

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

Wednesday, January 20, 2010

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 (1min)  | Chief Judge Miller                                 |
| II.   | Approval of November 28, 2009 Banc Meeting Minutes (1 min)  | Chief Judge Miller                                 |
| III.  | WestLaw for the Court (3 min)   | Chief Judge Miller                                 |
| IV.   | Court Reporter's Office (5 min)   | Chief Judge Miller                                 |
| V.    | E-Filing Briefs - IT Update (10 min)  | Chief Judge Miller<br>Judge Phipps<br>John Ruggeri |
| VI.   | Charging for Motions (5 min)  | Judge Ellington                                    |
| VII.  | Offsite Oral Arguments (10 min)   | Chief Judge Miller                                 |
| VIII. | Motions for Reconsideration filed with the Court of Appeals after Cert Applications filed with the Supreme Court (10 min) | Judge Phipps<br>Bill Martin                        |
| IX.   | Budget Update (10 min)  | Chief Judge Miller<br>Jan Kelley<br>Bill Martin    |
| X.    | Old Business (3 min)  | Chief Judge Miller                                 |
| XI.   | New Business (3 min) - Judge Beasley Letter   | Chief Judge Miller                                 |
| XII.  | Announcements (1 min)   | Chief Judge Miller                                 |
| XIII. | Adjournment (1 min)   | Chief Judge Miller                                 |

## TALKING POINTS

Wednesday, January 20, 2010

### ADMINISTRATIVE BANC MEETING

#### I. **Call Meeting to Order - Ascertainment of Quorum**

*Call the meeting to order promptly at 10:30 a.m. Announce that a quorum is present.*

#### II. **Approval of November 28, 2009 Banc Meeting Minutes**

*Ask if anyone has any changes for the Minutes. If not, ask if there is a motion to approve the Minutes.*

#### III. **WestLaw**

*You will say: Since our last Banc Meeting on November 18, I have been in negotiations with WestLaw's local, state and regional sales persons and finally one of the top vice president's in Eagan, Minnesota. Pete Thomas, Shellie Cappalle and Katherine Lewis, the latter being the Regional Account Manager, came to my office for a meeting. I stressed that it was important that this Court have WestLaw, particularly given the fact that we were having to furlough and needed all the research tools we could get.*

*Later I had a telephone conference call with Tom Leighton, one of the Senior Vice Presidents in Eagan, Minnesota and also expressed my concern to him that this Court have WestLaw and that we have WestLaw at the same rate the Supreme Court pays. Thereafter, we were offered a contract with West, where upon Bill Martin and I went back and forth on some of the contract provisions, and finally executed a contract for six months for WestLaw for the Court with an option for the next fiscal year. Our rate is the same per user rate as the Supreme Court.*

*Because of cutting library books and hardbound volumes, we were able to make up much of the costs for WestLaw.*

#### **IV. Court Reporter's Office**

*In your Banc materials you have my response to the latest memo from the Reporter's Office. I hope that this will stop the excessive barrage of memos from the court reporter and the Chief Justice to me.*

*When I was asked by Legislative leaders how money could be reduced in the Judicial budget while maintaining core functions, I suggested that organizations like the Administrative Office of the Courts, the Judicial Administrative Districts and the Reporter's Office were not essential to the actual deciding of cases and issuing opinions. While I did not recommend doing away with these organizations, I did state that if it became a question of funding these organizations or funding lawyers for the appellate courts who are actually doing the business of deciding cases, I would opt to funding lawyers over these other organizations.*

#### **V. E-Filing Briefs - IT Update**

*You may wish to say: The Court has been receiving briefs electronically successfully since the first week in November. After the test phase, the Court went public and has been receiving briefs electronically and registering lawyers since December 1st. Mr. Martin has received many complimentary remarks regarding the e-filing system, the ease of registration, the ease of filing. As we go forward, our vendor TriVir, and our IT Department will be working next toward the ability to receive motions electronically and to issue the orders on those motions electronically.*

*I now want to turn the floor over to Judge Phipps for any comments he may have or to Mr. Ruggeri for any brief comments he may have.*

## **VI. Charging for Motions**

*At our last Banc Meeting the issue of charging for motions came up as a way to raise revenue. I appointed a committee to study the issue and as chair of that committee I would like to call upon Judge Ellington for his report.*

## **VII. Offsite Oral Arguments**

*You might want to say: Steven Leibel of Dahlongega has invited the Court to hold a special session of oral arguments in Dawsonville. He would like to coordinate the event at the Historic Courthouse in Dawsonville and invite the public, including students and others, to attend. Also, they would like to host a luncheon.*

*The Court has not had any offsite oral argument since the Court Centennial. I believe it is a good thing for the Court to go offsite from time to time to hold oral arguments, however, we may wish to wait until after the Legislative Session has passed to do this, if at all.*

*I bring this up for any comments, thoughts or suggestions any of you may have.*

## **VIII. Motions for Reconsideration filed with the Court of Appeals after Cert Applications have been filed with the Supreme Court**

*You will need to say: I want to call on Bill Martin since he asked that I put this on the agenda. (I will direct the attention to Rachel Derrico's memo regarding this matter and tell the Court that has always been the practice of the Court is not to entertain MFRs after the Application for Certiorari has been filed with the Supreme Court and that is my thought and I was taught when I came here that transfers jurisdiction. I think that is the better way to do it, however, I certainly want to do what is required by the law and what this Court*

*thinks is appropriate and so therefore, I am asking for guidance of this Court as to how the Court wants the clerk's office to deal with this particular situation).*

*At that time, you may ask Judge Phipps for any comments he has relative to this situation.*

**IX. Budget Update**

*You may wish to say: I have had several meetings with Chuck Martin, our House Budget Chairman and Preston Smith our Senate Budget Chairman. I have had these meetings with these chairs alone and also with Bill Martin and with Bill Martin and Jan Kelley. The one consistent theme in all of these meetings is that the state is in a dire financial situation. I am convinced that we are going to see at least an eight percent budget reduction due to the unprecedented revenue shortfalls.*

*In your materials you will see a plan(s) for helping reduce the number of days of furloughing which the Court will have to endure with an eight percent budget withhold. I would like to invite Mr. Martin and/or Ms. Kelley to briefly go over that budget plan(s) and answer questions any judge may have. After any discussions, ask if anyone has a motion relative to this budget report in an effort to reduce furlough days.*

*If there is a motion and a second, see if there is additional debate and if not, call the question.*

**X. Old Business**

*Ask if there is any Old Business (I know of none).*

**XI. New Business**

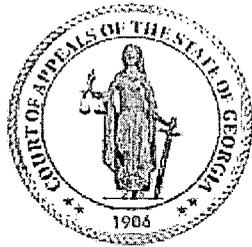
*Ask if there is any New Business (I know of no other new business).*

**XII. Announcements**

*You may wish to announce Judge Mikell's condition (since it is my understanding from Tyangye that he went into the hospital).*

**XIII. Adjournment**

*You may ask if there is a call for an adjournment.*



# Court of Appeals

## DRAFT Memorandum

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**To:** All Judges  
**From:** Chief Judge M. Yvette Miller  
**Subject:** January Administrative Banc Meeting  
**Date:** January 11, 2010

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Please remember there will be an Administrative Banc Meeting on Wednesday, January 20, 2010 at 10:30 a.m. in the Court of Appeals Banc Room located at Suite 501, 47 Trinity Avenue. If any of you have any items for the Banc Meeting Agenda, please give them to me by 4:30 p.m. on Wednesday, January 13, 2010. As you may recall, January 15 is a Court-wide Furlough Day, even though the clerk's office will be open. Also, Monday, January 18, 2010, is also a State Holiday, Martin Luther King, Jr.'s Birthday.

Some items which will be on the Banc Meeting Agenda are as follows:

- WestLaw for the Court
- Budget Update
- Court Reporter's Office
- E-Filing Briefs - IT Update
- Charging for Motions
- Offsite Oral Arguments

You will receive a packet of Banc materials on Thursday, January 14, 2010, so that everyone will have an opportunity to review them before they are discussed on Wednesday, January 20th.

Thank you.

/ld

**MINUTES OF THE BANC MEETING  
OF THE COURT OF APPEALS OF GEORGIA  
Wednesday, January 20, 2010 10:30 a.m.**

The January Banc Meeting of the Court of Appeals of Georgia was 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 20, 2010. Those present were:

Chief Judge M. Yvette Miller  
Presiding Judge Gary B. Andrews  
Presiding Judge Edward H. Johnson  
Presiding Judge G. Alan Blackburn  
Presiding Judge J.D. Smith  
Judge Anne Elizabeth Barnes  
Judge John J. Ellington  
Judge Charles B. Mikell  
Judge A. Harris Adams  
Judge Debra Bernes  
Judge Sara L. Doyle  
Ms. Jan Kelley, Fiscal Officer  
Mr. William L. Martin, III, Clerk/Court Administrator

Not in attendance was:

Judge Herbert E. Phipps

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

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

## II. REVIEW OF 2009 ACTIVITIES OF THE COURT OF APPEALS

Chief Judge Miller thanked the judges for their support and said she was working hard for them. She said she would like to take a moment to recapitulate some of the achievements the Court had accomplished in 2009.

Chief Judge Miller said she was here to serve the judges and for any judge to come to her at any time that judge had questions or concerns about issues before the Court or if she could assist in any way. Chief Judge Miller stated through her hard work House Bill 283, the bill to increase the filing fee in civil cases in the Supreme Court and Court of Appeals, was passed by the Legislature and signed into law by the Governor. She also said she was happy to report there were no reductions in force in calendar year 2009. Chief Judge Miller did report the Court Reporter's Office had reduced in force by two persons, but this was a unilateral decision made by the Chief Justice and the Supreme Court and Chief Judge Miller was only informed about it after the fact.

Chief Judge Miller said she was very happy and excited the Court had begun to receive briefs filed electronically. She said this brings the Court into the 21st Century. Also, Chief Judge Miller stated she and Bill Martin had worked very hard to hammer out a contract on December 30th which gave the Court WestLaw at the same per user fee as the Supreme Court was paying. The cost of WestLaw now is approximately one third of what WestLaw was charging the Court when the Court last decided not to renew its contract.

Chief Judge Miller said she thought the Court had a very nice Holiday Party this year and thanked the judges and the Court for their generosity in receiving many toys and cash contributions for the Toys for Tots project. Chief Judge Miller said she felt like she had established a good rapport and working relationship with House and Senate Budget leaders as well as the new Speaker. Finally, she felt like she had been able to achieve a similar rapport with State Bar President Bryan Cavan and through their meetings was able to get discounted Continued Legal Education for the staff attorneys on this Court.

### III. APPROVAL OF NOVEMBER 18, 2009 BANC MEETING MINUTES

Presiding Judge Smith made a motion to approve the November 18, 2009 Banc Meeting Minutes, which motion was seconded by Judge Adams and passed unanimously.

### IV. COURT REPORTER'S OFFICE

Chief Judge Miller said the Court Reporter's Office issues which she had shared with the other judges was something that was dead insofar as the FY2010 Supplemental Budget was concerned. She did say Representative Chuck Martin, Chairman of the Public Safety Subcommittee of the Appropriations Committee, wanted Chief Justice Hunstein and Chief Judge Miller to meet on the Reporter's Office as it relates to the FY2011 Budget.

Presiding Judge Andrews made a motion to write a letter to the Supreme Court asking to shift the Court of Appeals funding of the Reporter's Office to the Supreme Court or the Administrative Office of the Courts and to have discussions with West Publishing Company about making arrangements for West to edit and publish the Court's opinions. Thereafter there was a general discussion with several judges giving their views on the subject. Since there was no second to the motion, Chief Judge Miller moved to the next agenda item.

**V. E-FILING BRIEFS - IT UPDATE**

Chief Judge Miller reported the Court had been receiving briefs electronically since early November and had opened e-filing to the public on December 1st. Chief Judge Miller reported a total of 241 lawyers have registered for e-filing with a total number of 76 briefs having been e-filed in 58 cases. Our IT Department and our vendor, TRIVIR, hope to have the ability file motions and issue orders electronically by February 1, 2010.

**VI. CHARGING FOR MOTIONS**

Chief Judge Miller called upon Judge Ellington for a report of the Committee on Charging for Motions. Judge Ellington said he and Bill Martin had talked about the matter subsequent to the committee's meeting. They both came to the conclusion that "the lemonade was not worth the squeeze" in this particular project. There is no way the Court can charge the law department and the district attorney since their budgets are also in a crisis status and to exempt too many people means that others are not treated fairly. Judge Ellington said unless any other committee member had a different approach, he recommended no charges for motions. Chief Judge Miller thanked Judge Ellington for his report and no judge offered a different sentiment.

**VII. OFFSITE ORAL ARGUMENTS**

Chief Judge Miller said the Court had been invited by Steven Leibel to host oral arguments in the Historic Courthouse in Dawsonville, Georgia. There was a general discussion about that matter. Chief Judge Miller asked Mr. Martin to poll the presiding judges to determine which divisions would like to have the off-site oral arguments.

Chief Judge Miller did say the attorneys in the local Bar would host the judges and provide for their rooms and meals.

## **VIII. MOTIONS FOR RECONSIDERATION FILED WITH PENDING CERT APPLICATIONS IN THE SUPREME COURT**

Mr. Martin said since Judge Phipps was not at the meeting he would prefer to carrying this agenda item over to the next Administrative Banc Meeting. Judge Ellington said he had discussed the matter with Judge Phipps and said he knew Judge Phipps had some feelings about the issue he would like to express to the Banc. Judge Ellington suggested the matter be tabled. Chief Judge Miller tabled the matter and moved on to the next agenda item.

## **IX. BUDGET UPDATE**

Chief Judge Miller reported she had been working very hard with Preston Smith in the Senate and Chuck Martin in the House regarding the Court's budget. She said she was a staunch advocate for the Court of Appeals and felt there was nothing else the Court could give up without jeopardizing its core mission and Constitutional responsibilities. There was a general discussion about the budget, how it effects the Court, how it effects the Court's abilities to carry out its Constitutional duties.

Chief Judge Miller called upon Mr. Martin and Ms. Kelley to explain a potential budget option which was to reduce some expenditures. After a thorough discussion of that option, it was decided the Court would take no action at this time. Presiding Judge Blackburn made a motion to communicate to the appropriate powers that be that the Court of Appeals cannot afford anymore cuts to its budget and maintain the ability to carry out its Constitutional functions. Other than the 5% budget reduction and three furlough days, this Court has nothing else to give up and to give up anything further would jeopardize this Court's ability to carry out its Constitutional mandates. Judge Adams seconded the motion and it passed unanimously.

**X. ADJOURNMENT**

Hearing no further business and upon hearing a motion to adjourn, Chief Judge Miller adjourned the meeting at 11:45 a.m..

Respectfully submitted,

Minutes approved by the Court  
En Banc on the \_\_\_\_\_ day of  
\_\_\_\_\_, 2009

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WILLIAM L. MARTIN, III  
Clerk/Court Administrator  
Court of Appeals of Georgia

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OF THE COURT OF APPEALS OF GEORGIA**

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**DRAFT**

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En Banc on the \_\_\_\_\_ day of  
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WILLIAM L. MARTIN, III  
Clerk/Court Administrator  
Court of Appeals of Georgia

10:30 AM

1-20-10

Bene Mtg

- CJ MYM ✓
- PJ GBA ✓
- PJ EHS ✓
- PJ GAB ✓
- PJ JDS ✓
- J AEB ✓
- J JJK ✓
- J HED
- J CBM ✓
- J AHA ✓
- J DHB
- J SLD ✓

Recap 2009

1. Call Mtg to Order 10:35 AM
2. Approve Minutes notes JDS  
20 AHA -
3. Thanks to Cliff -
4. Court Reporters Office - PJ Anderson need to go forward  
w/ legislator -  
3rd alternative - write letter you control it  
admitt about it - switch funding -  
Set Down w/ West - what will the deal  
be -  
more Proposal to S.Ct. that funding  
shifted to AOC or S.Ct. , fairly that,  
have some discussions w/ West about  
publishing our opinion -  
JDS - important all states know we are begin

## 2009 Recap

Cy Miller here to serve the judges -

- 1) H.B. 283 - fee increase
- 2) FY 2009 - NO RFF'S
- 3) Court Reporter Office RIF'S
- 4) Begun E-Filing
- 5) WestLaw
- 6) Nice Holiday Party & Toys for Tots - many toys
- 7) Good relationship w/ House/Senate leaders & Speaker
- 8) " " w/ Bryan Cavan / got discount CLE.

DB - needs info from West - costs before sending letter / Reporter's office also catelings mistake

GAB - staff step - relies too much on Reporter's office

S. Ct. Excluded COA - / We have subsidized publisher for years & a scandal -

GAB - Can't win battle,

GAA -

AEB - pit against each other

motion GBA

2d

NO Se

6. charging for Motions -

← Will not work →

7. Steven hibel - off site oral argument  
Dawsonville -  
guests will put us up

< Panel decision - > Poll PJ - who wants  
to go -

8. MFR's Table

9. Budget - C. J. Miller

GAB - set limit of cuts for COA and Consti: duties -  
Are we going to defend - or give in -

SLD - no furloughs

DHB - nothing else on the table

Budget - Space - Super Ct  
cuts

GAB - AHA

Can't afford any more  
cuts

adjourn 11:45 Am -



# Court of Appeals

## Memorandum

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**To:** Members, Committee on Motions  
**From:**   
William L. Martin, III  
**Subject:** Report of Meeting December 15, 2009  
**Date:** December 22, 2009

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Please find a copy of the report of the meeting of the Committee on Motions attached. If you have any comments or corrections, please let me know. This topic will be included on the January 2010 Banc Agenda, and I will provide a copy of the final report to all judges prior to that meeting.

cc: Chief Judge M. Yvette Miller

**REPORT OF MEETING  
COMMITTEE ON MOTIONS  
December 15, 2009**

This committee was created to consider whether or not to establish a fee for filing motions with the Court. The committee discussed the following pros and cons to the proposal.

**1. Why should the Court consider a fee at this time?**

The fee would generate revenue for the state which is in a severe economic crisis, and perhaps this revenue stream would assist the Chief Judge in negotiations with the legislature regarding the Court's budget.

**2. Would charging a reasonable fee generate an amount worth the effort of collection?**

There were approximately 2000 motions filed in 2009. If a fee of \$25.00 was applied this would be about \$50,000. On the other hand, that amount would be reduced by pauper cases, the failure to collect the fee on all motions or if the fee was not applied to all cases or all types of motions. For instance, assuming that motions are filed in civil cases and criminal cases at the same rate, the collection would be cut by about one-half if the fee only applied to civil cases. If it did not apply to motions to withdraw an appeal, the amount would be reduced by about 5%; Motions for Reconsideration about 23%.

**3. What inconvenience would this fee cause attorneys?**

The Court has already increased the filing fee in civil cases by \$220.00 this year. This would be another fee in a time when all government is considering raising fees. On the other hand, a limited fee of \$20 or \$25 would probably not have a serious effect on the parties.

**4. Should an exclusion from the charge be made for public defenders, district attorneys and the law department?**

These agencies are suffering the same state budget cuts as the Court. Is it fair to put a new burden on them? On the other hand, an argument can be made that the fee should apply equally to all parties. Excusing these groups from paying the motion fee, would eliminate fees from any of the criminal cases and many of the juvenile cases. This would reduce the amount collected by at least one-half.

**5. Should a fee for filing motions be applied to civil cases only?**

In a survey of Clerks of the appellate courts of other states, the majority of those who reported a fee for filing motions applied the fee only to civil appeals.

**6. What burdens would collection impose on the Clerk's Office and Fiscal Office?**

The Clerk's Office would have to make sure that the fee was paid before accepting the motion, a receipt would have to be written identifying the type of fee, and the check, cash or money order properly turned over to the Fiscal office. The Fiscal Office would need to create a category to track collections and notify the State Treasury of this new category.

**7. What changes would be required in the e-filing system if a motion fee was adopted and would the filing require a \$5.00 convenience?**

The e-filing system would have to be altered to recognize the motion code as an item for which a fee is due. Then the e-filing system would have to be set to send the user to the credit card payment process. In order to cover the credit card processing fee, the user would have to pay the \$5.00 convenience fee. The e-filing collection report would also have to set up a separate category for this money.

**8. Would it generate any bad publicity, particularly, since the Supreme Court would probably not join the Court of Appeals in imposing the fee?**

It is possible that the Court would be questioned why the motion fee was necessary, whether it restricts access to the Court, and whether it really generates an amount of revenue that really serves rational purpose.

**9. Would it have the effect of reducing the number of motions e.g., for extension of time and motions for reconsideration and would this be good or bad for the Court and the parties?**

It is possible that the fee may discourage some attorneys or parties from filing a motion that was not truly necessary and perhaps speed up slightly the filing of briefs. On the other hand, the fee may seem to be a punishment to the attorney if there is truly a hardship reason for an extension and particularly if it turns out a second extension is necessary and reasonable.

The Court would not want to discourage motions to dismiss that are based on a legitimate ground since a dismissal may save the Court from additional work on a case. Nor would the Court want to punish someone for moving to withdraw an appeal. Lastly, whether the Court should charge a fee for the party to point out the error of the Court in an MFR is debatable. At least some MFRs are granted for legitimate reasons. On the other hand, it might discourage the filing of MFRs that contain no real basis for a change in the opinion or judgment of the Court.

**10. What would happen if the fee did not accompany the motion? Would the motion be sent back? Would it make a MFR untimely? What would happen if a MFR were sent in the last few days during MFR distress?**

Ordinarily, the Clerk's office does not accept an appellant's brief or motion for courtesy appearance without the proper fee. If a motion fee was adopted and the Clerk did not accept a motion which was not accompanied by the fee, the results may not suit the Court. For instance, a party's case may be dismissed before the motion for an extension of time was returned or a MFR was not addressed before the end of distress because the MFR had not been returned timely or before the end of the MFR distress period.

**11. Can the Court charge a fee for filing motions by rule and not by statute?**

The Court has adopted a courtesy appearance fee by rule and there has been no objection. On the other hand, a motion fee for all motions is similar to a filing fee for a case which is set by legislation. In the survey of other states, in some states the motion fees were established by Rule and in others by statutes.

**MOTIONS FILED IN 2009**

Description	Number
FOR EXT TO FILE BRIEF	775
MFR	447
MOTION TO DISMISS	115
TO FILE REPLY/SUPP BRIEF	100
TO SUPPLEMENT RECORD	96
TO WITHDRAW APPEAL/APPLICATION	94
TO EXCEED PAGE LIMIT	49
PRO SE MOTION/S	31
MOTION/S	27
FOR FRIVOLOUS APPEAL	18
TO REMAND	18
TO SUBSTITUTE ATTORNEY	18
TO WITHDRAW AS COUNSEL	17
TO REQUEST COURTESY APPEARANCE/ARGUMENT	16
TO CONSOLIDATE	15
TO STRIKE	15
TO AMEND	13
TO FILE 2ND MFR	10
TO EXPEDITE	9
TO REQUEST ADDITIONAL TIME TO ARGUE	8
FOR SANCTIONS	6
RULE 40(B) EMERGENCY MOTION *	6
TO TRANSFER	6
2ND MOTION FOR RECONSIDERATION	5
FOR EXT TO FILE MFR	5
TO RESCHEDULE ORAL ARGUMENT	5
TO STAY	5
TO SUBSTITUTE PARTY	5
FOR CONTEMPT	4
TO WITHDRAW MOTION	4
FOR EXT TO FILE REQUEST TO ARGUE	3
FOR SUPERSEDEAS	3
TO EXPEDITE REMITTITUR	3
TO UNSEAL RECORD, EXHIBITS OR BRIEFS	3
TO WITHDRAW MFR	3
MOTION TO SEAL	2
TO FILE ELECTRONIC BRIEF/S	2
TO SUPPLEMENT MOTION	2
FOR EXT TO FILE NOTICE OF INTENT	1
FOR EXT TO FILE RESPONSE TO MOTION	1
TO CHANGE FILING DATE	1
TO PLACE AT BEGINNING OF CALENDAR	1
TO RECALL REMITTITUR	1
TO REDACT AND/OR RECAST BRIEF	1

TO STAY/BANKRUPTCY PROCEEDINGS	1
TO SUBSTITUTE BRIEF/PAGE/FILED W MOTION	1
TO VACATE JUDGMENT/ORDER	1
<b>TOTAL</b>	<b>1972</b>



## The General Assembly

Atlanta, Georgia 30334

December 16, 2009

Dear Judicial Branch Agencies,

Georgia continues to experience a difficult period with respect to state revenue collections. The 2010 year-to-date revenue collections over 2009 are down 15.4%, and we expect this revenue decline to result in a \$1.26 billion shortfall from the original FY10 budget. This decline will likely result in executive agencies being asked to take, on average, an 8% cut in FY10.

Although we hope that the economic situation will stabilize or turn around, we need to prepare for continuing declines. Please be prepared for potential 8% reductions in FY10 and FY11.

We appreciate your cooperation and efforts in managing these reductions in a manner that least affects Georgia's citizens.

Sincerely,

Handwritten signature of Ben Harbin in black ink.

Ben Harbin, Chairman  
House Appropriations Committee

Handwritten signature of Jack Hill in black ink.

Jack Hill, Chairman  
Senate Appropriations Committee

## FY2010 SUPPLEMENTAL BUDGET REPORT

Percent Budget Reduction	Furlough Days Needed to Meet 8% Reduction	Staff Furlough Days Sep.-Dec. 2009	Expense Reduction Furlough Days Saved	Remaining Furlough Days Needed Jan.-Jun.2010	Planned Furlough Days 2010	Additional Furlough Days Needed
8%	22.3	4	2.6	15.7	6	10

Additional furlough days needed is rounded to the nearest whole day since the Court cannot have a partial furlough day.

Additional Expense Reduction	
Reduction IT Expenses	\$62,000
Elimination of Co-Location	\$4,000
Reduction General Operating Expenses	\$21,930
Release 11 Unused Parking Spaces	\$1,760
Release 6th Flr. Judicial Bldg. Space	\$13,996
Attorneys Pay Bar Dues	\$10,237

Total Additional Expense Reduction	\$113,923	or	-3.7 Furlough Days
			6 Remaining Furlough Days Needed

<b>*6 Planned Furlough Days + 6 Furlough Days = 12 Furlough Days Jan. 1 - Jun. 30, 2010.</b>
--

# FY2011 BUDGET REPORT

Percent Budget Reduction	Furlough Days Needed to Meet 8% Reduction
8%	24

24 furlough days needed

Number of furlough days is rounded to nearest whole day.

Continuation - Reduction of Operating Expenses from Supp. FY2010	
Continued Elimination of Co-Location	\$12,000
Continued Release of Unused Parking Spaces	\$5,280
Continued Reduction in Space - 6th Floor Judicial Building	\$50,988
Total Continuing Expense Reduction	\$68,268 or <u>-2.2721</u> furlough days
	21.5601 furlough days remaining

<b>Remaining Furlough Days Required</b>	<b>22</b>
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**APPELLATE JUDGE'S ANNUAL SALARY  
W/FRINGES**

**\$166,186**

**SALARY & BENEFITS P/DAY**

**\$830**

(RETIREMENT NOT INCLUDED)

**EQUIVALENT**

**FURLOUGH DAYS**

**INDIVIDUALLY**

**12 JUDGES**

<b>1 DAY</b>	<b>\$830</b>	<b>0.03</b>	<b>\$9,960</b>	<b>0.32</b>
<b>2 DAYS</b>	<b>\$1,660</b>	<b>0.05</b>	<b>\$19,920</b>	<b>0.64</b>
<b>3 DAYS</b>	<b>\$2,490</b>	<b>0.08</b>	<b>\$29,880</b>	<b>0.96</b>

**From:** Harris Adams  
**To:** Jan Kelley  
**Date:** 1/19/2010 10:56 AM  
**Subject:** Budget

Could you please clarify for me whether the budget materials we were given for the Banc meeting tomorrow reflect continued furloughs by the Judges? If not, could you please prepare something for me showing how this would impact the figures we have been given? Please prepare these figures showing if one Judge continues to furlough, if two Judges continue to furlough, and so forth--up to the number of Judges that furloughed before.

Please provide me with this information as soon as possible so that I may review it before the Banc meeting tomorrow morning. Thank you.

DOROTHY TOTH BEASLEY  
450 Highbrook Drive, NE  
Atlanta, GA 30342

JAN 11 2009

8 January 2010

The Honorable M. Yvette Miller  
Chief Judge  
Court of Appeals of Georgia  
47 Trinity Avenue, Suite 501  
Atlanta, GA 30334

Dear Chief Judge Miller:

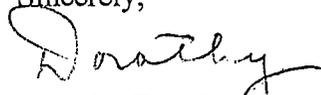
We are all aware of the alarmingly reduced funding of the court system of Georgia by the Georgia General Assembly and by the counties, which are also responsible for assuring that the judicial branch has adequate resources. It is notable that even *The New York Times* on November 25 cited Georgia as a state whose courts are at the tipping point of crisis. I can only imagine the enormous pressure on you and all the other judges of Georgia as well as the courts' personnel, all of whom strive to deliver the justice that is promised in our Constitution.

As a senior judge, I would like to offer my services in whatever manner I might best be used. I know there is no money to engage senior judges, but I for one am willing to forego any financial remuneration. After all, I am sufficiently taken care of by retirement benefits. We are often reminded that to whom much is given, much is required, and that we have an obligation to "give back," although I think of it as giving *forward*. It would be an honor to help with cases if more judge-time would make a dent in alleviating the problem.

I am sending similar letters to Atlanta Circuit Chief Judge Doris Downs and to Fulton County State Court Chief Judge Albert Thompson, since I live in Fulton, and to Supreme Court Chief Justice Carol Hunstein, with respect to service wherever there is a need.

Thank you for your leadership during these difficult times.

Sincerely,



Dorothy Toth Beasley  
Senior Judge, State of Georgia

**MINUTES OF THE BANC MEETING  
OF THE COURT OF APPEALS OF GEORGIA  
Wednesday, November 18, 2009 10:30 a.m.**

The November Banc Meeting of the Court of Appeals of Georgia was held in the Court of Appeals Banc Room, Suite 501, 47 Trinity Avenue, S.W., Atlanta, Georgia at 10:30 a.m. on Wednesday, November 18, 2009. Those present were:

Chief Judge M. Yvette Miller  
Presiding Judge Gary B. Andrews  
Presiding Judge Edward H. Johnson  
Presiding Judge J.D. Smith  
Judge Anne Elizabeth Barnes  
Judge John J. Ellington  
Judge Herbert E. Phipps  
Judge A. Harris Adams  
Judge Debra Bernes  
Judge Sara L. Doyle  
Ms. Jan Kelley, Fiscal Officer (Part of Meeting)  
Mr. William L. Martin, III, Clerk/Court Administrator

Not in attendance were:

Presiding Judge G. Alan Blackburn  
Judge Charles B. Mikell

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

Chief Judge Miller called the meeting to order at 10:30 a.m. and announced a quorum was present.

II. **APPROVAL OF OCTOBER 21, 2009 BANC MEETING MINUTES:**

Judge Phipps made a motion to approve the October 21, 2009 Banc Meeting Minutes, which motion was seconded by Judge Barnes, and which passed unanimously.

Before the Chief Judge could begin with the Banc Meeting Agenda, Judge Adams stated he could not take action on the package of information that has been delivered to his office. Chief Judge Miller responded she would not be requesting action on those budgetary matters at this meeting. She said those items were included only for informational purposes.

III. **RECUSAL COMMITTEE REPORT:**

Judge Bernes reported she was representing the Court on Chief Justice Hunstein's Committee to look into recusals in light of the Caperton Decision. Judge Bernes stated the Court's rule on Disqualifications and Recusals allows the parties twenty (20) days from docketing to file a Motion to Recuse. She suggested shortening that time along the lines of the Superior Court Rule.

After a general discussion of the Recusal Committee's actions and the need for a new Recusal Rule, Chief Judge Miller appointed a committee of Judge Bernes as Chair, Judge Barnes and Judge Adams to work on a draft Recusal Rule.

IV. **AMENDMENTS TO INTERNAL OPERATIONS MANUAL:**

Chief Judge Miller called upon Presiding Judge Smith who said the proposed amendments to the IOM had been previously distributed to the judges. He asked if there were any comments or questions regarding the IOM changes.

There being none, Presiding Judge Johnson made a motion to approve the IOM amendments as presented. Judge Doyle seconded the motion and it passed unanimously.

**V. WEST LAW CONTRACTS:**

Chief Judge Miller said she and Mr. Martin had a telephone conversation with Mr. Dave Tevelin of West Publishing Company regarding the harvesting of the Court's data from its web docket. Mr. Tevelin was unable to make a decision as to whether West would be willing to trade access for the Court of Appeals to West Law for access to West for our docket information.

After a general discussion, it was the sense of the Court that it is important to have access to West Law since so many of the titles and treatises necessary for adequate and complete research of the opinions are proprietary with West .

Chief Judge Miller stated she and Mr. Martin would be meeting with Mr. Pete Thomas of West and she hoped to have a resolution of this matter before the end of the year.

**VI. CHARGING FOR MOTIONS:**

Chief Judge Miller said there is a report of what States charge for motions in the Banc materials. There was a general discussion about fees being assessed when certain motions are filed.

After the general discussion, Chief Judge Miller appointed a committee to study this issue and bring back recommendations to the Court. Chief Judge Miller appointed the committee of Judge Ellington as Chair along with Presiding Judge Smith, Judge Barnes , Judge Phipps and Judge Bernes. She also asked Mr. Martin to work with the committee and get figures on the number and types of motions that have been filed with the Court in order to determine which motions should be assessed a charge and how much the filing fee for the motions should be.

## VII. BUDGET:

Chief Judge Miller called upon Bill Martin and Jan Kelley for a Budget Report. Mr. Martin stated if the Court takes no further action to reduce expenditures then beginning in January the Court will have to furlough seven days through the end of the fiscal year; at 8% 16 days; at 9% 20 days and at 10% more than 24 days. Mr. Martin said he did not see how the Court could furlough this many days and still meet its constitutional obligations.

Chief Judge Miller said the longer the Court waits to take any definitive action, the harder the hit will be if the Legislature imposes cuts. Mr. Martin also reviewed additional operational expenses the Court could address before it turned to personnel issues.

Presiding Judge Andrews asked if money could be taken from other judicial agencies or councils such as the Administrative Office of the Courts, Judicial Administrative Districts and the Court Reporter's Office. He said these organizations might be nice to have but are not essential to the operation of the courts. Chief Judge Miller said she had told legislators we do not need these agencies and programs and the money spent on them should be directed to the Supreme Court, Court of Appeals and superior courts. She said however that she felt the Supreme Court wants to hold on to their committees and commissions.

Thereafter, there was a general discussion on unused parking spaces, space on the sixth floor including the courtroom and what could be done to generate revenue.

Presiding Judge Johnson said the Court should draft a letter to the Legislature explaining the effect that across the board cuts would have on the budget of this Court and agencies like the Court of Appeals which were personnel based. Presiding Judge Johnson made a motion that Mr. Martin draft such a letter for the Court's approval. The motion was seconded by Judge Phipps and passed unanimously.

Presiding Judge Smith then made a motion to increase the copy costs to the Court of Appeals from \$1.00 per page to \$1.50 per page. This motion was seconded by Judge Doyle and passed unanimously.

#### **VIII. OLD BUSINESS:**

Chief Judge Miller said the Court had begun receiving e-filed Briefs on November 4th. Also, she said Attorney General Thurbert Baker had registered and Chairman Chuck Martin was present for that event. She said the Court has received four Briefs electronically with no problems. After the test phase, Chief Judge Miller said the Court will go public with e-filing and accept briefs from all properly registered attorneys beginning December 1, 2009.

#### **IX. NEW BUSINESS:**

Chief Judge Miller called upon Presiding Judge Smith for a report of the Rules Committee. Presiding Judge Smith said there were two rules, one to put a deadline for filing pleadings on applications and another to address e-filing.

Presiding Judge Smith called on Mr. Martin to explain the rule for the applications. Mr. Martin said since applications do not have a remittitur, there is not a cut-off on the Court's automated system to say an application is over and final. Direct appeals have a remittitur, but no remittitur issues with an application.

Mr. Martin suggested the rule for 30 days so the Court's computerized docketing system could then be coded to drop applications off after 30 days from the Court's order on the application or the Motion for Reconsideration. He said the rule is necessary so the parties would know they do not have the right to file beyond that date.

Mr. Martin said the rule on e-filing is to direct attorneys to the terms and conditions of e-filing. He said this is an interim rule until the entire e-filing project is complete at which time the Court will probably adopt comprehensive rules for e-filing.

Presiding Judge Johnson made a motion to adopt the rules which was seconded by Judge Phipps and passed unanimously.

Judge Barnes suggested the language in the IOM should be changed to substitute "granted" for "determined" when talking about applications. Judge Barnes made a motion to change the language and which motion was seconded by Presiding Judge Johnson and passed unanimously.

Also under New Business, Chief Judge Miller asked if there was a reaction from the Court to the State Bar's public service announcement asking the Legislature to fund the Courts. Presiding Judge Johnson said the Court should stay out of it. He said the State Bar did not ask the Courts advice before running the ad or about its content and he felt this was a matter that was between the Legislature and the State Bar and the judges of this Court did not need to get into it.

**X. ANNOUNCEMENTS:**

Chief Judge Miller thanked the judges who attended the Mass Swearing-In. Judge Doyle stated Donuts for Distress would be hosted by the Third and Fourth Divisions and would be on December 3 in the Third Floor Conference Room.

Chief Judge Miller said she was working on a Holiday Party and announced December 16th as the date of the party and that details would follow.

**XI. ADJOURNMENT:**

There being no further business, by hearing a motion to adjourn, Chief Judge Miller adjourned the meeting at noon.

Respectfully submitted,



WILLIAM L. MARTIN, III  
Clerk/Court Administrator  
Court of Appeals of Georgia

Minutes approved by the Court  
En Banc on the \_\_\_\_\_ day of  
\_\_\_\_\_, 2009

**From:** Jan Kelley  
**To:** Bill Martin; Yvette Miller  
**Date:** 1/19/2010 5:15 PM  
**Subject:** State Health Benefit Plan Changes

I received a phone call from Adam Ross (OPB Liaison) today informing me that they had changed the language on the budget line which addresses the changes in State Health Plan Benefit Costs for AFY 2010. Adam said that they were planning on reducing the employer's share of health insurance from April to June to 20.618%. He told me that OPB had calculated our additional savings would be \$47,306 and therefore we would see an additional cut to our appropriation to reflect this during the legislative session. I reminded Adam that the original cut was supposed to be for four months (effective Aug-Nov) of reduced employer costs and that they only reduced the expenses for 3 months due to a timing problem with the payroll system (effective Sep-Nov). Therefore the original reduction would be off by one month of savings. Using OPB's figures we would have a total reduction of \$187,089 for health insurance but I calculate the savings for the Court of Appeals is only \$143,231 (a variance of \$43,858). Since the additional reduction is not yet reflected anywhere it may be too early to do anything about it. However, with your permission I would like to send an email to our representatives in the House Budget Office, Senate Budget Office and OPB to make sure that they are aware of this discrepancy and inform them of the correct savings so we don't get hit with the full amount of reduction that OPB has calculated. If you prefer we can address this discrepancy when we see their revised budget reduction.

**From:** Jan Kelley  
**To:** Bill Martin  
**Date:** 1/19/2010 12:11 PM  
**Subject:** Re: Fwd: Court of Appeals Salaries for FY2010

No, there were so a few step increases last fiscal year but none this fiscal year. But, you are right we have provided this information before. They have personal services projections for both last fiscal year and this fiscal year. We haven't had any raises or step increases this fiscal year at all.

>>> Bill Martin 1/15/2010 8:12 AM >>>

I don't know. I believe we have supplied that info. There have been no raise since when, year before last?

**From:** Jan Kelley  
**To:** Bill Martin  
**Date:** 1/19/2010 2:41 PM  
**Subject:** Recommended Budget Reduction COA vs Supreme Court

Since the Governor cannot recommend or take any action to judicial agencies budget request, the column labeled recommended in the Governor's Budget book actually shows each judicial agencies request as outlined by the Office of Planning & Budget's requirements for the years submitted plus any prior year liabilities as per the agreement between the Governor and the former Chief Justice. Each agency was required to submit a budget of 5% + 3 Days for the 2010 supplemental budget. The difference in the percentage reduction of the Court of Appeals and the Supreme Court's is due to enhancement requests by the Supreme Court for FY 2009 liabilities of \$182,703 for a 2009 membership fee for the National Center of State Courts and for outstanding unpaid FY 2009 liabilities of \$38,785 (total \$221,488). As you know, we had a request for \$58,900 for the portion of the contract we could not honor in FY 2009. Because Supreme Court's total budget is only 59% of our budget their overall budget reduction is less than the required 5+3% (due to the request for reimbursement for prior year liabilities).

(1)

**Bill Martin - 2010 WC Program Goal**

---

**From:** "Jones, Sharlene" <Sharlene.Jones@doas.ga.gov>  
**To:** <jkelley@gaappeals.us>  
**Date:** 1/15/2010 2:45 PM  
**Subject:** 2010 WC Program Goal

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January 15, 2010

Dear Ms. Kelley,

Ref: **Court Of Appeals Workers' Compensation Frequency Goals**

DOAS Risk Management Services has a statutory obligation to implement effective loss control programs with the goal of reducing losses from state operations. We have seen a drop in claims for nearly all exposures in the state year to date. As part of this statewide goal, agency specific Workers' Compensation claim frequency reduction goals were distributed earlier this year. Most agencies were asked to reduce claims by 5 -10% based upon their prior claims history and loss trends. Smaller agencies with little or no claims experience were asked to keep their frequency static.

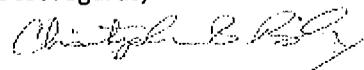
As we had previously communicated, once an agency exceeds its frequency target, it will be assessed a co-payment of \$150 per claim. If the agency exceeds its goal and the prior year's loss frequency experience, the co-payment will increase to \$300 per claim. If an agency has an unusual event(s) or a new exposure that was not part of prior year operations, an agency can contact RMS to discuss an adjustment to their agency's frequency goals.

A review of the state's claims data shows that your agency is on track to meet the Workers' Compensation frequency target.

FY2009 Claims Count:	3
FY2010 Frequency Goal:	3
WC Claims Count as of 12/31/2009:	1

We appreciate your efforts in eliminating and reducing losses and claims. Our Loss Control and Safety Officers, Ted Low [ted.low@doas.ga.gov](mailto:ted.low@doas.ga.gov) 404-463-6309 and C.G. Lawrence [charles.lawrence@doas.ga.gov](mailto:charles.lawrence@doas.ga.gov) 404-657-4457, are available if you need additional assistance improving the effectiveness of your safety programs.

Best regards,



Chris Risley, Director  
Risk Management Services



## The General Assembly

Atlanta, Georgia 30334

December 16, 2009

Dear Judicial Branch Agencies,

Georgia continues to experience a difficult period with respect to state revenue collections. The 2010 year-to-date revenue collections over 2009 are down 15.4%, and we expect this revenue decline to result in a \$1.26 billion shortfall from the original FY10 budget. This decline will likely result in executive agencies being asked to take, on average, an 8% cut in FY10.

Although we hope that the economic situation will stabilize or turn around, we need to prepare for continuing declines. Please be prepared for potential 8% reductions in FY10 and FY11.

We appreciate your cooperation and efforts in managing these reductions in a manner that least affects Georgia's citizens.

Sincerely,

Handwritten signature of Ben Harbin in black ink.

Ben Harbin, Chairman  
House Appropriations Committee

Handwritten signature of Jack Hill in black ink.

Jack Hill, Chairman  
Senate Appropriations Committee



# Court of Appeals

## Memorandum

To: Self

From: William L. Martin, III

Subject: January Banc Agenda

Date: January 4, 2010

I need to speak with Chief Judge Miller about the following topics as possible Banc Agenda items:

- [1] Charging for motions; (8)
- [2] WestLaw for the Court; (1)
- [3] Budget Update; (2)
- [4] Court Reporter's Office; (4)
- [5] E-Filing Briefs - IT Update and (3)
- [6] Considering Motions for Reconsideration after Cert application has been filed with the Supreme Court of Georgia (5)
- (7) Scanning
- (8) opinion back for S.Ct.
- (9) off site oral arguments  
Steve Zibel N. GA

**Bill Martin - Fwd: Re: Chief Judge M. Yvette Miller**

---

**From:** Tyangye Harris  
**To:** Martin, Bill  
**Date:** 12/16/2009 9:59 AM  
**Subject:** Fwd: Re: Chief Judge M. Yvette Miller

---

Good morning Mr. Martin,

Please see the e-mails below. Chief Judge Miller would like to discuss this with you.

Thanks.

- Tyangye

>>> "Steven Leibel P.C." <steven@leibel.com> 12/14/2009 2:55 PM >>>  
We are very excited to host all members of the Court of Appeals to Dawson county.

I would appreciate your sending me some dates for the Court to come and hear an argument. We can then coordinate with the historic courthouse in Dawsonville to set up space for the public to attend. Also to host a lunch with school students and others.

The Court will be hosted appropriately and given appropriate accomodations.

Once I have some dates I will work on sponsors to help fund the event.

I look forward to working with you

Steven Leibel  
706-867-7575

This email (and any attachment) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, and is legally privileged and confidential. If the reader of this message is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, the reader is hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, delete the message from your computer system. Thank you.

On Dec 14, 2009, at 2:34 PM, "Tyangye Harris" <[harrist@gaappeals.us](mailto:harrist@gaappeals.us)> wrote:

Good afternoon Mr. Leibel,

Chief Judge Miller asked that I forward to you her contact information. She said that during you all's conversation, you made mention that you would like to host a retreat for the Court of Appeals Judges. Chief Judge Miller can be reached at 404.463.3032 or [millery@gaappeals.us](mailto:millery@gaappeals.us).

If I may be of assistance, please do not hesitate to call. Thanks and have a wonderful afternoon.

# January Banc Agenda

- 1) Charge for Motions
- 2) WestLaw — 60 users costs -
- 3) Budget
- 4) Court Reporters Office
- 5) E-Filing Briefs - IT update
- 6) Lexis - in lieu of  
→ any difference in West Law -

Budget Reports -

60 = 1300/mo.