

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

Wednesday, March 17, 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                             | 1 minute   | Chief Judge Miller                          |
| II.   | Ascertainment of Quorum                           | 1 minute   | Chief Judge Miller                          |
| III.  | Approval of January 20, 2010 Banc Meeting Minutes | 2 minutes  | Chief Judge Miller                          |
| IV.   | Budget Update                                     | 10 minutes | Chief Judge Miller<br>Jan Kelley            |
| V.    | Technical Services Report                         | 10 minutes | Judge Phipps<br>John Ruggeri<br>Bill Martin |
| VI.   | GBA Charging for Use of Courtroom After Hours     | 5 minutes  | Chief Judge Miller                          |
| VII.  | Old Business                                      |            |   |
|       | (a) MFR filed after Cert Application              | 10 minutes | Judge Phipps                                |
|       | (b) Rule Change - Rule 27                         | 5 minutes  | Presiding Judge Smith<br>Bill Martin        |
|       | (c) GBA - Rent Abatement                          | 5 minutes  | Chief Judge Miller                          |
| VIII. | New Business                                      | 5 minutes  | Chief Judge Miller                          |
| IX.   | Announcements                                     | 3 minutes  | Chief Judge Miller                          |
| X.    | Adjournment                                       | 1 minute   | Chief Judge Miller                          |

**BUDGET SCENARIOS REDUCTIONS - AFY 2010**

<b>TOTAL STATE FUNDS</b>		<b>\$13,452,235</b>	<b>FY 2010</b>	
			<b>7.32%</b>	
			<b>-\$984,179</b>	
<b>STATEWIDE BENEFIT CHANGES</b>			<b>\$140,430</b>	
<b>REMAINING REDUCTIONS AFTER STATEWIDE CHGS</b>			<b>\$843,749</b>	
<b>APPROVED REDUCTIONS PLUS FURLOUGHS ALREADY TAKEN</b>			<b>\$638,699</b>	
Additional Personal Services Svgs Due to LWOP			<b>\$37,678</b>	
<b>TOTAL REDUCTIONS/SVGS TO DATE</b>			<b>\$676,377</b>	
Savings Staff Furloughs	4	Mar-10	\$124,772	
Savings from 3 Furlough Days Reporer's Ofc		Mar-10	\$4,135	
Savings Judges Furloughs	8	Mar-10	\$6,640	
<b>PENDING SCHEDULED FURLOUGH DAYS (JUDGES &amp; STAFF)</b>			<b>\$135,547</b>	
<b>TOTAL REDUCTIONS</b>			<b>\$811,924</b>	
<b>REMAINING CUTS TO BE IDENTIFIED</b>			<b>-\$31,825</b>	
<b>EQUIV STAFF FURLOUGH DAYS</b>			<b>1.02</b>	
<b>POTENTIAL ADDITIONAL REDUCTIONS</b>			<b>\$153,980</b>	
<b>Addtl Reductions Equiv Staff Furlough Days</b>			<b>4.94</b>	
<b>ADDITIONAL CUTS</b>	<b>SPCL</b>	<b>DATE</b>	<b>7.32%</b>	<b>EQUIV FURLOUGH DAYS</b>
Reduce I.T. Budget			\$62,000	1.99
Retract-2010 Docket Upgrade Contract			\$58,900	1.89
Eliminate Co-Location		Apr-10	\$3,000	0.10
Reduce Office Supplies			\$20,000	0.64
Reduce Travel-Other Employees			\$9,000	0.29
Release Unused Parking Spaces	9	Apr-10	\$1,080	0.03

March Banc 3/17/10

10:30

MYM ✓

GOA ✓

E#J ✓

GAB - Absent

JDS ✓

AEB ✓

JJE ✓

HEP ✓

CBM - absent

ATTA ✓

DHB ✓

SLD ✓

✓ I. Call to order: Motion ✓

II. Minutes E#J ✓  
JDS ✓

III. Budget

AEB → JDS  
SLD → Motion

No forlonger in  
April



VII (c)

GPA Rent abatement  
learned alot:

legis  
Dor Mauson  
Capital -

VIII

New Business -

C. Miller - J. Ellington - Mem for  
JHA ->

will publish

AEB - J. Ruffin - need to raise their own  
contribution -

Memorial Comm

circulate memo about contributions -

old

Avance My ad

~~11:20~~

11:10 AM



# Court of Appeals

## Memorandum

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**To:** All Judges  
**From:** Chief Judge Yvette Miller *nyjm*  
**Subject:** Banc Meeting - March 17, 2010  
**Date:** March 4, 2010

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Please find enclosed the materials for the Administrative Banc Meeting to be held on Wednesday, March 17, 2010 at 10:30 a.m. I am providing these materials to you now so you will have time to review them before the meeting. If you have additional items you wish to have added to the agenda, please let me know and I will bring them up either under new or old business.

Please bring these materials to the meeting on Wednesday along with the minutes of the last meeting which have already been distributed to you. If you need an additional copy of the minutes, please call Bill or Holly and they will give them to you.



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Court of Appeals  
Memorandum

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To: Chief Judge M. Yvette Miller  
From: *William L. Martin, III*  
Subject: March Banc Meeting Minutes  
Date: March 23, 2010

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Enclosed please find the Minutes for the March Banc Meeting. I would appreciate your reviewing them and making any corrections you deem appropriate.

If the Minutes are correct as submitted, please initial same and return them to me and I shall cause them to be distributed to the other judges.

Thank you.

/ld

Enclosures

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

**Wednesday, March 17, 2010 10:30 a.m.**

The March 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, March 17, 2010. 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  
Mr. John Ruggeri, Technical Services (Part of the 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 JANUARY 20, 2010 BANC MEETING MINUTES**

Chief Judge Miller called for the approval of the Minutes. Presiding Judge Johnson made a motion to approve the Minutes as submitted. The motion was seconded by Presiding Judge Smith and passed unanimously.

III. **BUDGET UPDATE**

Chief Judge Miller announced Jan Kelley's father had died and she was returning from his funeral in Kansas. Chief Judge Miller said she felt that due to conservative efforts of the Court and the possibility of reducing some other operational expenses, the Court could forego furloughing in April, May and June. There was a general discussion about the FY2010 Supplemental Budget which Chief Judge Miller said she felt would remain steady, however, she did caution that until the Supplemental Budget is finally passed everything is open to change.

Presiding Judge Smith and Judge Barnes made a motion based upon the budget report that the Court not furlough the month of April. The motion was seconded by Judge Doyle and passed unanimously.

Chief Judge Miller reported the FY2011 Budget is still in flux. She said she would be meeting with Kendra Mitchell of the House Budget Office along with Jan Kelley and Bill Martin next week to discuss a plan for further reductions to the Court of Appeals FY2011 Budget. Chief Judge Miller said no Banc action was necessary at this time on the FY2011 Budget.

IV. **TECHNICAL SERVICES REPORT**

Chief Judge Miller called upon Judge Phipps for a report on Technical Services. Judge Phipps asked John Ruggeri to make the report. Mr. Ruggeri stated the IT Department was continuing to work with TRIVIR to be able to have motions filed electronically and Court actions

to go out electronically in response to those motions. Presently, IT is concentrating on Motions for Extension of Time to File Briefs and Requests to Argue.

Chief Judge Miller said she had postponed the implementation of the next phase of e-filing until after Distress, on April 1, 2010. Mr. Ruggeri stated he and Holly Sparrow were now doing in-chambers training with staff attorneys and administrative assistants.

Mr. Martin stated as of March 17, 61 briefs have been filed electronically during the month of March. He anticipates receiving 100 electronically filed briefs for the month. Also, he said the systems problems which had arisen a few weeks ago have been corrected. He reported no problems with the system for the last two weeks.

Mr. Ruggeri left the meeting at 10:50 a.m.

**V. GBA CHARGING FOR USE OF COURTROOM AFTER HOURS**

Chief Judge Miller stated the Georgia Building Authority has begun to charge \$17.50 an hour for supposed heating and cooling of the Courtroom after hours. Chief Judge Miller said she had met with Steve Stancil and other officials of the Georgia Building Authority and asked them to waive those costs but had been refused.

**VI. OLD BUSINESS**

**(a) MOTIONS FOR RECONSIDERATION (MFR) AND CERT APPLICATIONS**

Chief Judge Miller called upon Judge Phipps for the question of how the Court should handle Motions for Reconsideration which are pending in the Court after an Application for Certiorari has been filed with the Supreme Court. There was a general discussion about how the

Court should address these. After the discussion, Presiding Judge Johnson made a motion the Court continue to act on MFRs until such time as the Supreme Court rules otherwise. Judge Phipps seconded the motion and it passed unanimously.

**(b) RULE CHANGE - RULE 27**

Presiding Judge Smith stated the Rules Committee was proposing a change regarding supplemental briefs. Currently, the rules provide that attorneys may file a Motion for Permission to File a Supplemental Brief and the Supplemental Brief at the same time. Because we now are accepting Briefs electronically, if the Motion for Permission to File Supplemental Brief is denied on a Brief filed electronically, the clerk's office cannot remove that Brief from the system. This requires Technical Services to redirect their efforts from the e-filing initiative and their other work to remove the Brief.

After a brief discussion, Presiding Judge Smith made a motion to adopt this rule. The motion was seconded by Judge Adams and passed unanimously.

**(c) GBA - RENT ABATEMENT**

Chief Judge Miller stated she had a meeting with Steve Stancil and GBA officials regarding an abatement of rent in the Court of Appeals. She said she had directed Jan Kelley to withhold the rent until a future time. Chief Judge Miller said she learned from the meetings that although the Supreme Court, Court of Appeals and Law Department pay a substantial rent for space in the Judicial and Health Buildings, no rent is paid by the Legislature for LOB and the Capitol or the Governor for the Governor's Mansion and the Capitol. She stated it appears the Judiciary is subsidizing the rent for the Executive and Legislative Branches of Government.

**VII. NEW BUSINESS:**

Chief Judge Miller called upon Judge Ellington for a report on the Memorial Edition in the reports for Judge Ruffin. Judge Ellington stated the Committee was working in conjunction with the Reporter of Decisions and a Memorial Edition would be forthcoming.

Judge Barnes stated she thought the contribution to Morehouse College from the Court of Appeals in the amount of \$100.00 was embarrassingly small. She suggested when we have a situation where a former judge of this Court has died, particularly one who had been on the Court as recently as Judge Ruffin, the Court consider making a contribution other than the standard \$100.00 limit prescribed in the Court Flower Fund.

After a general discussion, Presiding Judge Johnson suggested the next time this situation arises that the clerk/court administrator circulate a memorandum to the Court asking input as to the amount and type of contribution to be made in memory of the deceased judge.

**VIII. ADJOURNMENT**

There being no further business, and upon hearing a motion to adjourn, Chief Judge Miller adjourned the meeting at 11:10 a.m.

Respectfully submitted,

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

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



# Court of Appeals

## Memorandum

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**To:** All Judges  
**From:** Judge Herbert Phipps *HED*  
**Subject:** E-Filing and Scanning  
**Date:** March 4, 2010

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As Judge in Charge of IT, I am providing you an update on the status of e-filing and scanning.

### E-Filing

Overall, e-filing has been going well. We had 155 e-filings through February 2010. The number has been increasing month by month since we began accepting electronic briefs on December 1, 2010. Initially, we received a number of compliments including that the system is easier to use than the federal court system. The only problems that originally occurred related to the attorney profile in our system which had missing data either from the State Bar or our Court admission date or the attorney failed to remember his or her password which was dealt with quickly and positively.

As we began to alter the system to add functions in January, we experienced some short outages due to a slow down of the state internet system which occurred when the legislature went into session. A second problem occurred when for an unknown reason the memory capacity of the system is exceeded and the system fails to reset and it must be reset manually. Without going into detail about each problem, I can say that users usually experienced these problems as a slowdown or the inability of the system to recognize and upload a pdf file.

In each instance, a member of the Clerk's office or IT contacted the individual asking for assistance and provided a solution, most times on the same day and usually within an hour or two. These outages are of concern, of course, since we want to encourage the use of e-filing and continue attorney confidence in the system. On the other hand, it could be expected that we would have problems since IT and TriVir are continuing to work on the system to add motions and court actions while attorneys are using it to e-file. IT and TriVir now have a process in place to test the system each morning to make sure that it is up for filing. We have not experienced any of these problems for the last three days.

## Scanning

In January 2010 the Clerk's office began to scan all paper briefs. Issues with scanning include:

(1) Scanning turned out to be more time-consuming for the Clerk's staff than anticipated. This is a serious concern since the reduction in force in FY2009 resulted in fewer individuals than originally contemplated would be available to do the scanning.

(2) There have been several processing problems to work through including the recognition of the data on the batch cover sheet and the number of briefs that can be successfully scanned at one time.

(3) The optical character recognition process has a higher rate of error than expected.

These errors are a problem for our staff attorneys who must read the briefs and the attorneys who may feel we are improperly displaying their work. These errors also render the scanned documents inappropriate for long term record retention. IT could change the scanning process so that the scanner produces only an image which would exactly mirror the original brief, but then the electronic brief would not be text-searchable.

(4) The Clerk's office has determined that several judges' offices prefer to have a printed copy of the brief rather than a searchable electronic copy, anyway, so that time is wasted scanning the brief.

As a result of the above issues, for the time being, the Clerk has decided to instruct his staff not to scan briefs filed in the future unless a judge's office wishes a scanned searchable copy or an electronic imaged copy. Should you or one of your staff attorneys want a scanned version of a brief, please let Bill or Holly know.

If you have any specific questions or comments about the information I have provided, please let me or Bill Martin know and we can discuss them at the March Banc Meeting.

cc: Bill Martin  
John Ruggeri  
Holly Sparrow



# Court of Appeals

## Memorandum

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**To:** Bill Martin  
**From:** John Ruggeri  
**Subject:** Status of IT Equipment Budget  
**Date:** March 10, 2010

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Realizing that I have not consumed my allotted IT budget in FY10 and that the Court may want to consider using those funds to offset our need for additional furloughs, I wanted to make you aware of the age of some of the equipment that the staff relies on every day.

Our oldest laptops, NX5000's, are being used by Presiding Judge Johnson and Judge Phipps' staffs, central staff and Presiding Judge Blackburn and Judge Phipps, a total of 14. These laptops were purchased in January 2005. They were to be replaced at the end of fiscal 2009. We have a couple spare units that we have cannibalized for parts and have not paid to be repaired. Worst case scenario, if one of these units could not be replaced or repaired, we would issue that staff attorney a spare desktop PC that we have from our last desktop replacements. This would prevent the staff attorney from teleworking, but they would be up and running. If that staff attorney decided to furnish his/her own PC for teleworking, we

would install all the necessary court software for their use. To replace these units in this fiscal year (FY10) will cost around \$26,600 or \$1900 per unit.

Our printers in our offices were scheduled to be replaced during FY2008, we purchased a few of the required 15 units, but canceled the PO's for the balance of the new printers to make budget cut requirements for that year. Our current printer and copier fleet is still very serviceable, we only planned on replacing our current units in FY2008 so we could increase their printing speed in preparation of the staff printing a larger volume of e-filed documents. The judges staff's may begin to have more and more complaints about the speed of our printer fleet, but we are still able to maintain them and have them repaired on an as needed basis. Some of the maintenance on these printers can run \$500 per unit depending on the parts required, but the average repair bill is under \$300. We do have a couple of spare printers to use while others are under repair. To replace enough printers so each judges suite has a new printer will cost around \$16,875 or \$1875 per unit in FY10.

Our next oldest laptops, NC6320's, are being used by the balance of the judges offices, floating staff attorneys and IT. A few of the judges use laptops and the others use desktops. These units were purchased in June 2006. They are not scheduled to be replaced until fiscal year 2011. Once again, we would use our old, but serviceable desktops to replace one of these laptops if necessary. Replacement costs for these units is around \$91,200 or \$1900 per unit. These costs would be in a future fiscal year.

Our AA's, Reporter's office, Fiscal office and clerk's office staff use our newest desktop equipment purchased in June 2008. This equipment is not scheduled to be replaced until FY 2012 or FY2013. We have a spare unit for use as an immediate replacement and these units are still under warranty until June 2011. The cost to replace these desktops in some future fiscal year is \$72,150 or \$1850 per unit.

Our server farm and networking equipment is made up a machines of various ages, some as old as 7+ years. We have our servers setup so that our most critical services can run on more than one server and no single server outage would cause us prolonged downtime. Some of the servers are still under warranty and the rest we can pay to repair as needed.

We have started a project to consolidate our services on fewer more powerful servers. We would need two more servers to complete our first phase of this project. The cost is \$15,000 per server or \$30,000. These costs would be in a future fiscal year.

Our networking equipment was purchased in July 2004. We carry next business day hardware support on our critical networking switch that is the center of our network operations. We are not scheduled to replace the our center networking switch until FY2012. We have several different classes of switches on all of the edges that feed our users. We have a couple of spare units and do not carry maintenance on these switches. We will use the spare units and repair as needed. We will not replace the majority of our edge switches until we replace our center networking switch in FY2012. We will then need to match edge switches

to the capability of the center switch. We have a well designed network and do not foresee any capacity issues before our scheduled replacement time. Provided that we can continue to purchase maintenance on our critical center switch, it is more than possible to forgo the scheduled replacement past FY2012.

The cost of a center networking switch is around \$30,000 . The center networking switch in the datacenter is a shared cost with the Supreme Court, Bar Admissions and Council of Superior Court Judges (CSCJ), so our cost would be closer to \$10,000 provided everyone had budget for the purchase at that time. The edge switches are around \$2100 each for a total of \$25,200. Each group pays for their own edge switches. These costs would be in a future fiscal year.

Our network security firewall was purchased on 2008 and is not scheduled to be replaced until FY2012 or 2013. We carry next business day hardware maintenance on this unit that will help us to minimize any outages. It is too expensive to carry a spare at this time. In the future we may design a configuration for our firewall so we do not have a single point of failure. The replacement cost is around \$15,000 . These costs would be in a future fiscal year.

Our storage area network (SAN) was last upgraded in December 2007. We do not plan on replacing these units until FY2012 or 2013. Our SAN is a shared cost and several agencies have contributed its components. We all carry the highest level of maintenance for these

devices, and plan on continuing to do so. As we all start storing more and more electronically filed documents from our various e-filing projects, we may run into a need for more capacity. But we would have time to plan on that worst case scenario before we had to do an actual replacement. These units cost around \$27,500 each. These costs would be in a future fiscal year.

As you can see from this information, we could put off upgrading the majority of our equipment for the next couple of years. The NX5000 laptops and printers are our oldest set of equipment and would be replaced first. As time moves on, we may experience more frequent downtime and slower performance than the court is accustomed to. We may have to have funds to replace an unforeseen item or upgrade a piece of equipment for a new judge. However, if we can continue to have our necessary annual software and hardware maintenance budgets we should be able to weather the budget storm while helping to mitigate our furloughs with the balance of appropriated IT budget dollars.

### Chart of IT Spending Priorities

Priority	Description	Units	Cost	Total	FY Schedule Replacement
1	NX5000 Laptops	14	\$1,900	\$26,600	2009
2	Printers	9	\$1,875	\$16,875	2008
3	Servers	2	\$15,000	\$30,000	2009
4	NC6320 Laptops	48	\$1,900	\$91,200	2011
5	Center Network Switch	1	\$30,000	\$30,000	2012/2013
6	Edge Network Switches	12	\$2,100	\$25,200	2012/2013
7	Firewall	1	\$15,000	\$15,000	2012
8	Desktops	39	\$1,850	\$72,150	2013
9	SAN	2	\$27,500	\$55,000	2013



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# Court of Appeals

## Memorandum

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**To:** Chief Judge M. Yvette Miller  
**From:**   
William L. Martin, III  
**Subject:** Number of E-Briefs Filed by Month  
**Date:** March 8, 2010

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In December 2009, we had 37 briefs filed electronically. That number went up to 45 in January and 73 in February.

What do you think of putting a chart of our e-filed briefs on our website under our announcements? This may encourage other people to file electronically.

If it looks like the figures are declining or leveling off, we can always take them down.

Please let me know your thoughts.

/ld

cc: Judge Herbert E. Phipps  
John Ruggeri  
Holly Sparrow



*for Banc*

# Court of Appeals

## Memorandum

To: John Ruggeri  
Holly Sparrow

From: *William L. Martin, III*  
William L. Martin, III

Subject: E-Filing Update

Date: March 3, 2010

What do you think about putting a report on the Announcement Section of our website to catalog the number of e-file briefs we have for a particular month and then the running total? This might be interesting and encourage others to e-file.

Thank you.

/ld

*I think we could do it for the next few months assuming we like the results, i.e., e-filings continue to increase. Margo has a table on K: where we keep a running total so we could use it to obtain the numbers for the announcement.*

*I believe after a few months it may become boring to the web readers.*

*HS*



List of IT issues as of March 1st

E-filing:

Jan 11th -

First reported issues of extreme slowdown of eFast website- made adjustments to system resources and changed memory allocations. Suspected increase traffic of public attorney's registering and using eFast system required changes to system resources.

Jan 19th -

Second report of poor eFast performance site was so slow it was unusable. Made further adjustments to server memory allocations. Increased logging level to capture more detailed information about performance issue.

Jan 22nd -

New logs showed missing LDAP information for select group of eFast users in Court Judicial

tree causing memory leak. We added the missing information for the users and changed frequency of LDAP sync process. Expected this to resolve weekly issue.

Jan 23- Feb 10th -

We had administrative restarts to install new code for fixes and scanner portion of project on Jan 31st and Feb 5th.

Feb 11th -

Memory leak fix ineffectual. Began plan to add additional tools to the test system to try to reproduce the error. Begin development of automated nightly restart scripts to prevent the memory leak until it could be resolved through our investigation on our test server. Begin to see issues with uploading PDF's when the PDF extension was in uppercase.

Feb 16th -

Began use of automated nightly restart scripts. Introduced new error when uploading PDF files. The PDF upload function would not accept and files for upload. Error message stated that all PDF's were invalid. Was the first time we saw this error and waited to see if it would occur again.

Feb 17th -

PDF upload error occurred again. We did not have a method to evaluate the problem without making test e-filings against the production docket so we install higher level of logging to capture PDF error when next e-filer attempted to upload their document and the error condition was present.

Feb 18th -

PDF upload error occurred. We captured more detailed information about the error and began to make adjustments to our nightly restart scripts.

Feb 19th -

PDF uploads continue to cause errors and we decide that we needed to create a method to test PDF issue against the production docket system. by assigning an old case A00D0001 to our test bar ID 000003. We create an e-filing against A00A0001 every morning and attempt to upload a PDF. If successful, we would cancel the transaction before it went to the clerk's office. We would then know that the automated restart we unsuccessful and manually restart the system which cleared the error. Furthermore, we would have additional logged information to use to resolve the issue. We tested and made changes

nighty.

Feb 24th -

Continue to evaluate PDF upload error, making changes to scripts and eFast code to resolve the issue. Introduced error that only affected the internal eFast chambers users and restarted their service at 2 PM to resolve.

Feb 27, Feb 28 -

Made changes to PDF tmpupload directories and tested scripts

March 1st -

successful auto - restart script with no PDF tmpupload issues, installed fix for PDF extension in uppercase error.

Scanning eFast:

Feb 5th -

First report of scanned transactions causing errors in the eFast system. Kofax scanning validation process did not catch all possible database entry errors before the release script entered a scanned transaction into the eFast system. Trivir will have to add edits and validation to the release script.

Feb 8th -

Kofax will not extend Trivir's temporary developer licenses so we can fix the issue. They will also require us to renew our annual maintenance agreement to get support. Trivir begins the process of purchasing a Kofax licenses for our older version of Kofax software.

Feb 1th -

COA purchases Kofax maintenance for 5 month period ending with fiscal year. We are now entitled to upgrade to latest version when needed.

Feb 15th -

Clerk's office reports that multiple scanning cover sheets are being rejected by scanning process when more than one filing is scanned at a time. IT tries to reproduce errors.

Feb 16th -

We schedule our Kofax vendor to come onsite at earliest date, March 4th to help troubleshoot ongoing intermittent cover sheet errors.

Feb 18th - Now

First staff attorney reports that a scanned document has a few OCR errors in the body of a brief not related to time stamps and signatures or special characters. Others follow over the coming weeks and are calling for the paper filings. Discussions begin about eliminating the problem by only scanning in an image of the filing and not try to index it for searching.

Feb 25th -

Continuing to evaluate cover sheet rejection errors, we trained the clerk's office staff on how to make adjustments to the scanner's feed tray so the documents are not scanned in an angle. We anticipate this can help resolve the cover sheet issue, since IT is having a hard time reproducing the error when we scan in documents. We also collected samples of problem documents to give to vendor on March 4th.

Feb 26th -

Internal clerk's efast process was interrupted due to a scanning database error. Trivir is trying to finalize the purchase of a Kofax license that matched our older version of the software. They estimate that they will have the purchase complete at the beginning of March. Afterwards they suggest it will only take a week to implement an improved script.

#### Internet Slowdown:

Oct 8, 2009 -

First reported issues with latency accessing Lexis. Had Lexis onsite support technician come to office and test connections and visit offices that reported slow performance. We implemented Lexis suggestions for browser clean up, but was unable to recreate this intermittent problem. The Supreme Court and Law Department was seeing the same issues with Lexis and Westlaw.

Nov 9 & 10, 2009 -

Open support incidents with the State help desk about Lexis access issues. Escalated the incidents and began evaluation with IBM and ATT of court's connectivity and internet access bandwidth. All state agencies are reporting intermittent internet slowdowns.

Nov 17, 2009 -

State admits to firewall hardware issues and affected repairs. They expect issue has been resolved.

Nov - Dec 2009 -

See a few but very infrequent days of slow internet connectivity. Nothing out of the ordinary.

Jan 11 & 12, 2010 -

State wide internet slowdown. Open incident with GTA help desk and escalated the severity. Legislature has begun session. State firewall connections are overwhelmed. Had troubleshooting conference call with Lexis, ATT, IBM and GTA. State agreed that the issue was not with Lexis or Westlaw and that they would keep my incident open for further evaluation.

Rest of January -

Daily calls from GTA helpdesk, IBM and ATT checking on intermittent internet slowdowns. Solution still not forthcoming.

Feb 10th -

Escalated issue with ATT and had meeting with upper customer support personnel and ATT engineers. They omitted that the state's internet firewalls, managed by IBM, do not have the surge capacity to handle the state's traffic. As part of the new GAIT outsourcing project, they have been planning on replacing the IBM firewalls and taking over the management of the state's internet connectivity. This fix has been in the planning stages for months and may begin to be implemented in mid March.

Feb 11th -

I emailed the Court the information that was given to me the night before by ATT. I still get calls and e-mails from some select staff attorneys letting me know that they are experiencing the slowdown on and that they are struggling to meet their drafting

deadlines. They also let me know that they understand that the issue is out of my control but wanted me to know none the less.



# Court of Appeals

## Memorandum

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**To:** Presiding Judge Smith and Judge Bernes

**From:** Judge Phipps (Derrico)

**Subject:** A09A1144. *Smith v. The State.*  
Motion for Reconsideration

**Date:** December 15, 2009

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In *Smith v. State*, Case No. A09A1144 (decided November 6, 2009), we affirmed Donald Frank Smith's multiple convictions. Smith's attorney filed a motion for reconsideration of our decision, which we agreed to deny. Before the order denying the motion for reconsideration was issued, Smith filed a pro se petition for certiorari in the Supreme Court. In light of the pending petition for certiorari, Bill Martin prepared an order to dismiss the motion for reconsideration on the ground that the certiorari petition deprived us of jurisdiction. I believe that we still have jurisdiction to resolve the motion for reconsideration.

The Georgia Constitution grants the Supreme Court the right to review our cases by certiorari.<sup>1</sup> That constitutional provision is implemented in OCGA § 5-6-15, which simply

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<sup>1</sup>Ga. Const. Art. VI, § VI, Para. V.

provides that, “[t]he writ of certiorari shall lie from the Supreme Court to the Court of Appeals as provided by Article VI, Section VI, Paragraph V of the Constitution of this state.” Neither the constitution nor case law nor statute describes the supersedeas effect of petitioning the Georgia Supreme Court for certiorari in order to review one of our decisions.<sup>2</sup>

There is a statute, however, concerning the supersedeas effect of petitioning the superior court for review by certiorari of a decision of a lower court. That statute, OCGA § 5-4-19, provides that, “[t]he writ of certiorari, when granted in civil cases, shall operate as a supersedeas of the judgment until the final hearing in the superior court.” Additionally, numerous cases involving superior court review of a lower court decision have held that the sanction or grant of the writ acts as supersedeas until the final hearing in superior court.<sup>3</sup> This principle comes from the common law which provides that “[w]here the writ of certiorari has been applied for and has been granted, *the sanctioning of the writ operates as a stay of the*

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<sup>3</sup>See, e.g., *Equitable Life Assurance Soc. v. Culp*, 159 Ga. 874 (127 SE 225) (1925); *Dixon v. Sable*, 147 Ga. 623, 625 (95 SE 240) (1918); *Loeb v. Mangum*, 134 Ga. 335 (67 SE 882) (1910). The cases do not expressly limit this rule to civil proceedings.

Sanctioning the writ is an act of the judge that must take place before the clerk of court may file the petition for writ of certiorari. See *Fleming v. Bainbridge*, 84 Ga. 622 (10 SE 1098) (1890). Sanctioning is the act required to allow the petition to be filed so that the court can consider its merits; sanctioning itself is not a consideration of the merits. See *Cobb County v. Herren*, 230 Ga. App. 482 (496 SE2d 558) (1998).

*proceedings*, and the powers of the inferior tribunal as to that case are suspended until the final determination of the case in the superior court.”<sup>4</sup> In other words, only when the certiorari petition has been sanctioned does it have supersedeas effect. The common law rule “seems to prevail universally except where it has been abrogated or modified by statute.”<sup>5</sup>

In the absence of any directly applicable constitutional provision or statute, it is appropriate to look to the common law to answer the question presented here. Applying the common law rule to this case, I have concluded that the filing of the petition for certiorari in the Supreme Court does not act as supersedeas. Should the Supreme Court grant (or “sanction”) the petition, thereby allowing the case to proceed for review of the merits, that grant will act as supersedeas. Until then, we have jurisdiction and may rule on the motion for reconsideration.

According to Bill Martin, in practice, we have treated petitions for certiorari filed in the Supreme Court as divesting us of jurisdiction. But we are not required to do so. I suggest the better practice is to resolve pending motions on the merits rather than dismiss them on the ground of a questionable conclusion about jurisdiction. For these reasons, I recommend that, instead of issuing the proposed order to dismiss the motion for reconsideration, we issue a standard order denying the motion for reconsideration.

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<sup>4</sup>*Loeb*, supra, at 625.

<sup>5</sup>*Id.*



# Court of Appeals

## Memorandum

---

**To:** Rules Committee

**From:** J.D. Smith

**Subject:** Suggested Amendment to Rule 27

**Date:** February 18, 2010

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I hope you all have received the attached memo dated February 15 from Holly Sparrow concerning amendment to Rule 27. I agree with the memo. Please let me know if you do not agree. I would like to put it on the agenda for our March 17 banc meeting.

Thank you.



# Court of Appeals

## Memorandum

To: Rules Committee

From: Holly Sparrow *HS*

Subject: Suggested Amendment to Rule 27

Date: February 15, 2010

Attached you will find a draft amendment to Rule 27 (a). This proposed amendment strikes the provision permitting contemporaneous filings of the motion to file supplemental brief and the brief. Shortly, the Court will permit the filing of motions electronically and one of those motions will be the motion for permission to file a supplemental brief.

The reason for this change is to make the e-filing and scanning process simpler for the Clerk's staff and to keep the e-filing and paper filing systems as similar as possible. The change will also reduce the number of docket codes needed for these filings and reduce the different types of orders that will be needed in the e-filing system to accommodate them.

If the amendment is not approved, the Clerk's office will have to hold the docketing of e-filed supplemental briefs until the motion for permission to file has been disposed. This is because once docketed, an e-filed brief is given a filing date and time by the system and it cannot be changed. To hold the brief's docketing could result in an oversight should the orders' clerk fail to notify the briefs' clerk of the order or the briefs' clerk fail to docket the brief by mistake after the order was issued.

On the other hand, if the e-filed motion and brief were docketed together and the motion was not granted, the briefs' clerk would have to delete the brief from the docket. Deleting the brief from the docket does not delete the brief from the EFaST document database. At this time, the Clerk does not have a method to delete a document from the database that has been

docketed. As a result, there may be confusion as to whether the Court considered the supplemental brief in its disposition of the case.

Mr. Martin and I are recommending that the Committee approve this change for submission to all the judges at the next Banc Meeting.

cc: Chief Judge Miller  
Bill Martin

## DRAFT AMENDMENT

### Rule 27. Supplemental Briefs

(a) Briefs of the parties shall be limited to an appellant's brief, an appellee's brief and an appellant's reply brief. Supplemental briefs may be filed only by leave of Court. Counsel may file a motion for permission to file supplemental briefs. ~~Contemporaneously with filing a motion, counsel may file, as a separate document, an original and two copies of the supplemental brief, not to exceed 15 pages. Counsel may not file a supplemental brief contemporaneously with the motion, but may include a copy of the supplemental brief with the motion for permission to file as an exhibit. Counsel shall file a supplemental brief with an original and two copies, not to exceed 15 pages only after permission to file is granted.~~ A certificate of service must be attached to the supplemental brief and service must be made to opposing counsel.

**BUDGET SCENARIOS REDUCTIONS - AFY 2010**

<b>TOTAL STATE FUNDS</b>		<b>\$13,452,235</b>	<b>FY 2010</b>	
			<b>7.32%</b>	
			<b>-\$984,179</b>	
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Savings from 3 Furlough Days Reporer's Ofc		Mar-10	\$4,135	
Savings Judges Furloughs	8	Mar-10	\$6,640	
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Reduce Travel-Other Employees			\$9,000	0.29
Release Unused Parking Spaces	9	Apr-10	\$1,080	0.03



# Court of Appeals

## Memorandum

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To: Chief Judge M. Yvette Miller

From: Jan R. Kelley, Director of Fiscal Services

Subject: GBA Meeting

Date: March 5, 2010

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This memorandum is written to document the meeting you held today with Steve Stancil, State Property Officer, regarding a request for a reduction in rent. A meeting had previously been held on March 4th regarding the general poor condition of the Judicial Building and in particular the recent event of moisture/rain coming in on the 6th floor. In attendance for the March 4th meeting were: Steve Stancil, State Property Officer; Debra Myers, GBA Facilities Director; Steve Fanczi, Deputy Director of GBA, Chief Judge M. Yvette Miller, Bill Martin, Jan Kelley and Carrie Anne Steele. In this meeting a request was made for reduction of rent for six months and for GBA to provide water coolers since the water in the building was undesirable for drinking. Bill Martin mentioned that we had requested water coolers several years ago (before they renovated the Health Building) and had been denied.

At the March 4th meeting, Mr. Stancil mentioned that they had secured \$2.5 million for their facade project. Various buildings around Capitol Hill have gaps in their facades which allow rain, wind, etc. to leak into the buildings.

In today's meeting, Mr Stancil said that he had contacted Tommy Hills, State Chief Financial Officer, regarding the request for a reduction in rent. Mr. Hills had told Steve Stancil that the state's fiscal problems would not allow a rent reduction. However, Mr. Stancil said that the Judicial Building would be their top priority for facade repair. Projected start date for facade repair for the Judicial Building would be May 1. Also, Mr. Stancil told the Chief Judge that they would have an improved water system for the Judicial Building by July 1. Jan Kelley will contact Steve Fanczi requesting information regarding details. She will also ask to see if we can have the after-hours charges waived that we have recently incurred.

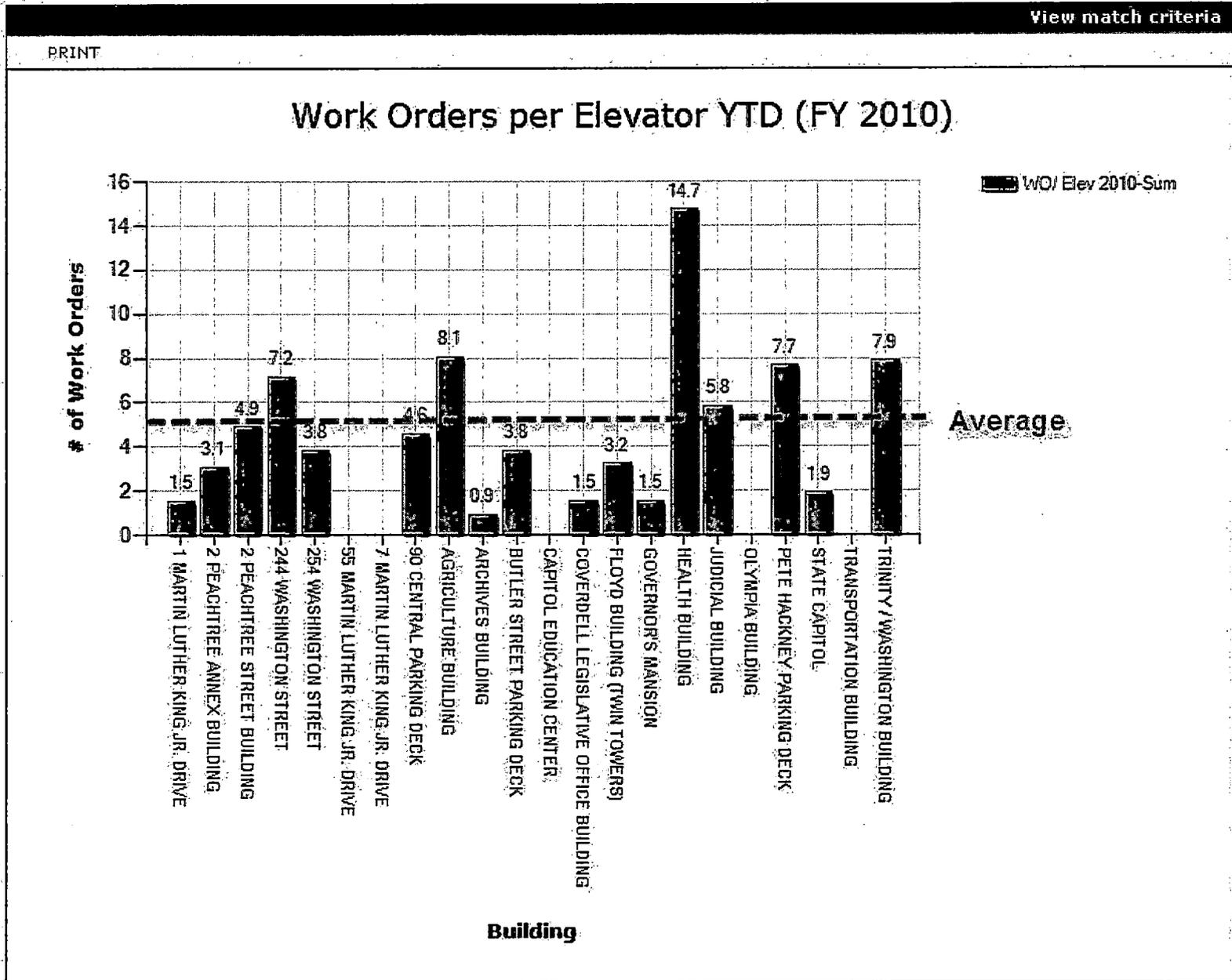
Chief Judge Miller informed Jan Kelley that she had told Mr. Stancil that they would be withholding rent payments for the current time. Rent obligations, however, will be caught up by the end of the fiscal year.

cc: William L. Martin, III

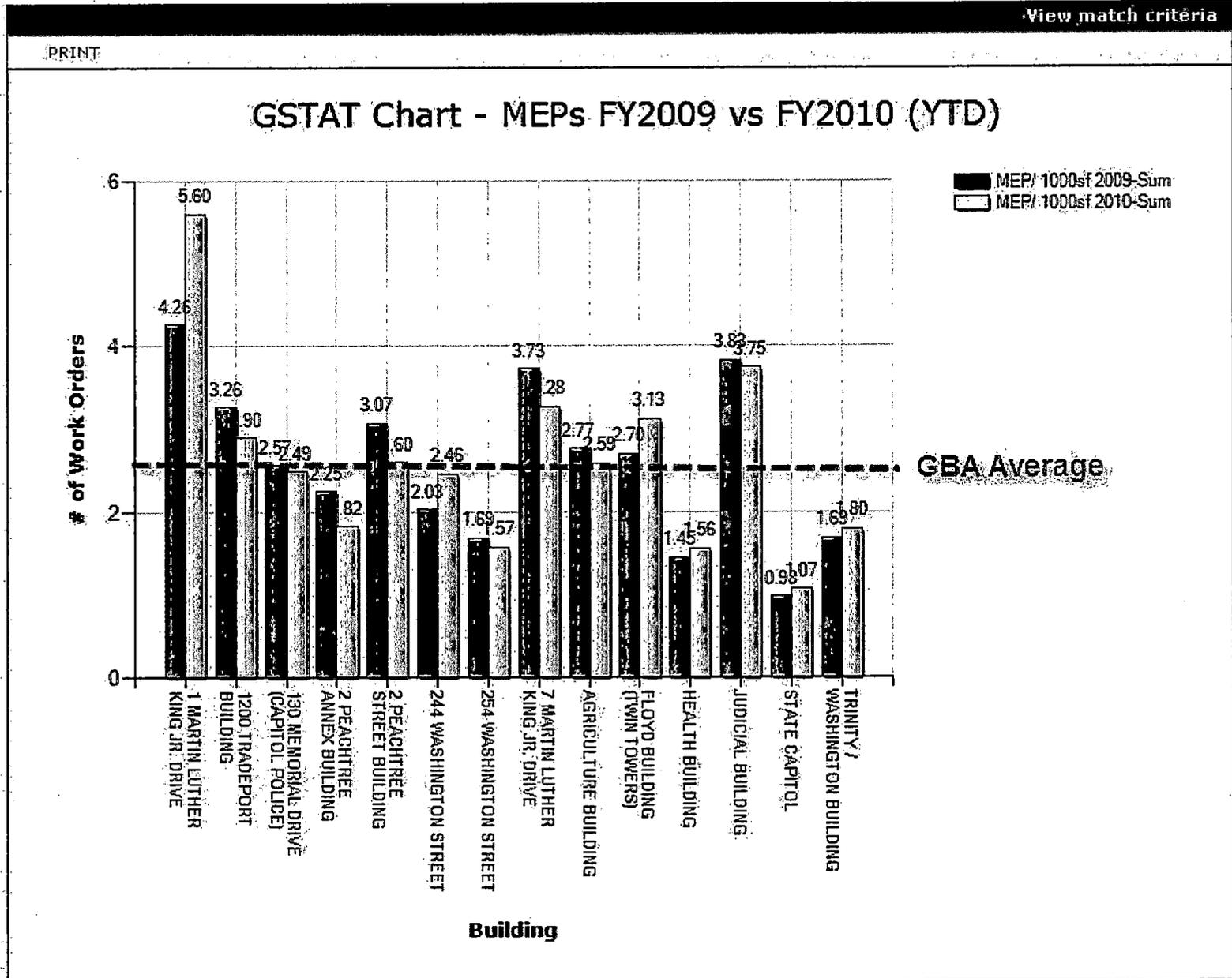
**From:** Carrie Anne STEELE  
**To:** Bill Martin; Jan Kelley  
**Date:** 2/17/2010 3:18 PM  
**Subject:** Charge for After Hour Heating in Courtroom

In the past I have never been charged for heating in the courtroom after hours. Judge Bernes had an event in the courtroom from 6:00 pm to 8:30 pm and we were just charged \$17.50. Chief Judge Miller is having an event in the courtroom tomorrow night and Tyangye is speaking with her concerning turning the heat on or not. I just wanted to make you guys aware that events that are held will now be accompanied with a charge for heating/cooling. How should I handle these charges? Should the court pay for them?

## Buildings | Work Orders per Elevator YTD (FY 2010)



## Buildings | GSTAT Chart - MEPs FY2009 vs FY2010 (YTD)





# Court of Appeals

## Memorandum

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To: Presiding Judge Smith and Judge Bernes

From: Judge Phipps (Derrico)

Subject: A09A1144. *Smith v. The State*.  
Motion for Reconsideration

Date: December 15, 2009

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In *Smith v. State*, Case No. A09A1144 (decided November 6, 2009), we affirmed Donald Frank Smith's multiple convictions. Smith's attorney filed a motion for reconsideration of our decision, which we agreed to deny. Before the order denying the motion for reconsideration was issued, Smith filed a pro se petition for certiorari in the Supreme Court. In light of the pending petition for certiorari, Bill Martin prepared an order to dismiss the motion for reconsideration on the ground that the certiorari petition deprived us of jurisdiction. I believe that we still have jurisdiction to resolve the motion for reconsideration.

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provides that, “[t]he writ of certiorari shall lie from the Supreme Court to the Court of Appeals as provided by Article VI, Section VI, Paragraph V of the Constitution of this state.” Neither the constitution nor case law nor statute describes the supersedeas effect of petitioning the Georgia Supreme Court for certiorari in order to review one of our decisions.<sup>2</sup>

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---

<sup>4</sup>*Loeb*, supra, at 625.

<sup>5</sup>*Id.*

**From:** Jan Kelley  
**To:** Court of Appeals  
**Date:** 3/5/2010 2:04 PM  
**Subject:** GaBreeze - New Self-Service Flexible Benefits System

The new Flexible Benefits Services will include:

- \* A participant self-service Web site used for enrolling in and updating flexible benefits throughout the year;
- \* A call center to support employees enrolled in flexible benefits and spending accounts.
- \* Personalized, online total rewards statements for employees (State Agencies Only), providing the full picture of the total value of their benefits and compensation--an important tool to support employee engagement and retention;
- \* Flexible benefits and spending account administration;
- \* An employer Web site for agencies that do not have an automated HR data system;
- \* Single sign-on access to a full suite of Hewitt total rewards, benefits and spending account tools;
- \* A significant technology upgrade to replace 20-year-old systems; and
- \* Efficiencies that will eliminate duplicate work, reduce time spent on routine transactions and allow more time for strategic initiatives;

Configuration and implementation have begun. The "first phase of the project will go live" in the second quarter of 2010. Additional services will be launched throughout 2010 and 2011.

**Bill Martin - Additional cuts requested from Governor - 3%**

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**From:** "Mitchell, Kendra" <Kendra.Mitchell@house.ga.gov>  
**To:** <kelly.steele@gaaoc.us>, "Bill Martin" <MARTINW@appeals.courts.state.ga.us>, <millerc@cscj.org>, <davidsoc@pacga.org>, <jkelley@gaappeals.us>, "Kirsten" <kirsten.wallace@earthlink.net>, "Randy Dennis" <dennisr@gaaoc.us>, "Sandy Lee" <LeeS@superior.courts.state.ga.us>, "Tee Barnes" <BARNEST@gasupreme.us>  
**Date:** 3/16/2010 11:25 AM  
**Subject:** Additional cuts requested from Governor - 3%  
**CC:** "Mike Cuccaro" <mike.cuccaro@gaaoc.us>, "Bricka, Shelby" <Shelby.Bricka@senate.ga.gov>

---

Hey you all! As you have probably heard, the Governor reduced the revenue estimates for both budget years. His plan will not require further cuts to agencies in AFY 10, but he is requesting that agencies reduce their budgets by an additional 3% for FY 2011.

To that end, I am asking each of the judicial branch agencies to provide me with a plan to achieve the 3% level of cuts outlined per agency, as follows:

Court of Appeals	-444,033
Judicial Council	-467,910
Juvenile Court	-217,099
PAC	-1,898,724
Superior Courts	-1,996,133
Supreme Court	-265,174

This is in addition to any cuts that have already been proposed for FY 2011.

Please get this to me by COB Wednesday, and call me if you have any questions.

Thanks,

Kendra

**Kendra F. Mitchell**  
 Budget Analyst, GA House of Representatives  
 412 Coverdell Legislative Office Building  
 Atlanta, GA 30334  
 (404) 656-1780 office  
 (404) 831-4122 blackberry  
 kendra.mitchell@house.ga.gov



# Court of Appeals

## Memorandum

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**To:** Rules Committee

**From:** J.D. Smith

**Subject:** Suggested Amendment to Rule 27

**Date:** February 18, 2010

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I hope you all have received the attached memo dated February 15 from Holly Sparrow concerning amendment to Rule 27. I agree with the memo. Please let me know if you do not agree. I would like to put it on the agenda for our March 17 banc meeting.

Thank you.



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Mr. Martin and I are recommending that the Committee approve this change for submission to all the judges at the next Banc Meeting.

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FEB 25 2010



# Court of Appeals

## Memorandum

---

**To:** Chief Judge M. Yvette Miller  
**From:** *WLM*  
William L. Martin, III  
**Subject:** March Banc Meeting Agenda Item  
**Date:** February 25, 2010

---

GBA has begun to charge the Court \$17.50 per hour for after hours use of the Court of Appeals Courtroom. This charge essentially is for heating and cooling the building.

I believe this item should be placed on the Agenda for the March Banc Meeting. It may be that when groups come to use our Courtroom on weekends or after hours, that they should give us a deposit for the charges to be accessed by GBA. I would suggest we require the deposit to be on the high side so we could refund any difference.

Thank you.

/ld

cc: Holly Sparrow  
Jan Kelley

*good  
mym  
2/26/10*

**From:** <fitzlaw@windstream.net>  
**To:** <clerk@gaappeals.us>  
**Date:** 2/2/2010 4:29 PM  
**Subject:** Clerk Feedback Form

E-MAIL SENT FROM THE CLERK FEEDBACK FORM

Sender's Name: Lane Fitzpatrick  
Sender's E-Mail: fitzlaw@windstream.net

Message: Bill,

In my 33+ years of practice, there have been a few technology changes that revolutionized how I practice law. The first was a correcting selectric typewriter (this shows how old I am). the 2nd was word processing. The 3rd is email. The 4th is computerized research. But saving the best for last, this efilng briefs takes the blue ribbon. I've already filed 2 briefs and it was wonderful! No more running around like a chicken with its head cut off trying to get done before 4:30 when the Post Office closes in Danielsville, or flying to Athens searching for a Post Office substation that is open after 6:00, or knocking on the door of the main Post Office after hours begging a clerk to stamp the certified receipt. I cannot begin to tell you how great efilng is. Before I file my last suit, I am able to file every pleading online in every court. Please thank everyone involved in this project. I will do a testimonial for efilng anytime you'd like me to.

Thanks so much.  
Lane Fitzpatrick



# Court of Appeals

## Memorandum

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**To:** All Judges  
**From:** Chief Judge Yvette Miller *nyjm*  
**Subject:** Banc Meeting - March 17, 2010  
**Date:** March 4, 2010

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Please find enclosed the materials for the Administrative Banc Meeting to be held on Wednesday, March 17, 2010 at 10:30 a.m. I am providing these materials to you now so you will have time to review them before the meeting. If you have additional items you wish to have added to the agenda, please let me know and I will bring them up either under new or old business.

Please bring these materials to the meeting on Wednesday along with the minutes of the last meeting which have already been distributed to you. If you need an additional copy of the minutes, please call Bill or Holly and they will give them to you.

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

Wednesday, March 17, 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                             | Chief Judge Miller                          |
| II.   | Ascertainment of Quorum                           | Chief Judge Miller                          |
| III.  | Approval of January 20, 2010 Banc Meeting Minutes | Chief Judge Miller                          |
| IV.   | Budget Update                                     | Chief Judge Miller<br>Jan Kelley            |
| V.    | Technical Services Report                         | Judge Phipps<br>John Ruggeri<br>Bill Martin |
| VI.   | GBA Charging for Use of Courtroom After Hours     | Chief Judge Miller                          |
| VII.  | Old Business                                      |   |
|       | (a) MFR filed after Cert Application              | Judge Phipps                                |
|       | (b) Rule Change - Rule 27                         | Presiding Judge Smith<br>Bill Martin        |
|       | (c) GBA - Rent Abatement                          | Chief Judge Miller                          |
| VIII. | New Business                                      | Chief Judge Miller                          |
| IX.   | Announcements                                     | Chief Judge Miller                          |
| X.    | Adjournment                                       | Chief Judge Miller                          |

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Release Unused Parking Spaces	9	Apr-10	\$1,080	0.03



# Court of Appeals

## Memorandum

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**To:** All Judges  
**From:** Judge Herbert Phipps *HEP*  
**Subject:** E-Filing and Scanning  
**Date:** March 4, 2010

---

As Judge in Charge of IT, I am providing you an update on the status of e-filing and scanning.

### E-Filing

Overall, e-filing has been going well. We had 155 e-filings through February 2010. The number has been increasing month by month since we began accepting electronic briefs on December 1, 2010. Initially, we received a number of compliments including that the system is easier to use than the federal court system. The only problems that originally occurred related to the attorney profile in our system which had missing data either from the State Bar or our Court admission date or the attorney failed to remember his or her password which was dealt with quickly and positively.

As we began to alter the system to add functions in January, we experienced some short outages due to a slow down of the state internet system which occurred when the legislature went into session. A second problem occurred when for an unknown reason the memory capacity of the system is exceeded and the system fails to reset and it must be reset manually. Without going into detail about each problem, I can say that users usually experienced these problems as a slowdown or the inability of the system to recognize and upload a pdf file.

In each instance, a member of the Clerk's office or IT contacted the individual asking for assistance and provided a solution, most times on the same day and usually within an hour or two. These outages are of concern, of course, since we want to encourage the use of e-filing and continue attorney confidence in the system. On the other hand, it could be expected that we would have problems since IT and TriVir are continuing to work on the system to add motions and court actions while attorneys are using it to e-file. IT and TriVir now have a process in place to test the system each morning to make sure that it is up for filing. We have not experienced any of these problems for the last three days.

## Scanning

In January 2010 the Clerk's office began to scan all paper briefs. Issues with scanning include:

(1) Scanning turned out to be more time-consuming for the Clerk's staff than anticipated. This is a serious concern since the reduction in force in FY2009 resulted in fewer individuals than originally contemplated would be available to do the scanning.

(2) There have been several processing problems to work through including the recognition of the data on the batch cover sheet and the number of briefs that can be successfully scanned at one time.

(3) The optical character recognition process has a higher rate of error than expected.

These errors are a problem for our staff attorneys who must read the briefs and the attorneys who may feel we are improperly displaying their work. These errors also render the scanned documents inappropriate for long term record retention. IT could change the scanning process so that the scanner produces only an image which would exactly mirror the original brief, but then the electronic brief would not be text-searchable.

(4) The Clerk's office has determined that several judges' offices prefer to have a printed copy of the brief rather than a searchable electronic copy, anyway, so that time is wasted scanning the brief.

As a result of the above issues, for the time being, the Clerk has decided to instruct his staff not to scan briefs filed in the future unless a judge's office wishes a scanned searchable copy or an electronic imaged copy. Should you or one of your staff attorneys want a scanned version of a brief, please let Bill or Holly know.

If you have any specific questions or comments about the information I have provided, please let me or Bill Martin know and we can discuss them at the March Banc Meeting.

cc: Bill Martin  
John Ruggeri  
Holly Sparrow

**From:** Carrie Anne STEELE  
**To:** Bill Martin; Jan Kelley  
**Date:** 2/17/2010 3:18 PM  
**Subject:** Charge for After Hour Heating in Courtroom

In the past I have never been charged for heating in the courtroom after hours. Judge Bernes had an event in the courtroom from 6:00 pm to 8:30 pm and we were just charged \$17.50. Chief Judge Miller is having an event in the courtroom tomorrow night and Tyangye is speaking with her concerning turning the heat on or not. I just wanted to make you guys aware that events that are held will now be accompanied with a charge for heating/cooling. How should I handle these charges? Should the court pay for them?



# Court of Appeals

## Memorandum

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**To:** Presiding Judge Smith and Judge Bernes

**From:** Judge Phipps (Derrico)

**Subject:** A09A1144. *Smith v. The State.*  
Motion for Reconsideration

**Date:** December 15, 2009

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In *Smith v. State*, Case No. A09A1144 (decided November 6, 2009), we affirmed Donald Frank Smith's multiple convictions. Smith's attorney filed a motion for reconsideration of our decision, which we agreed to deny. Before the order denying the motion for reconsideration was issued, Smith filed a pro se petition for certiorari in the Supreme Court. In light of the pending petition for certiorari, Bill Martin prepared an order to dismiss the motion for reconsideration on the ground that the certiorari petition deprived us of jurisdiction. I believe that we still have jurisdiction to resolve the motion for reconsideration.

The Georgia Constitution grants the Supreme Court the right to review our cases by certiorari.<sup>1</sup> That constitutional provision is implemented in OCGA § 5-6-15, which simply

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<sup>1</sup>Ga. Const. Art. VI, § VI, Para. V.

provides that, “[t]he writ of certiorari shall lie from the Supreme Court to the Court of Appeals as provided by Article VI, Section VI, Paragraph V of the Constitution of this state.” Neither the constitution nor case law nor statute describes the supersedeas effect of petitioning the Georgia Supreme Court for certiorari in order to review one of our decisions.<sup>2</sup>

There is a statute, however, concerning the supersedeas effect of petitioning the superior court for review by certiorari of a decision of a lower court. That statute, OCGA § 5-4-19, provides that, “[t]he writ of certiorari, when granted in civil cases, shall operate as a supersedeas of the judgment until the final hearing in the superior court.” Additionally, numerous cases involving superior court review of a lower court decision have held that the sanction or grant of the writ acts as supersedeas until the final hearing in superior court.<sup>3</sup> This principle comes from the common law which provides that “[w]here the writ of certiorari has been applied for and has been granted, *the sanctioning of the writ operates as a stay of the*

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<sup>2</sup>There are, however, statutes regarding the supersedeas effect of appealing to our court or the Supreme Court from a lower court. OCGA §§ 5-6-35 (h); 5-6-45 through 5-6-47.

<sup>3</sup>See, e.g., *Equitable Life Assurance Soc. v. Culp*, 159 Ga. 874 (127 SE 225) (1925); *Dixon v. Sable*, 147 Ga. 623, 625 (95 SE 240) (1918); *Loeb v. Mangum*, 134 Ga. 335 (67 SE 882) (1910). The cases do not expressly limit this rule to civil proceedings.

Sanctioning the writ is an act of the judge that must take place before the clerk of court may file the petition for writ of certiorari. See *Fleming v. Bainbridge*, 84 Ga. 622 (10 SE 1098) (1890). Sanctioning is the act required to allow the petition to be filed so that the court can consider its merits; sanctioning itself is not a consideration of the merits. See *Cobb County v. Herren*, 230 Ga. App. 482 (496 SE2d 558) (1998).

*proceedings*, and the powers of the inferior tribunal as to that case are suspended until the final determination of the case in the superior court.”<sup>4</sup> In other words, only when the certiorari petition has been sanctioned does it have supersedeas effect. The common law rule “seems to prevail universally except where it has been abrogated or modified by statute.”<sup>5</sup>

In the absence of any directly applicable constitutional provision or statute, it is appropriate to look to the common law to answer the question presented here. Applying the common law rule to this case, I have concluded that the filing of the petition for certiorari in the Supreme Court does not act as supersedeas. Should the Supreme Court grant (or “sanction”) the petition, thereby allowing the case to proceed for review of the merits, that grant will act as supersedeas. Until then, we have jurisdiction and may rule on the motion for reconsideration.

According to Bill Martin, in practice, we have treated petitions for certiorari filed in the Supreme Court as divesting us of jurisdiction. But we are not required to do so. I suggest the better practice is to resolve pending motions on the merits rather than dismiss them on the ground of a questionable conclusion about jurisdiction. For these reasons, I recommend that, instead of issuing the proposed order to dismiss the motion for reconsideration, we issue a standard order denying the motion for reconsideration.

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<sup>4</sup>*Loeb*, supra, at 625.

<sup>5</sup>*Id.*



# Court of Appeals

## Memorandum

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**To:** Rules Committee

**From:** J.D. Smith

**Subject:** Suggested Amendment to Rule 27

**Date:** February 18, 2010

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I hope you all have received the attached memo dated February 15 from Holly Sparrow concerning amendment to Rule 27. I agree with the memo. Please let me know if you do not agree. I would like to put it on the agenda for our March 17 banc meeting.

Thank you.



# Court of Appeals

## Memorandum

To: Rules Committee

From: Holly Sparrow *HS*

Subject: Suggested Amendment to Rule 27

Date: February 15, 2010

Attached you will find a draft amendment to Rule 27 (a). This proposed amendment strikes the provision permitting contemporaneous filings of the motion to file supplemental brief and the brief. Shortly, the Court will permit the filing of motions electronically and one of those motions will be the motion for permission to file a supplemental brief.

The reason for this change is to make the e-filing and scanning process simpler for the Clerk's staff and to keep the e-filing and paper filing systems as similar as possible. The change will also reduce the number of docket codes needed for these filings and reduce the different types of orders that will be needed in the e-filing system to accommodate them.

If the amendment is not approved, the Clerk's office will have to hold the docketing of e-filed supplemental briefs until the motion for permission to file has been disposed. This is because once docketed, an e-filed brief is given a filing date and time by the system and it cannot be changed. To hold the brief's docketing could result in an oversight should the orders' clerk fail to notify the briefs' clerk of the order or the briefs' clerk fail to docket the brief by mistake after the order was issued.

On the other hand, if the e-filed motion and brief were docketed together and the motion was not granted, the briefs' clerk would have to delete the brief from the docket. Deleting the brief from the docket does not delete the brief from the EFaST document database. At this time, the Clerk does not have a method to delete a document from the database that has been

docketed. As a result, there may be confusion as to whether the Court considered the supplemental brief in its disposition of the case.

Mr. Martin and I are recommending that the Committee approve this change for submission to all the judges at the next Banc Meeting.

cc: Chief Judge Miller  
Bill Martin

## DRAFT AMENDMENT

### Rule 27. Supplemental Briefs

(a) Briefs of the parties shall be limited to an appellant's brief, an appellee's brief and an appellant's reply brief. Supplemental briefs may be filed only by leave of Court. Counsel may file a motion for permission to file supplemental briefs. ~~Contemporaneously with filing a motion, counsel may file, as a separate document, an original and two copies of the supplemental brief, not to exceed 15 pages.~~ Counsel may not file a supplemental brief contemporaneously with the motion, but may include a copy of the supplemental brief with the motion for permission to file as an exhibit. Counsel shall file a supplemental brief with an original and two copies, not to exceed 15 pages only after permission to file is granted. A certificate of service must be attached to the supplemental brief and service must be made to opposing counsel.



Court of Appeals

FROM: Chief Judge Miller

To: Bell

Were you going to put  
this on a Bone meeting  
calendar or what?

advise

gm

2/1/10



# Court of Appeals

## Memorandum

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To: Chief Judge M. Yvette Miller

From: *William L. Martin, III*  
William L. Martin, III

JAN 27 2010

Subject: Recusals/Disqualifications

Date: January 26, 2010

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I do not care to present the Summary of the Transfers from Judges Offices due to Recusals or Disqualifications to the Banc. I do, however, have Holly make a compilation of the orders done throughout the year so the Court would have an idea of how many recusals and who is recusing.

Quite frankly, I believe the Court has way too many recusals. I am sure the judges do not realize it, but it takes probably two or three hours time involving the judge's office, my time and Patty's to make these transfers.

I do not plan to do anything with these figures, but I do keep them in case we should ever need information on them in the future.

Thank you.

/ld