a motion that the Chief Judge be granted the authority to determine when to fill the vacancy. The motion was seconded by Judge Mikell and approved unanimously. Judge Mikell also moved that the Judge in Charge of Central Staff be delegated the authority to choose the candidate to hire for the vacant Central Staff position after the Chief Judge makes the decision as to when to fill the position. This motion was seconded by Judge McFadden and approved unanimously.

V. EXTENSION TO FILE BRIEFS

Chief Judge Ellington called upon Presiding Judge Phipps to report on this issue. Presiding Judge Phipps indicated there have been delays in dealing with Extensions of Time to File Briefs and because of the delay the clerk's office has to take time to answer numerous and repeated calls from counsel as to the status of the extensions. He proposed that since almost all first requests for extension for less than 20 days are granted by the Court, the Clerk be given the authority to grant such motions within parameters. Presiding Judge Phipps asked Ms. Sparrow to comment. She added that over 38 of the appellate courts in the nation do give the Clerk some authority to grant an extension of limited time. Presiding Judge Phipps made a motion to give the Clerk authority to grant no more than a 20-day Extension of Time to File a Brief when the motion is the first motion submitted by the party and there is nothing unusual about the request. Presiding Judge Phipps accepted an amendment by Judge Andrews that the motion must be filed before the due date of the Brief. Judge Dillard seconded the motion and the motion was approved unanimously.

VI. JUDICIAL COUNCIL RECUSAL COMMITTEE

Chief Judge Ellington asked Presiding Judge Smith to report on the work of the Judicial Council Recusal Committee and the draft amendments to Canon 3 regarding contributions to a judge's campaign and recusal. He highlighted the changes for the judges. Presiding Judge Smith asked whether in light of the draft amendments, the Court of Appeals rule on recusal (Rule 44) should be amended. It was decided to table this issue while Presiding Judge Smith investigates how the Supreme Court is dealing with this issue.

VII. RECORD APPENDIX AND STATUTE ON COST OF PREPARING APPELLATE RECORD

Presiding Judge Smith at the request of Chief Judge Ellington began the discussion of this issue noting that a bill (HB 41) to repeal the increase in the appellate record preparation fee from \$1.50 to \$10.00 has been introduced in the 2011 General Assembly. He pointed out that even if the Bill passes, the Georgia Trial Lawyers Association opposes disposing of the rule which permits the parties to file Record Appendices. Presiding Judge Smith stated that Chief Justice Hunstein also opposes eliminating the Record Appendix process. Presiding Judge Smith indicated that the Record Appendix has resulted in some of the trial court clerk's work in preparing the appellate record being shifted to the clerk's office of the Court of Appeals. With the small staff, this process has become very burdensome for the clerk's office. Presiding Judge Smith said there are a number of Bar groups studying this issue, but no solution has been offered for the Court's problems.

After a discussion of the pros and cons of retaining the rule permitting filing of a Record Appendix, Chief Judge Ellington proposed that the Court support the repeal of the \$10 charge. Upon passage of House Bill 41, the Court will delete the amendment to Rule 17 that permits Record Appendix filing in the Court of Appeals of Georgia. The proposal was restated as a motion and seconded by Presiding Judge Miller. The motion was unanimously approved.

VIII. COURT CAR

Chief Judge Ellington presented his proposal to surplus the Court car. The Chief Judge noted that the car was getting older, there are no funds to replace it and it has been less frequently used recently. Ultimately, it would be beneficial to the Court's budget to surplus the car and not replace it. Presiding Judge Smith made a motion to surplus the Court car which was seconded by Presiding Judge Barnes. The motion was unanimously approved by the judges.

IX. NEW BUSINESS

Chief Judge Ellington stated that the Court needs to create a schematic for placement of Chief Judge portraits on the hallways of the fourth and sixth floors of the Judicial Building since the Courtroom portrait locations have all been filled. He asked Judge Mikell, head of the Portrait Committee, to create, along with Ms. Sparrow and Ms. Kelley, a scheme and present it to the judges at the next Banc Meeting.

X. ANNOUNCEMENTS

For the benefit of the new judges, Chief Judge Ellington reminded the judges that the third Wednesday of each month is tentatively reserved for Banc Meetings and the judges should note this on their calendars.

Chief Judge Ellington also announced he would be making new Committee Assignments and asked the new judges to indicate their interest in specific committees to him within the next couple of weeks.

Finally, Chief Judge Ellington explained to the new judges the Recusal - Case Transfer procedure the clerk's office uses, and also explained to all the judges that the process is being reset to appropriately add the new judges to the process.

XI. ADJOURNMENT

There being no further business, and upon hearing a motion to adjourn, Chief Judge Ellington adjourned the meeting.

Respectfully submitted,



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

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

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

Wednesday, February 16, 2011
2:30 P.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 19, 2011 Banc Meeting Minutes | Chief Judge Ellington |
| III. | Budget Update and Job Vacancies | Chief Judge Ellington
Presiding Judge Phipps |
| IV. | Recusal Rule | Presiding Judge Smith |
| V. | Old Business | Chief Judge Ellington |
| VI. | New Business | Chief Judge Ellington |
| VII. | Announcements | |
| VIII. | Adjournment | |

2:25

Board Meeting 2/16/2011

Quorum 2nd
Banes, McFadden

Doyle - vote to delete amendment Rule 17

sunset
affirmation
approval

Notes

[Traves, Dues
June 4

State Bar Myrtle Beach
= Jan \$1200 travel } estimate
\$300 conf fee }
membership dues

Ellington donate travel
Jan has form

Jan Sen Budget 2011 act Jucent c
earmarks floaters AAs

Differences Sup Ct & COA

job vacancy central staff.

Ma Sean Brant hired start today
physically by end of month
transition from Judge Mikell

J Mikell interviewing

* Shared Fiscal Services

Smith present dis Sup Ct
Andrews current COA rule

Dillard leave as is

Barnes not hurt to set out internal
procedures

transparent
to judges decide

Smith Cannons has specific rules on amount
rather than indiv. ext rules

let. C.J. Hanstein know keeping or not

current rule added

Mot Doyle - 2 judges & PJ of best panel

determined

Judge can voluntarily disqualify
use Sup Ct language

Smith second

regulation

Thippis - indiv judge pay com indiv photos
Ellington - disagree as to new judges

Ellington motion
resolution

mens Furlough March

actant, in distress

ION processors of apin

3rd Wed 16th
Mar

Andrews motion to adjourn
Mikell and

**COURT OF APPEALS OF GEORGIA
FY 2011 BUDGET**

APPROVED REDUCTIONS

	EFFECTIVE DATE		FURLOUGH DAYS
FY 2011 SHORTFALL		\$558,993	17.92
PROPOSED BUDGET CUTS - OPERATING			
I.T. EXPENSES	7/1/10	\$62,000	1.99
OFFICE EXPENSES	7/1/10	\$25,000	0.80
NON-JUDGE TRAVEL	7/1/10	\$10,000	0.32
REDUCE OUTSIDE EMPLOYEE TRAINING	7/1/10	\$10,000	0.32
RELEASE UNUSED PARKING SPACES	7/1/10	\$4,800	0.15
		<u>\$111,800</u>	<u>0.00</u>
REMAINING NEEDED		\$447,193	14.34
PROPOSED BUDGET CUTS - PERSONNEL			
CLERK RETIREMENT	8/1/10	\$137,828	
		<u>\$137,828</u>	
REMAINING NEEDED/FURLOUGH DAYS		\$309,365	10.14
EST. REVISED SAVINGS P/FURLOUGH DAY	\$30,504		
APPROVED FURLOUGHS			
SEP, OCT, NOV, JAN, FEB	5	\$152,520	
		<u>\$152,520</u>	<u>4.89</u>
		\$156,845	5.14
OTHER POTENTIAL OPERATING CUTS			
I.T. EXPENSES - REDUCE EQUIPMENT BUDGET (APPROVED)		\$60,564	
VOLUNTARY FURLOUGH - JUDGES		\$3,320	
DONATED LEAVE - JUDGES		\$2,840	2.19
		<u>\$66,724</u>	
		<u>\$90,121</u>	<u>2.95</u>
PROJECTED PERSONNEL CHANGES AFFECTING BUDGET			
ESTIMATED CHANGES IN PERSONAL SVCS EXP		-\$62,626	
ESTIMATED PENDING ANNUAL LEAVE/FORFEITED LEAVE		\$16,277	
		<u>-\$46,349</u>	<u>-1.52</u>
		<u>\$43,772</u>	<u>1.43</u>
PROJECTED CHANGES IN OPERATING EXP			
ESTIMATED FUNDS AVAILABLE FROM OPERATING EXPENSE			
I.T. EXPENSES		-\$22,000	
OTHER - PRINTING, MOTOR VEHICLE, FREIGHT, REGISTRATION/DUES (CLERK)		-\$3,517	-\$25,517
PER DIEM & MILEAGE EXP-SENIOR JUDGES		\$3,215	
INCREASE IN JUDGES' COMMUTE EXP - NEW JUDGE		\$4,592	
		<u>\$7,807</u>	<u>0.26</u>
		<u>-\$17,710</u>	
REMAINING REDUCTIONS/FURLOUGHS NEEDED		\$26,062	0.85

BUDGET CUTS/EXP COMPARISON - FY 2011

	SUPREME COURT	COURT OF APPEALS
REDUCTION%	-12.57%	-15.01%
CASELOAD	INCR	SLIGHT DECR
FUNDED POSITIONS	43	82
PERSONAL SERVICES		
STAFF SALARIES FROZEN	YES	YES
NOTE: COA ATTYS MAKE APPROX \$2,000 MORE THAN SUPREME COURT ATTYS DUE TO LAST STEP INCREASE FUNDED BY LEGISLATURE		
ANNUAL LEAVE PAYOUT & BENEFITS	2 NOT MUCH LEAVE	7 \$91,146
FORFEIT LEAVE PAYOUT	NOT MUCH LEAVE	\$59,688
		\$150,834
CENTRAL STAFF	3 + 2 DEATH PENALTY	5
CLERK'S OFFICE		
STAFF	5	9
ADMINISTRATIVE ASSISTANT	NO	YES
INTAKE CLERK	NO	YES
FILE LIBRARIAN	NO	YES
WORKING INTERNS - NO PAY	YES	YES
FISCAL OFFICE	1 + HELP FROM CLERK'S OFC & BAR ADMISSIONS PERSONNEL	3
STAFF		
DUTIES:		
PROCUREMENT SERVICES	CLERK'S OFC NO	YES
FACILITIES	CLERK'S OFC NO	YES
ASSET MANAGEMENT	NO	YES
TELECOMMUNICATIONS	I.T. NO	YES
PAYROLL & HR	YES	YES
FINANCIAL SERVICES	YES	YES
LIBRARY SERVICES	CLERK'S OFC NO	YES
PUBLIC INFORMATION OFFICER	YES	NO
POSITIONS LOST	7	11
CENTRAL STAFF	2	5
FLOATING AA	1	2
FISCAL OFFICE	0	1
CLERK'S OFC & OTHER	4	3
REPORTER'S OFC	2	

BUDGET CUTS/EXP COMPARISON - FY 2011

BOOK SUBSCRIPTIONS	NO	YES - \$17,000/YR
ONLINE LEGAL SUBSCRIPTIONS		
LEXIS	\$1,044/MO	\$1,300/MO
WESTLAW	\$1,100/MO	\$1,306/MO
JUDGES TRAVEL-DUES	NO	YES
JUDGES TRAVEL EXP - COMMUTE HB 120	1	6
TRAINING - ATTYS	INHOUSE CLE ONLY	INHOUSE CLE ONLY
STATE BAR - ATTYS	PAID LAST YR	PAID LAST YR
ATTYS P/JUDGESHIP	2	3
PAY FOR JUDGES PORTRAITS	NO	YES
REMODELING/REPAIRS	NO	PAINTING-\$743.34
MOVING EXP	NO	\$7,034
NEW JUSTICES/JUDGES THIS YEAR	NONE	7
NEW JUDGES EXPENSE		\$7,341
NEW JUDGES & NEW CHIEF JUDGE-COURT PHOTOS	N/A	\$3,630
TECHNICAL SERVICES/I.T.		
BUDGET	\$50,000	\$184,739*
(I.T. EQUIP, SUPPLIES, REPAIRS, CO- LOCATION EXP, SOFTWARE, SOFTWARE MAINTENANCE, PER DIEM EXP- CONSULTANTS	NOT SURE WHAT IT INCLUDES	YES
*NOTE: We have already internally reduced this amount by \$60,564 and have identified another \$22,000 which can be reduced.		
STAFF	2	3
SALARIES	\$86,000 & \$65,000	\$108,380, \$64,000, \$47,500
OUTSIDE DOCKET SUPPORT (COA - REQUIRED ANOTHER 6 MOS) \$2,100/MO.	NO	YES
SPACE REDUCED	YES	NO

* If the Court were to vacate any space it is estimated that it would take 2-3 years to recover the cost to build out the space for another tenant as required by GBA. Any request to vacate space must be submitted to GBA by April 1 for the succeeding fiscal year.

SHARED FISCAL SERVICES

There has been various proposals by the Senate and the House of Representatives to move some fiscal services (Payroll, Accounts Receivable & Accounts Payable) from the Supreme Court, Court of Appeals and Superior Courts to either the State Account Office or the Administrative Office of the Courts in an effort to reduce costs. We have provided the following attached information to the House Public Safety Subcommittee as a response to their request to us and AOC. The Public Safety Subcommittee for the House has scheduled a hearing with the various judicial agencies to discuss the 2012 budget and this issue on Friday, February 18 at 9:00 a.m. in Room 406 of the CLOB Building.

PAYROLL & HR SERVICES. Many Court of Appeals employees do not regularly use employee self service. The customer service portion of HR & payroll would still need to be retained within the agency. HR services such as benefits administration, hiring and termination activities would still need to be performed at the agency level which accounts for more of an employees' time than the actual posting of activity/transactions.

LEAVE PROCESSING – Attendance Reports which are received monthly are the current means of collecting leave and attendance data from each office. Fiscal Office staff must accumulate these reports so that they can be entered into PeopleSoft. This would need to be done by the agency since the judges' and most court employees do not actively utilize employee self service. The coordination of employees going on FMLA or LWOP would still be required to be handled at the agency level.

AR – Included in our estimate of AR services is cash collection activity for collection of the filings and court costs as well as invoicing and collections for other services. Cash collection activity includes logging all cash collections and reconciliation to actual cash collected, making change for the front desk, refunds to customers and transfers of funds to the Supreme Court for filings. Cash collection activity other than the actual posting of transactions and making deposits would still need to be handled at the agency level. Actual posting activity and making deposits is estimated to account for less than 50% of the AR activity.

AP – Included in our estimate of AP activities is the reconciliation of Pcard activities and the accumulation of the required documentation for these expenses. This would still need to be done at the agency level. The accumulation and compilation of group payments for memberships and subscriptions would also still need to be done at the agency level.

BUDGETING AND GENERAL ACCOUNTING – These activities would still need to be performed at the agency level. Payroll & benefit reconciliations, account reconciliations, cash reconciliations, would still be done at the agency level. Monitoring of the travel/dues budget for each of the judges would also still need to be done at the agency level.

COURT OF APPEALS OF GEORGIA

PAYROLL

# OF EMPLOYEES (INCLUDES 6 PART-TIME)	85
# OF TIMES YOU MAKE CHANGES TO PAYROLL/YEAR	560
# OF TIMES YOU MAKE CHANGES TO LEAVE	642

AP(ACCOUNTS PAYABLE)

# VOUCHERS (INVOICES) PROCESSED/YEAR	672
# CHECKS ISSUED PER YEAR	714
# OF ACH (ELECTRONIC PAYMENTS)/YEAR	318
# PURCHASE ORDERS SET UP/YEAR	252

AR(ACCOUNTS RECEIVABLE)

# DEPOSITS EACH YEAR	152
# REVENUE TRANSACTIONS/YEAR	2598

NOTE: DEPOSITS ARE MADE WEEKLY

FIXED ASSETS

# FIXED ASSETS	634
#OF ASSET ACCOUNTS RECONCILED EACH MO	3
# IRS FORM 1099 ISSUED/YEAR	11

FISCAL SERVICES

# EMPLOYEES THAT WORK ON FISCAL SERVICES	3
--	---

POSITION

SALARY & FRINGES

PERSONNEL REPRESENTATIVE

PAYROLL & LEAVE PROCESSING	\$11,027.88
AR – CASH COLLECTIONS	\$35,840.60

ACCOUNTANT/ASSET MGR

AP	\$13,045.03
AR	\$ 652.25

DIRECTOR OF FISCAL SERVICES

AP	\$13,707.01
AR	\$ 1,370.70

NOTE: All three of these employees have other duties which are not limited to but include facilities, telecommunication services, assets management, procurement and library services.

Supreme Court - Motions to Disqualify

Rule 26. MOTIONS AND MOTIONS TO DISQUALIFY. Any motions may be filed while a matter is pending in the Court. Motions should comply with Rules 15, 16, and 17. Responses to motions may be filed at any time. See Rule 18.

A party to the proceeding may file a motion to disqualify a Justice within a reasonable time after the moving party discovers or should have discovered the grounds for disqualification.

The motion and all evidence thereon shall be presented by accompanying affidavit(s) which 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 of the conduct or statements which demonstrate either bias in favor of any adverse party, prejudice toward the moving party, or that the Justice's impartiality otherwise might be reasonably questioned. Allegations consisting of bare conclusions and opinions shall not be legally sufficient to support the motion or warrant further proceedings.

A motion to disqualify shall be decided by the remaining Justices of the Court. A Justice may, however, voluntarily disqualify himself or herself prior to the matter being decided by the remaining Justices. The criteria for disqualification are set forth in statutory law, case law, and the Code of Judicial Conduct. When a Justice is disqualified, the underlying action will proceed in accordance with Rule 57.

- (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 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 recusal motion shall be made upon the written record and no hearing or oral argument shall be permitted.

Proposed Legislation of Interest

2/15/2011

HB27. This bill would clarify that natural persons may represent themselves pro se in administrative proceedings and that corporations may be represented by officers, directors and employees. This contrasts decision in *Eckles d/b/a/ Atlanta Technology Group v. Atlanta Technology Group Inc.* that a corporation must be represented in courts by an attorney. The status of this bill on February 15th was that it had been tabled by the House Judiciary Civil Lane Subcommittee.

HB41. This bill was intended to correct an increase in appellate record preparation fee. It reduces the per page rate charged by superior court clerks from \$10 to \$1. Representative Willard asked for a rewrite of Section 1 to make sure that the bill would apply to current cases before the courts. A substitute was passed by the House Judiciary Civil Committee on February 8, 2011 which eliminated charges for a copy of a record in a capital felony case for the Department of Law. HB41 is now in the House Rules Committee.

HB100. Provides for the creation of a Georgia Tax Court with judges to be paid at the rate of judges of the Court of Appeals of Georgia.

HB158. Changes nonpartisan election timing for filing of Notice of Candidacy and the date of the nonpartisan election from the General to the Primary Election.

HB 160. Amends OCGA 5-6-48 relating to grounds for dismissal of appeals to add that an appeal shall be dismissed or considered invalid if the appeal was filed as a Notice of Appeal, but should have been filed as an Application for Appeal. This bill received a DO PASS recommendation from the House Judiciary Civil Jacobs Subcommittee.