

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

Wednesday, May 19, 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 February 17, 2010<br>Banc Meeting Minutes | 2 minutes  | Chief Judge Miller                        |
| IV.   | Budget Committee Report                               | 20 minutes | Judge Doyle<br>Jan Kelley                 |
| V.    | Technical Services Report                             | 10 minutes | Presiding Judge Phipps<br>John Ruggeri    |
| VI.   | Legislation - HB 1055                                 | 5 minutes  | Judge Ellington<br>Presiding Judge Barnes |
| VII.  | Old Business  | 5 minutes  | Chief Judge Miller                        |
| VIII. | New Business  | 5 minutes  | Chief Judge Miller                        |
| IX.   | Announcements   | 2 minutes  | Chief Judge Miller                        |
| X.    | Adjournment   | 1 minute   | Chief Judge Miller                        |

Bank Meeting - May 19, 2010

Those present:

- CJ Miller ✓
- PJ Andrews
- J. Johnson ✓
- J. Blackburn ✓
- PJ Smith ✓
- J. Barnes ✓
- J. Ellington ✓
- J. Phipps ✓
- J. Mikell ✓
- J. Adams ✓
- J. Bernes ✓
- J. Doyle ✓
- Jam Kelley ✓
- Bill Martin ✓

I. Call Mtg to order CJ Miller @ 10:30 AM.

II. Quora and Approval Minutes:

move AED  
2d JSE

vote UM

III. Budget Committee...  
Thanked Committee need \$500,000

July 1

operatives cuts →

SLD Move

2d EIS

unanimous

\$ 447,000 Left

Clerk → Retire August 1<sup>st</sup>

Floating AA August 1, 2010.

Retire August GAB

HEP >

Go to  
appoint

Judge JE → Judge in charge of clerks off

Motion to not RIF any AAs today

Second GAB →

unanimous

Furlough Day approval. Sept 3d

Motion - JSE  
2d Dyke

unanimous

Motion for closed

no Furlough June -  
Money letter - Suppl Budget

Tech Services Report -

John  
11:15

List of e-filing -

11:25

now working on refinements for Judges' Office  
No major problems  
send out election order on paper filing

June - Send out court initiated ~~to~~ Court orders.

Old Business -

JSE  
Berny  
Boyle  
Philip  
Miller  
Thanked Judge Doyle -

New Business -

Gov + Judge Blunka Sent

Jan  
Kelley →

PeopleSoft 13-2014  
to correct SAO

Kendra Mitchell

11:35  
adrian GAG  
JSE

**TALKING POINTS**  
**MAY ADMINISTRATIVE BANC MEETING**  
**Wednesday, March 19, 2010 10:30 a.m.**

**I. Call the Meeting to Order**

*Promptly at 10:30 a.m.*

**II. Ascertainment of Quorum**

*Announce that a quorum is present.*

**III. Approval of March 17, 2010 Banc Meeting Minutes**

*Call for a motion to approve the March 17, 2010 Banc Minutes if no one has any changes or corrections.*

**IV. Budget Committee Report**

*Call on Judge Doyle for a report of the Budget Committee. Thank Judge Doyle and the Committee for their hard work and announce to the Banc that because our appropriation is \$935,000 less than what we had last year some difficult decisions will have to be made.*

**V. Technical Services Report**

*Call upon Presiding Judge Phipps for a report from Technical Services and a status report on e-filing.*

**VI. Legislation**

*Call upon Judge Ellington and Presiding Judge Barnes for any comment on House Bill 1055 which among other things raises the cost of preparation of record on appeal from \$1.50 per page to \$10.00 per page.*

## VII. Old Business

*Yesterday, Jan Kelley, Bill Martin and I met with Dennis Dunn, the Senior Assistant Attorney General who represents the Court of Appeals. We met to discuss the possibility of getting out of our lease for the sixth floor in the Health Building which includes our Banc Room and the Fiscal Office. Jan was told the notice had to be given by April 1 and that we would be responsible for any build out costs to separate and secure the space for any new tenant.*

*I told Mr. Dunn that if GBA would provide adequate drinking water for the Court of Appeals and Judicial Building, let us out of the lease for the referenced space on the fifth floor of the Health Building and begin construction to repair the side of the sixth floor Judicial Building, I would release the rent money we are holding.*

## VIII. New Business

*Report that you and I met with Nels Peterson of the Governor's Office regarding Judge Blackburn's successor. Mr. Peterson told us that as of this moment, the Governor plans to appoint a successor to Judge Blackburn's position and he hopes to have that appointment done by June 30 or mid July at the latest. Mr. Peterson said that the Governor has not announced this yet and ask that we permit the Governor to make this announcement. He also said that from time to time the Governor's does change his mind and although this is what the Governor intends today it may not be what the Governor ends up doing.*

## IX. Announcements

*Ask if anyone has any announcements to make.*

**X. Adjournment**

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

**Wednesday, May 19, 2010 10:30 a.m.**

The May 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, May 19, 2010. Those present were:

Chief Judge M. Yvette Miller  
Presiding Judge Herbert E. Phipps  
Presiding Judge Anne Elizabeth Barnes  
Presiding Judge J.D. Smith  
Judge Edward H. Johnson  
Judge G. Alan Blackburn  
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. John Ruggeri, Technical Services (Part of the meeting)  
Mr. William L. Martin, III, Clerk/Court Administrator

Not in attendance was:

Presiding Judge Gary B. Andrews

**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. APPROVAL OF MARCH 17, 2010 BANC MEETING MINUTES

Chief Judge Miller asked if there were any changes or corrections to the March Banc Meeting Minutes. Hearing known, she entertained a motion to approve the Minutes made by Judge Ellington and seconded by Judge Doyle. The motion passed unanimously.

III. BUDGET COMMITTEE REPORT

Chief Judge Miller called upon Judge Doyle for a report of the Budget Committee. Chief Judge Miller stated she ~~had met along with~~ <sup>and</sup> the Budget Committee several times and worked very hard with Jan Kelley <sup>and</sup> Bill Martin in trying to come up with different options. Judge Doyle said the Budget Committee received approximately 16 different options from Jan Kelley and Bill Martin but the Budget Committee had tried to stay away from options that would reduce hours of lawyers or judges' staff. Judge Doyle presented to the Banc two proposals <sup>and</sup> to deal with the budget shortfall.

<sup>judicial</sup> Each proposal would eliminate certain operating expenses including IT expenses, office expenses, non-judicial travel, outside employee training, <sup>and</sup> unused parking spaces. She said the combination of these would reduce our shortfall for FY2011 by approximately \$112,000. After a brief discussion, Judge Doyle made a motion to accept these operational cuts; the motion was seconded by Judge Johnson, and the judges voted unanimously in favor of the motion.

Judge Doyle said that still left a shortfall of about \$447,000. She said the clerk had offered his retirement and coupled with the RIF of one floating administrative assistant, the hiring of two part-time persons to fill the intake clerk's position and possibly giving up space, <sup>could be reduced</sup> ~~could reduce~~ the deficit to six furlough days for the year.

After a general discussion, the Court reluctantly agreed to accept the retirement of Mr. Martin as a budget strategy. Judge Blackburn made a motion the clerk retire effective August 1, 2010 and Deputy Administrator, Holly Sparrow, serve as acting clerk until a successor could be

found. Presiding Judge Phipps seconded the motion and it passed unanimously. It was suggested that Judge Ellington, as Judge-in-Charge of the clerk's office, communicate with Holly Sparrow.

Judge Doyle then said the Committee had recommended the reduction force of one of the floating administrative assistants and the replacement of the retiring intake clerk, Juanita Daniell with two part-time employees. By hiring part-time employees, the Court would save the cost of their benefits. Presiding Judge Barnes asked if the other clerk's office employees could rotate on the front desk and leave that position open. Mr. Martin stated last month Ms. Daniell had been out of work for six days and the work backed up in the docketing clerk's office so that 60 appeals had backed up before they were docketed. However, Mr. Martin suggested since Juanita Daniell's position would not be filled until July 1 at the earliest, that the clerk's office operate with no intake clerk and the other clerk's office personnel sitting in on a rotating basis to see if it was feasible to do that on a long term basis.

Chief Judge Miller said Tracey Parker was doing a good job as serving as her second AA and Crystal Willis could fill in on the front desk when she was not otherwise assigned to a judge's office.

Judge Mikell made a motion not to RIF any AAs in today's meeting but to observe the situation and address it at a later Banc Meeting. Chief Judge Miller stated she did not want to have another Banc Meeting until September. Judge Mikell said it was fine to address the situation at that time. Judge Blackburn seconded the motion and it passed unanimously.

Judge Doyle said the Committee had looked at the idea of giving up space occupied by the Fiscal Office. She reported that may not be an option now because there was an April 1 deadline in which to cancel the contract. Also, the savings to be realize is not as much as originally anticipated and there could be problems with security if another agency occupied that space.

Chief Judge Miller stated some of this action could be deferred until a September Banc Meeting. She did say that through the conservation of all Court employees and the good work of the Fiscal Officer, the Court could forego its planned furlough day for June.

After a discussion of the budget in general, Judge Blackburn asked if the State revenue picture improved could money be recaptured in the supplemental budget process. Ms. Kelley said the Court could ask to restore funds in the supplemental budget process. In the meantime, it was decided for Ms. Kelley ~~turn in the budget~~ <sup>submit the Court's budget</sup> to the State showing the shortfall to be ~~picked up~~ <sup>absorbed</sup> by furlough days. ~~It~~ <sup>FF</sup> was understood that the actual number of furlough days will be less than what may appear on the budget. Judge Ellington stated the Budget Committee planned for probably one furlough day per quarter. Chief Judge Miller said in that regard she would like to ask the Court to approve the first quarter furlough day for Friday, September 3. Chief Judge Miller stated that would give a long weekend for the Labor Day weekend. Judge Ellington made a motion to approve September 3 as a Court furlough day which motion was seconded by Judge Doyle and passed unanimously.

#### IV. TECHNICAL SERVICES REPORT

Chief Judge Miller called upon Presiding Judge Phipps for a report on the IT Department. Presiding Judge Phipps called upon John Ruggeri who stated the e-filing effort was progressing nicely. He said ~~that in the judges' Banc handout materials was~~ <sup>contained</sup> a list of the different types of actions which could be filed electronically. ~~The motions are listed which could be filed~~ <sup>presently</sup> electronically in all the answers in electronic order. Mr. Ruggeri said ~~that right now~~ the Technical Services was working on refining the applications to the judges' offices adding drop downs and making the process more user friendly for the staff attorneys and the administrative assistants. He said in June ~~the~~ <sup>g</sup> Technical Services would be working on issuing orders electronically from Court initiated action, that is, actions that were not in response to motions, such as, orders to file and the like. Mr. Ruggeri said this is the first step in being able to send out opinions electronically.

Chief Judge Miller thanked Mr. Ruggeri and his staff for the excellent progress they were making toward e-filing. She also asked him to thank TriVir, the vendors who are helping in the project. At Chief Judge Miller's request, the judges gave a hearty round of applause in appreciation for Mr. Ruggeri and his staff efforts.

## V. LEGISLATION

Chief Judge Miller called upon Presiding Judge Barnes and Judge Ellington for a report on House Bill 1055. Judge Ellington reported the House Bill 1055 was an omnibus fee bill which <sup>among other things</sup> increased the fee for the trial court's preparation of the record on appeal from \$1.50 per page to \$10.00 per page. He said he was unsure how this came about but the fact of the matter is this <sup>has</sup> voluminous increase in the per page cost for record preparation for lawyers, legislators, county commissioners and trial court clerks in a state of anxiety. Judge Ellington said he has attended several meetings on the matter and said he felt confident the issue would be resolved, however, he was not sure exactly when the resolution would come about and how it would come about.

## VI. OLD BUSINESS

Chief Judge Miller stated she was meeting with Dennis Dunn of the Law Department to go over our lease, the failure of Steve Stancil, Head of Georgia Building Authority (GBA) to deliver on his promises to have potable water in the Judicial Building and to begin the repair on the facade on the front of the Judicial Building. Chief Judge Miller stated if Mr. Stancil will deliver on his promises she would release the rental funds which she had directed the fiscal officer to withhold.

Judge Ellington thanked the Budget Committee and the efforts of Chief Judge Miller, Presiding Judge Phipps, Judge Bernes and Judge Doyle. Judge Ellington said he particularly wanted to thank Judge Doyle for her hard work and leadership in the efforts of the Budget Committee.

**VII. NEW BUSINESS:**

Chief Judge Miller stated she had met with a Nels Peterson, the Governor's Executive Counsel. Mr. Peterson said at this time it was the Governor's intention to appoint a successor to Judge Blackburn and the Governor hopes to have that appointment made sometime between June 15 and June 30.

**VIII. PEOPLE SOFT:**

Chief Judge Miller called upon Jan Kelley for a report on People Soft. Ms. Kelley stated the State Accounting Office is requiring all state agencies to go on People Soft. Ms. Kelley stated she had hoped not to have to go on People Soft this year since it will probably cost the Court between \$15,000 - \$20,000. Judge Phipps asked if this was an unfunded mandate <sup>to</sup> in which Ms. Kelley said ~~that was exactly what this was.~~ *responded affirmatively.*

Chief Judge Miller thanked Ms. Kelley for her report and for her good work with the budget process.

**IX. ADJOURNMENT**

There being no further business, and upon hearing a motion to adjourn by Judge Blackburn which was seconded by Judge Ellington, Chief Judge Miller concluded the meeting at 11:35 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

**Bill Martin - FW: Court of Appeals**

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**From:** "Jones, Brett" <brett.jones@gba.ga.gov>  
**To:** <jkelley@gaappeals.us>  
**Date:** 5/17/2010 2:50 PM  
**Subject:** FW: Court of Appeals

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Jan,  
As discussed, here is the response for your questions, and in addition COA would be responsible for any build-out to isolate the space.

Please let me know if I can be of further assistance.

Thank you,  
Brett

Brett Jones  
Assistant Director, Facilities Operations  
Georgia Building Authority  
One Martin Luther King, Jr. Drive  
Atlanta, Georgia 30334  
Phone: (404) 656-4232  
Fax: (404) 657-1166  
E-mail: [brett.jones@gba.ga.gov](mailto:brett.jones@gba.ga.gov)

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**From:** Jones, Brett  
**Sent:** Monday, May 17, 2010 7:08 AM  
**To:** Smith, Frank  
**Cc:** Elovich, Debra; 'jkelley@gaappeals.com'; Fanczi, Steve; Myers, Debra  
**Subject:** RE: Court of Appeals

Jan,  
As Frank stated, the IGA between COA and GBA specifically states that any space reduction request must be received by "April 1<sup>st</sup> of the then effective Term or Renewal Term".

I would be happy to meet and discuss the logistics of your request and furnish the Sq Ft for a FY12 reduction request.

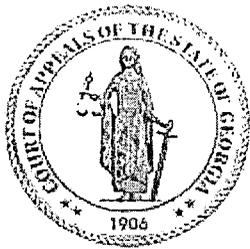
Please let me know if you would like to meet.

Thank you,  
Brett

Brett Jones  
Assistant Director, Facilities Operations  
Georgia Building Authority  
One Martin Luther King, Jr. Drive  
Atlanta, Georgia 30334  
Phone: (404) 656-4232  
Fax: (404) 657-1166  
E-mail: [brett.jones@gba.ga.gov](mailto:brett.jones@gba.ga.gov)

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**From:** Smith, Frank  
**Sent:** Friday, May 14, 2010 1:57 PM  
**To:** Jones, Brett  
**Cc:** Elovich, Debra; 'jkelley@gaappeals.com'



# Court of Appeals

## Memorandum

*Approved  
1 handls  
myrm  
2/9/10*

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To: Chief Judge M. Yvette Miller  
From: *W. Martin*  
William L. Martin, III  
Subject: January Administrative Banc Meeting Minutes  
Date: January 25, 2010

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Enclosed please find a draft of the Banc Meeting Minutes. I would appreciate your reviewing same and making any corrections you deem appropriate. If the Minutes are satisfactory as presented, please initial same and return them to me.

Thank you.

/ld

Enclosure

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

**Wednesday, January 20, 2010 10:30 a.m.**

*DRAFT*

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.

*in 2008  
2007 or 8*

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~~ *with one*

*judge abstaining.*

**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



# Court of Appeals

## Memorandum

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To: Chief Judge M. Yvette Miller

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

Subject: Minutes

Date: December 14, 2009

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Please review the latest draft of the Minutes for any corrections or additions.

Thank you.

/ld

Enclosure

**MINUTES OF THE BANC MEETING  
OF THE COURT OF APPEALS OF GEORGIA  
D R A F T**

**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:

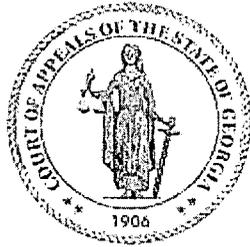
There being no further business, by hearing a motion to adjourn, Chief Judge Miller adjourned the meeting at noon.

Respectfully submitted,

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

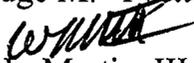


# Court of Appeals

## Memorandum

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To: Chief Judge M. Yvette Miller

From:   
William L. Martin, III

Subject: November Banc Meeting Minutes

Date: December 8, 2009

---

Please review the latest Draft of the above Minutes. If I have captured everything as you requested, please initial same and send them back to me and I shall cause the Minutes to be distributed to the judges.

Thank you.

/ld

Enclosure

**MINUTES OF THE BANC MEETING  
OF THE COURT OF APPEALS OF GEORGIA  
D R A F T**

**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.



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.

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**XI. ADJOURNMENT:**

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

Respectfully submitted,

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

---

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

**Subject:** Court of Appeals

Brett,

Jan Kelley called me to discuss giving up space on the 5th floor of Health and 6th floor of Judicial. I explained that the IGA between GBA and COA is now an annual contract that requires notice of giving up space by April 1<sup>st</sup> of each fiscal year. She asked that GBA confirm that there are no other options to give up space sooner.

She would also like to know how much money could be saved by giving up the space that is identified.

On the 5<sup>th</sup> floor in Health – Rooms 505 to 517 which is not an easy section to rent out since it is in the middle of COA space. I did not believe GBA would allow them to give this space up due to its location but this is your call.

On the 6<sup>th</sup> floor of Judicial – They would like to give up all of the 6<sup>th</sup> floor except the court rooms and attached support areas. So 605, 620, 610, 614, 618, 603 would all be given up. Determining how many sq feet this is and when they are allowed to give up space is again GBA's call.

I hope I've summed things up but Jan please add anything I've missed.

Thanks,

Frank Smith  
Deputy Executive Director  
State Properties Commission  
47 Trinity Avenue, S.W., Suite G02  
Atlanta, Georgia, 30334

[frank.smith@spc.ga.gov](mailto:frank.smith@spc.ga.gov)

Tel: (404) 656-5602

Fax: (404)-651-8084

"Our customers are very important. Please visit [www.howmyservice.spo.ga.gov](http://www.howmyservice.spo.ga.gov) and let us know if SPC met your needs and provided you with the customer care and service you requested."

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

**PROPOSAL A - (SPACE REDUCTION)**

	EFFECTIVE DATE			FURLOUGH DAYS
<b>FY 2011 SHORTFALL</b>			<b>\$558,993</b>	<b>17.92</b>
<b>PROPOSED BUDGET CUTS - OPERATING</b>				
I.T. EXPENSES	7/1/10	\$62,000		1.99
OFFICE EXPENSES	7/1/10	\$25,000		0.80
NON-JUDGE TRAVEL	7/1/10	\$10,000		0.32
REDUCE OUTSIDE EMPLOYEE TRAINING	7/1/10	\$10,000		0.32
RELEASE UNUSED PARKING SPACES	7/1/10	\$4,800		0.15
RELEASE SPACE HEALTH -BLDG - FISCAL OFC	7/1/10	\$26,193	\$137,993	4.42
<b>REMAINING NEEDED</b>			<b>\$421,000</b>	<b>13.50</b>
<b>PROPOSED BUDGET CUTS - PERSONNEL</b>				
CLERK RETIREMENT	8/1/10	\$137,828		4.42
RIF - 1 FLOATING AA	8/1/10	\$78,875		2.53
SAVINGS - INTAKE CLERK REPLACEMENT (HIRE TWO PART-TIME EMPLOYEES)	7/1/10	\$21,000	\$237,703	7.62
<b>REMAINING NEEDED/FURLOUGH DAYS</b>			<b>\$183,297</b>	<b>6.10</b>
EST. REVISED SAVINGS P/FURLOUGH DAY		<b>\$ 30,046</b>		

**PROPOSAL B - (NO SPACE REDUCTION)**

	EFFECTIVE DATE			FURLOUGH DAYS
<b>FY 2011 SHORTFALL</b>			<b>\$558,993</b>	<b>17.92</b>
<b>PROPOSED BUDGET CUTS - OPERATING</b>				
I.T. EXPENSES	7/1/10	\$62,000		1.99
OFFICE EXPENSES	7/1/10	\$25,000		0.80
NON-JUDGE TRAVEL	7/1/10	\$10,000		0.32
REDUCE OUTSIDE EMPLOYEE TRAINING	7/1/10	\$10,000		0.32
RELEASE UNUSED PARKING SPACES	7/1/10	\$4,800		0.15
			\$111,800	3.58
<b>REMAINING NEEDED</b>			<b>\$447,193</b>	<b>14.34</b>
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<b>REMAINING NEEDED/FURLOUGH DAYS</b>			<b>\$209,490</b>	<b>6.97</b>
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		<b>\$137,993</b>	<b>4.42</b>
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SAVINGS - INTAKE CLERK REPLACEMENT (HIRE TWO PART-TIME EMPLOYEES)	7/1/10	\$21,000	0.67
		<b>\$237,703</b>	<b>7.62</b>
<b>REMAINING NEEDED/FURLOUGH DAYS</b>		<b>\$183,297</b>	<b>6.10</b>
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**From:** Bill Martin  
**To:** Yvette Miller  
**Date:** 5/13/2010 3:05 PM  
**Subject:** Proposed Banc Meeting Agenda and Reminder Email..  
**Attachments:** Draft Agenda Banc Meeting for May 5-13-10.wpd; Banc Meeting Email Reminder 5-13-10.wpd

Attached please find a proposed Banc Meeting Agenda. If you want to strike any of the items, please let me know.

Concerning the Banc Meeting Reminder memo, If approved, I will send it out today.



# Court of Appeals

## Memorandum

---

**To:** Holly Sparrow  
**From:** William L. Martin, III  
**Subject:** E-Filings  
**Date:** May 18, 2010

---

Can you give me a report on the number of Briefs that have been e-filed and the number of motions that have been e-filed so Chief Judge Miller can include that in her report at the Banc Meeting tomorrow?

Thank you.

/ld

*See attached memo*

- noon Tues May 18

Mo.  
Briefs 55  
Ext, Req. to Argue & other Motions 19  
Notices 2

Orders Issued 21

~~Yr to date~~

Briefs since 12/1

33  
19  

---

52

Met April & May  
1/64

Met & RA ~~52~~ 52

Notices 3

37  
45  
73  
121  
109  
55  

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440

385  
55  

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440

20      26



# Court of Appeals

## Memorandum

---

**To:** All Judges  
**From:** Chief Judge M. Yvette Miller  
**Subject:** Status of E-Filings  
**Date:** May 18, 2010

---

There were 55 briefs e- filed in the month of May as of noon on May 18, 2010. To date from December, 2009, there have been 440 briefs e-filed.

Since April 1, 2010 when the Court began to accept e-filed motions and request to argue, there have been 52 e-filed. Three notices have also been e-filed. The Court issued 46 electronic orders on the 52 e-filed motions and requests to argue as of noon, May 18, 2010.

As of May 19, 2010

<b>DOCUMENTS WHICH CAN BE E-FILED</b>	
<b>BRIEFS:</b>	<b>MOTIONS:</b>
BRIEF OF APPELLANT/NT	FOR EXT TO FILE BRIEF/NT
BRIEF OF APPELLEE/EE	FOR EXT TO FILE BRIEF/EE
REPLY BRIEF/NT	FOR EXT TO FILE REPLYBRIEF/NT
SUPPLEMENTAL BRIEF/NT	FOR EXT TO FILE SUPP BRIEF
SUPPLEMENTAL BRIEF/EE	FOR EXT TO FILE REQ TO ARGUE
AMENDED BRIEF/NT	FOR REQ TO ARGUE/NT
AMENDED BRIEF/EE	FOR REQ TO ARGUE/EE
AMENDED SUPP BRIEF/NT	AMENDED REQUEST TO ARGUE
AMENDED SUPP BRIEF/EE	TO REQUEST ADDITIONAL TIME TO ARGUE
BRIEF/AMICUS CURIAE	TO WITHDRAW REQUEST FOR ORAL ARGUMENT
<b>NOTICES:</b>	WAIVER OF ORAL ARGUMENT/NT
NOTICE OF INTENT	TO EXCEED PAGE LIMIT
CERTIORARI APP TO GA SUPREME CT	TO EXCEED 15 PAGE LIMIT/REPLY BRIEF
NOTICE OF INTENT TO USSC	TO FILE SUPP/BRIEF/NT
CERTIORARI APP TO USSC	TO FILE SUPP/BRIEF/EE
WITHDRAWAL/NOTICE OF INTENT	TO FILE SUPP/REPLY BRIEF/AMICUS CURIAE
<b>RESPONSES:</b>	TO SUBSTITUTE ATTORNEY
RESPONSE TO MOTION FOR ADDL TIME TO ARGUE	TO SUPPLEMENT RECORD
RESPONSE TO MOTION FOR EXTENSION	TO WITHDRAW AS COUNSEL
RESPONSE TO MOTION TO SUPPLEMENT RECORD	
RESPONSE TO MOTION TO EXCEED PAGE LIMIT	

In abbreviations above, NT = appellant; EE = appellee; ADDL = additional; APP = application; CT = Court; EXT = extension; GA = Georgia; REQ = request; SUPP = supplemental; USSC = United States Supreme Court.



4/8

Court of Appeals

MAR 22 2010

FROM: Chief Judge Miller

To: Bill

To:  
From:  
Subject:  
Date:

These bills should be discussed as new legislation at the next Bonec meeting. I am happy to discuss if you would like.

Yvette

11236 and House Bill

of that bill from line 34 regarding a victim's rights, and matter. The turnaround

may mean our Court or the mandamus actions, not so a 5-day turnaround is not staffed.

the Georgia Reports or the

trial courts. Of particular deals to the Supreme Court

and Court of Appeals from

If you would like to discuss any of these bills with me, please do not hesitate to contact me.

Thank you.

/ld  
cc: Judge John J. Ellington w/copies  
Holly Sparrow w/copies  
Jan Kelley w/copies

House Bill 567

By: Representatives Parsons of the 42<sup>nd</sup> and Willard of the 49<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 17 of Title 17 of the Official Code of Georgia Annotated, relating to the  
2 "Crime Victims' Bill of Rights," so as to change certain provisions relating to the rights of  
3 crime victims; to clarify the rights of crime victims and the method for notifying victims in  
4 certain proceedings; to provide for proceedings for the enforcement of such rights; to provide  
5 for related matters; to provide an effective date; to repeal conflicting laws; and for other  
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Chapter 17 of Title 17 of the Official Code of Georgia Annotated, relating to the "Crime  
10 Victims' Bill of Rights," is amended by revising Code Section 17-17-1, relating to a  
11 declaration of policy, as follows:

12 "17-17-1.

13 (a) The General Assembly hereby finds and declares it to be the policy of this state that  
14 victims of crimes should be accorded certain basic rights just as the accused are accorded  
15 certain basic rights. Among these rights are:

16 (1) The right to be reasonably protected from the accused;

17 (2) The right to reasonable, accurate, and timely notice of any public proceeding  
18 involving the crime perpetuated against them or of any release or escape of the accused;

19 (3) The right not to be excluded from any such public proceeding, unless the court, after  
20 receiving clear and convincing evidence, determines that testimony by the victim would  
21 be materially altered if the victim heard testimony from a witness;

22 (4) The right to be heard at any public proceeding involving the release, plea, sentencing,  
23 or parole of the accused;

24 (5) The right to confer with the attorney for the state in any criminal prosecution related  
25 to the state;

26 (6) The right to restitution as provided by law;

27 (7) The right to proceedings free from unreasonable delay; and  
 28 (8) The right to be treated fairly and with respect for the victim's dignity.  
 29 (b) The crime victim or victim's lawful representative, and the attorney for the state's  
 30 prosecution, may assert the rights described in this chapter. The accused shall not be  
 31 authorized to obtain any form of relief under this chapter. The rights afforded by this  
 32 chapter shall be asserted in the court in which a defendant is being prosecuted for the crime  
 33 or, if no prosecution is underway, in the court having jurisdiction over the location where  
 34 the crime occurred. A court shall timely decide any motion asserting a victim's rights. If  
 35 a court denies the relief sought, the reasons for the denial shall be clearly stated on the  
 36 record, and the movant may petition the court of appeals for a writ of mandamus  
 37 challenging such decision. The court of appeals may issue the writ and shall consider and  
 38 decide such application within 72 hours after the petition has been filed. In no event shall  
 39 the proceedings provided by this subsection be stayed or subject to a continuance of more  
 40 than five days. Where the court of appeals denies the relief sought, the reasons for the  
 41 denial shall be clearly stated on the record."

42 **SECTION 2.**

43 Said chapter is further amended by revising Code Section 17-17-5, relating to notification  
 44 to victim of accused's arrest, release from custody, and any judicial proceedings at which  
 45 such release is considered, as follows:

46 "17-17-5.

47 (a) All victims, wherever practicable, shall be entitled to notification as defined by  
 48 paragraph (7) of Code Section 17-17-3 of the accused's arrest, of the accused's release from  
 49 custody, and of any judicial proceeding at which the release of the accused will be  
 50 considered. No such notification shall be required unless the victim provides a landline or  
 51 cellular telephone number ~~other than a pocket pager or electronic communication device~~  
 52 number, mailing address, or e-mail address to which such notice can be directed. A victim  
 53 requesting notification by more than one means of notification shall be so notified.

54 (b) The investigating law enforcement agency, prosecuting attorney, or custodial authority  
 55 who is required to provide notification pursuant to this chapter shall advise the victim of  
 56 his or her right to notification and of the requirement of the victim's providing ~~a landline~~  
 57 ~~telephone number other than a pocket pager or electronic communication device number~~  
 58 contact information to which the notification shall be directed. Such victim shall transmit  
 59 the ~~telephone number~~ contact information described in this subsection Code section to the  
 60 appropriate investigating law enforcement agency, prosecuting attorney, or custodial  
 61 authority as provided for in this chapter."

## 62 SECTION 3.

63 Said chapter is further amended by revising Code Section 17-17-6, relating to notification  
64 to victim of accused's pretrial release and of victims' rights and the availability of the victims'  
65 compensation and services, as follows:

66 "17-17-6.

67 (a) Upon initial contact with a victim, all law enforcement and court personnel shall make  
68 available to the victim the following information written in plain language:

69 (1) The possibility of pretrial release of the accused, the victim's rights and role in the  
70 stages of the criminal justice process, and the means by which additional information  
71 about these stages can be obtained;

72 (2) The availability of victim compensation and restitution where applicable; and

73 (3) The availability of community based victim service programs.

74 (b) The Criminal Justice Coordinating Council is designated as the coordinating entity  
75 between various law enforcement agencies, the courts, and social service delivery agencies.  
76 The Criminal Justice Coordinating Council shall develop and disseminate written  
77 information upon which law enforcement personnel may rely in disseminating the  
78 information required by this chapter."

## 79 SECTION 4.

80 Said chapter is further amended by revising Code Section 17-17-12, relating to notification  
81 to the victim of an accused's motion for new trial or appeal, release on bail or recognizance,  
82 appellate proceedings, and outcome of appeal, notifications regarding death penalty cases,  
83 and victim's rights retained at a new trial or on appeal, as follows:

84 "17-17-12.

85 (a) Upon the written request of the victim, the prosecuting attorney shall notify the victim  
86 of the following:

87 (1) That the accused has filed a motion for new trial, an appeal of his or her conviction,  
88 or an extraordinary motion for new trial;

89 (2) Whether the accused has been released on bail or other recognizance pending the  
90 disposition of the motion or appeal;

91 (3) The time and place of any appellate court proceedings relating to the motion or  
92 appeal and any changes in the time or place of those proceedings; and

93 (4) The result of the motion or appeal.

94 It shall be the duty of the prosecuting attorney to notify the victim of the need to make such  
95 request in writing.

96 (b) Upon the written request of the victim as defined in paragraph (11) of Code Section  
97 17-17-3, in cases in which the accused is convicted of a capital offense or other violent

98 offense against the victim, including, but not limited to, assault, battery, child molestation,  
 99 rape, or other sexual assault, and receives the death penalty or other sentence, it shall be  
 100 the duty of the Attorney General to:

101 (1) Notify the victim of the filing and disposition of all collateral attacks on such  
 102 conviction which are being defended by the Attorney General, including, but not limited  
 103 to, petitions for a writ of habeas corpus, and the time and place of any such proceedings  
 104 and any changes in the time or place of those proceedings; and

105 (2) Provide the victim with a report on the status of all pending appeals, collateral  
 106 attacks, and other litigation concerning such conviction which is being defended by the  
 107 Attorney General at least every six months until the accused dies or the sentence or  
 108 conviction is overturned or commuted or otherwise reduced to a sentence other than the  
 109 death penalty.

110 It shall be the duty of the prosecutor at or prior to the date of conviction and any post  
 111 conviction appeal, or the Attorney General following the date of the filing of a habeas  
 112 action, to make a reasonable attempt to notify the victim of the need to make such request  
 113 in writing and to provide information regarding how to contact the office of the Attorney  
 114 General.

115 (c) In the event the accused is granted a new trial or the conviction is reversed or remanded  
 116 and the case is returned to the trial court for further proceedings, the victim shall continue  
 117 to be entitled to request the rights and privileges provided by this chapter."

118 **SECTION 5.**

119 Said chapter is further amended by revising Code Section 17-17-13, relating to notification  
 120 to the victim of impending parole or clemency proceedings, as follows:

121 "17-17-13.

122 The State Board of Pardons and Paroles shall give 20 days' advance notification to a victim  
 123 whenever it considers making a final decision to grant parole or any other manner of  
 124 executive clemency action to release a defendant for a period exceeding 60 days; and the  
 125 board shall provide the victim with an opportunity to file a written objection to or other  
 126 statement or information regarding such action. No notification need be given unless the  
 127 victim has ~~expressed objection to release or~~ expressed a desire for such notification and  
 128 has provided the State Board of Pardons and Paroles with a current mailing address and,  
 129 e-mail address, or telephone number. At the time of conviction of an accused, the  
 130 prosecutor shall advise a victim of his or her right to notification under this Code section  
 131 and provide contact information for the State Board of Pardons and Paroles to the victim."

132

**SECTION 6.**

133 Said chapter is further amended by revising Code Section 17-17-15, relating to the failure  
134 to provide notice not rendering responsible person liable or comprising a basis for error,  
135 chapter not conferring standing, existing rights not affected, and waiver of rights by victim,  
136 as follows:

137 "17-17-15.

138 (a) Failure to provide or to timely provide any of the information or notifications required  
139 by this chapter shall not subject the person responsible for such notification or that person's  
140 employer to any liability for damages.

141 (b) Failure to provide a victim with any of the rights required by law shall not give an  
142 accused a basis for error in either an appellate action or a post-conviction writ of habeas  
143 corpus. In no case shall a failure to afford a right under this chapter provide grounds for  
144 a new trial; provided, however, that in any appeal in a criminal case, the prosecutor may  
145 assert as error the court's denial of any crime victim's right in the proceeding to which the  
146 appeal relates.

147 (c) This chapter does shall not confer upon a victim any standing to participate as a party  
148 in a criminal proceeding or to contest the disposition of any charge; provided, however,  
149 that a victim may make a motion to reopen a plea or sentence if:

150 (1) The victim has asserted the right to be heard before or during the proceeding at issue  
151 and such right was denied;

152 (2) The victim petitions the court of appeals for a writ of mandamus within ten days; and

153 (3) In the case of a plea, the accused has not pled to the highest offense charged.

154 (d) The enumeration of these rights shall not be construed to deny or diminish other  
155 notification rights granted by state law.

156 (e) The victim may waive any of the information or notification or other rights provided  
157 for by this chapter."

158

**SECTION 7.**

159 This Act shall become effective upon its approval by the Governor or upon its becoming law  
160 without such approval.

161

**SECTION 8.**

162 All laws and parts of laws in conflict with this Act are repealed.

FJI

10 LC 29 4128

House Bill 1236

By: Representative Willard of the 49<sup>th</sup>

## A BILL TO BE ENTITLED

## AN ACT

To amend Article 2 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to court reports, so as to change provisions relating to the procedure for distribution of court reports and discontinuance and resumption of distribution; to reduce the number of reports that the reporter has to distribute; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 2 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to court reports, is amended by revising Code Section 50-18-31, relating to the procedure for distribution of court reports and discontinuance and resumption of distribution, as follows:

"50-18-31.

The reporter shall make distribution of the reports which shall be handled in accordance with this Code section:

(1) The reporter shall place all orders for the reports with the publisher. ~~At any time the state librarian adds or eliminates a particular exchange point or determines that the number of copies of either of the reports needs to be changed, he or she shall notify the reporter of this fact in writing, and the reporter shall adjust his or her orders for new reports accordingly;~~

(2) All volumes distributed within this state to the state or to any of its subordinate departments, agencies, or political subdivisions, or to public officers or public employees within the state, ~~other than to the state librarian for exchange purposes,~~ shall be the property of the appropriate public officer or employee during his or her term of office or employment and shall be turned over to his or her successor; and the reporter shall take and retain a receipt from each such public officer or employee acknowledging this fact.

~~Volumes distributed to the state librarian for exchange purposes, but handled for delivery to exchangees by the reporter on behalf and in the name of the state library, shall become the property of the recipient.~~ The reporter shall at all times use the most economical method of shipment consistent with the safety and security of the volumes; and

(3) The reporter shall make distributions of the reports in accordance with the following:

Archives, State	one copy
Commissioner of Insurance	one copy
Court of Appeals of Georgia	23 copies
<del>(which number may be increased upon written order from the Chief Judge to the reporter)</del>	
Executive Department	one copy
<del>Georgia Institute of Technology</del>	<del>one copy</del>
<del>Georgia State University</del>	<del>one copy</del>
Historical Society, Georgia	one copy
Human Resources, Department of	one copy
House Judiciary Committee	one copy
Labor, Department of	one copy
Law, Department of	six copies

~~(which number may be increased upon written order from the Attorney General)~~

Legislative Counsel one copy

~~(which number may be increased upon written order of the Legislative Council)~~

~~Library, State~~

~~Exchange Program:~~

~~Each foreign government authority participating one copy~~

~~Each state participating one copy~~

~~Shelving two copies~~

~~Newly created superior court circuits or judgeships as appropriate~~

~~Whenever a new superior court circuit or a new judgeship within a circuit shall be created, if the officer entitled to reports shall notify the reporter in writing of his or her assumption of office, the reporter shall add his or her position to those to receive reports and shall supply him or her with all earlier volumes.~~

Judge of the Probate Court (each county) one copy

Public Service Commission one copy

~~Recipients not named herein but named on the librarian's distribution list as of the date of his or her last distribution of the reports next preceding April 18, 1975 (each) one copy~~

~~The reporter is authorized to add such names, in whole or in part, to his or her listing of distributees to receive future reports.~~

Reporter	
Assistant reporter's desk	one copy
Copyright	three copies
Reporter's clerical staff	one copy
Reporter's desk	one copy
Secretary of State	one copy
Senate Judiciary Committee	one copy
<del>Special or emergency circumstances</del>	<del>as appropriate</del>

~~When it shall appear to the reporter that a worthy state purpose will be served thereby, he or she may add agencies or officers to the list of recipients of reports, provided that no courts or agencies of a local nature shall be added to the list.~~

Superior Courts	
Clerks (each)	one copy
District Attorneys (each)	one copy
Judges (each)	one copy
Supreme Court of Georgia	18 copies
<del>(which number may be increased upon written order from the Chief Justice to the reporter)</del>	
<del>United States Courts</del>	
<del>Court of Appeals, Fifth Circuit</del>	<del>one copy</del>
<del>District Courts, Georgia</del>	<del>four copies</del>

University of Georgia Law School Library 25 two copies

Workers' Compensation, State Board of six copies

The reporter may add additional recipients or additional copies to named recipients upon written order from the Chief Justice of the Supreme Court, and

~~(4) Notwithstanding the provisions of paragraph (3) of this Code section regarding distribution of reports to superior courts and to judges of the probate courts, the chief judge of the superior courts of any judicial circuit may, for any county within that circuit, have discontinued or restored the distribution of any of that county's authorized number of copies of reports, as such judge determines the needs therefor, upon written request to the librarian. In any event, at least one copy of each report shall be distributed to each county to be placed in the county law library or, if no such library is maintained, in the office of the judge of the probate court for the use of the general public."~~

## SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

This information is provided in electronic format by the Georgia general Assembly as a public service. This information does not constitute an official record of the General Assembly and no warranty or guarantee of any kind is provided.

10 LC 29 4187

House Bill 1328

By: Representatives Lane of the 167<sup>th</sup> and Willard of the 49<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

To amend Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to upwardly adjust certain fees to account for inflation and repeal certain fees assessed by the sheriff and the superior, probate, and magistrate courts; to amend Code Section 14-10-4 and Part 3 of Article 2 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to formation of professional associations and rural telephone cooperatives, respectively, so as to correct cross-references; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising paragraph (2) of subsection (e) and subsections (g) and (h) of Code Section 15-6-77, relating to fees for superior court, as follows:

"(2) Except as provided in paragraphs (3) and (4) of this subsection, the total sum for all services rendered by the clerk of the superior court through entry of judgment in civil cases shall be ~~\$58.00~~ \$91.00. Such sum shall not be required if the party desiring to file such case or proceeding is unable, because of his indigence, to pay such sum and such party files with the clerk an affidavit to such effect, as provided by law. Nothing contained in this subsection shall be deemed to require advance payment of such sum by the state, its

agencies, or political subdivisions."

"(g) Miscellaneous fees:

(1) Recording any instrument or writing, fee not otherwise specified, first page	\$ 5.00
Each page, after the first	2.00
(2) Uncertified copies of documents, if no assistance is required from the office of the clerk of superior court, per page	<del>25</del> <u>.50</u>
Uncertified copies, if assistance is required	1.00
Uncertified copies, if transmitted telephonically or electronically, first page	2.50
Each page, after the first	1.00
(3) Uncertified copies of documents, drawings, or plats, copy larger than 8.5 x 14 inches	2.00
(4) Certification or exemplification of record, including certificates and seals, first page	2.50
Each page, after the first	.50
(5) Clerk's certificate	1.00
(6) Court's seal	1.00
(7) The clerk may provide computer data or computer generated printouts of public records subject to disclosure maintained on computer by, or available to, the clerk, for each page or partial page of printed data or copies of such or its equivalent	2.50

Nothing in this paragraph shall be construed to require any clerk to provide computer generated reports nor shall any clerk be required to

prepare custom or individualized computer compilations or reports for any person or entity which would require preparation of a computer program which is not a standard existing computer program in use by the clerk. The clerk shall not be required to permit access to, or to provide copies of, copyrighted computer programs or any other computer programs in violation of any software license agreement or containing confidential records otherwise excluded or exempted by this Code section or any other applicable law.

(8) Issuing certificate of pending or unsatisfied judgment, as provided in Code Section 40-9-40 3.00

(9) Issuing certificate of appointment and reappointment to notaries public, as provided by Code Section 45-17-4 ~~13.00~~ 20.00

(10) Registering and filing trade names pursuant to Code Section 10-1-490 ~~8.00~~ 13.00

(11) Issuing subpoena, signed and sealed, notwithstanding subsection (e) of this Code section, each ~~1.00~~ 2.00

(12) Preparation of record and transcript to the Supreme Court and Court of Appeals, per page ~~1.50~~ 8.00

Where a transcript of the evidence and proceedings is filed with the clerk and does not require recopying, the clerk shall not receive the fee herein prescribed with respect to such transcript but shall receive, for filing and transmission of such transcript, a fee of ~~5.00~~ 34.00

(13) ~~Reserved. Issuing jury scrip or check, each~~ ~~.30~~

(14) ~~For each day of service in attendance upon the courts~~ ~~50.00~~

~~The per diem attendance upon the courts shall be paid from the treasury~~

~~of the respective counties of this state only to clerks who are on a fee system of compensation. Reserved.~~

(15) For performing the duties required of them by Article 2 of Chapter 2 of Title 44, the clerks shall receive the same sums as in civil cases.

(16) For performing the duties required of them by Article 1 of Chapter 9A of Title 14, the 'Uniform Limited Partnership Act,' and for filing statements of partnership pursuant to Code Section 14-8-10.1, the clerks shall receive the sums as in civil cases.

~~(17) Filing incorporation proceedings except for corporation for which filing procedures are governed by Chapter 2 of Title 14:~~

<del>(A) Articles of incorporation</del>	<del>20.00</del>
<del>(B) Articles of amendment</del>	<del>20.00</del>
<del>(C) Restated articles</del>	<del>20.00</del>
<del>(D) Merger</del>	<del>20.00</del>
<del>(E) Dissolution</del>	<del>20.00</del>
<del>(F) Involuntary dissolution</del>	<del>no fee</del>
<del>(G) Consolidation and merger</del>	<del>20.00</del>
<del>(H) Certificate of election to dissolve</del>	<del>20.00</del>
<del>(I) Order approving change of principal office</del>	<del>no fee</del>
<del>(J) Articles of incorporation as required by Code Section 46-5-100</del>	<del>20.00</del>

(h) Fees in criminal cases:

(1) Entering and docketing bills of indictment, presentments, no-bills, accusations \$ 3.00

(2) <del>Reserved. Issuing and mailing first notice of arraignment pursuant to Code Section 17-7-91</del>	<del>1.00</del>
(3) <del>Reserved. Affidavit of custodian, filing and transmittal pursuant to Code Section 17-10-12</del>	<del>1.00</del>
(4) <del>Reserved. Preparation and transmission of defendant's personal history and related documents, as provided in Code Section 42-5-50</del>	<del>5.00</del>
(5) Reserved.	
(6) Preparation and furnishing copy of the record of appeal in criminal cases where accused was convicted of capital felony, in accordance with Code Section 5-6-43, per page	<del>1.50</del> <u>3.00</u>
Clerk's certificate	1.00

The clerk shall not receive compensation for the transcript of evidence and proceedings.

(7) When costs are assessed by the court the minimum amount assessed as court costs in the disposition of any criminal case in the superior court shall be \$100.00. Any surcharge provided for by law shall be in addition to such sum."

## SECTION 2.

Said title is further amended by revising paragraph (1) of subsection (e) and subsections (f) through (k) of Code Section 15-9-60, relating to costs for probate court, as follows:

"(1) Except as otherwise provided, the cost in an initial proceeding regarding the estate of a decedent or of a missing individual believed to be dead shall be ~~\$90.00~~ \$109.00 for all services rendered by the judge or clerk of the probate court through the entry of the final order on such initial proceedings, exclusive of recording charges;"

"(f) Costs in minor guardianship matters:



# Court of Appeals

## Memorandum

---

To: All Judges  
From: *WLM*  
William L. Martin, III  
Subject: Increased Filing Fee  
Date: March 24, 2010

---

Attached please find a copy of House Bill 1055 which deals with an additional \$100.00 filing fee for all civil filings in the state or superior courts. This is in essence, the gravamen of Preston Smith's bill which was going to add new additional judges to the Court of Appeals and justices to the Supreme Court.

Thank you.

/ld

Attachment

MAR 24 2010

FYI HB1055 Excerpt

**SECTION 36.**

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising Chapter 21A of Title 15 relating to judicial accounting, by adding a new Code section as follows:

"15-21A-6.1.

(a) In addition to all other legal costs, there shall be charged to the filing party and collected by the clerk an additional filing fee of \$100.00, to be known as a judicial operations fund fee, in each civil action or case filed in the superior and state courts except that municipalities, counties, and political subdivisions shall be exempt from such fee. Without limiting the generality of the foregoing, such fee shall apply to all adoptions, certiorari, trade name registrations, applications for change of name, and all other proceedings of a civil nature. Any matter which is docketed upon the official dockets of the enumerated courts and to which a number is assigned shall be subject to such fee, whether such matter is contested or not.

(b) Each clerk of court subject to this Code section shall collect the fees provided in this Code section and the moneys shall be paid over to the authority by the last day of the month after the month of collection, to be deposited by the authority into the general fund of the state treasury.

(c) The authority shall, on a quarterly basis, make a report and accounting of all funds collected pursuant to this Code section and shall submit such report and accounting to the Office of Planning and Budget, the House Budget Office, and the Senate Budget Office no later than 60 days after the last day of the preceding quarter. It is the intent of the General Assembly that such funds shall be made available for appropriation and may be appropriated for the purposes of funding salaries of judges and the operational needs of the judicial system in this state."



# Court of Appeals

## Memorandum

---

**To:** Chief Judge M. Yvette Miller

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

**Subject:** House Bill 1055 - Cost for Preparation of Record on Appeal

**Date:** May 18, 2010

---

I attended the meeting at the State Bar Headquarters yesterday afternoon at 2:30 p.m. about House Bill 1055, regarding that portion of the bill which provides that the clerk shall receive for the cost of preparing the record on appeal \$10.00 per page. This is up from \$1.50 per page. Please see the attached which is a portion of the bill dealing with these costs.

The meeting was chaired by Rusty Sewell and attended by Tom Bowler, Bill Clark, lobbyist for GTLA, Debra Nesbitt and a gentleman named Jim (I did not get his last name) of the Association of the County Commissioners of Georgia (ACCG), Mike Holiman, Executive Director of the Superior Court Clerks' Association, Dena Adams, Clerk, Superior Court of White County/President of the Clerks' Association, Tee Barnes and Tia (I do not know her last name) the Chief Justices' Assistant/Court Administrator, Bryan Cavan, State Bar President and a young lady whose first name was Lauren, (I did not get her last name) who was there representing the Georgia Chamber of Commerce and Mike Cuccaro, Administrative Office of the Courts.

Rusty Sewell called this meeting because he was looking for some way to get around the effect that the law will have, that is, raising the price for record preparation by the clerks from \$1.50 per page to \$10.00 per page. In other words, a 100 page record which ordinarily would cost \$150.00 will now cost \$1,000. We get cases in which the record can exceed 5000 pages.

**TO:** Chief Judge M. Yvette Miller  
**SUBJECT:** House Bill 1055 - Cost for Preparation of Record on Appeal  
**DATE:** May 18, 2010  
**PAGE:** 2

The lawyer legislators have been bombarded by the Attorneys of Georgia complaining about this increase. House Bill 1055 is an omnibus fee increase bill and this particular portion of it was kind of suppressed. The bill did come out on April 14 and it was out there for two weeks, however, the people who are charged with catching it, did not. I believe many people thought that it was a one time fee as were most of the other fees in that schedule and not a per page fee.

Rusty Sewell said that the lawyer legislators in the General Assembly were asking Rusty and the group assembled to find some way around this problem until the Legislature could reconvene next January to correct it. I announced that I was not speaking for the Court and that anything I said should not be attributed to the Chief Judge or any other judge on the Court. I was asked what authority required the clerk to prepare a certified record. I quoted the applicable statute (OCGA §5-6-43).

Bill Clark wondered if the parties could just agree on a record and have that sent to the appellate courts. I stated that I did not go behind a clerk's certification but I am not sure a clerk would be willing to certify something the clerk did not actually prepare. Ms. Adams said that was the case and Mr. Holiman said the statute providing for the fees did not give the clerk the discretion to charge or not charge the fees, but required that the fees would be collected and turned over to the General Fund of the County Treasury. There was some discussion that the clerk did not have to charge the entire \$10.00 since the Code Section said the clerk is entitled to charge \$10.00.

There was a discussion that the Chief Judge of each Circuit could issue an order directing the clerk to charge an amount less than \$10.00. Mr. Holiman said that even in light of an order from the Chief Judge, the clerks might interpret the Statute as mandatory and feel that they were exposed to civil and/or criminal penalties if they did not follow the Statute. He gave the example of the Superior Court clerk who was collecting the illegal fee at the direction and the order of Judge Brooks Blich. That clerk ended up pleading guilty to a Federal charge and received a Federal criminal sentence.

The group realized that it should have included representatives from the Superior and State Courts and Rusty Sewell will be contacting them. A request is going to be made to see if the Attorney General has ever issued an opinion regarding the collection of these fees being mandatory. However, Mr. Holiman says there are several cases from the Supreme Court and Court of Appeals which indicate that the collection of these fees is mandatory and not discretionary.

**TO:** Chief Judge M. Yvette Miller  
**SUBJECT:** House Bill 1055 - Cost for Preparation of Record on Appeal  
**DATE:** May 18, 2010  
**PAGE:** 3

There was some discussion that the Supreme Court and Court of Appeals should establish a rule which would basically override the statute. I commented that while I could not speak for the Court of Appeals, I was not sure that the Court would be willing to put itself in the position where it could have issued a rule which was in direct conflict with the statute in a case that might end up being appealed before the Court.

I find a lot of irony in the fact that the Legislature has basically passed a bill that they did not know what it meant or what its effect would be, and then turn to the Courts to pull their chestnuts out of the fire, the same Courts which for the last three years they have been consistently whittling away their budget and turning a deaf ear when the Courts tried to plead their case.

The \$10.00 fee was not an oversight. That was meant to be the figure. This was based upon research done showing the cost of living increases since 1971 when the fee was set at \$1.50 per page. Debra Nesbitt said she had explained it to everyone but evidently they did not understand or did not realize the impact.

There was some talk that there might be a test case, that an attorney who was charged that amount for a record will make a constitutional challenge that the fee denied equal access to the Courts. The ACCG representative said that there could also be a suit by the county commissioners if that fee were not collected as required by the statute.

I have attached several emails which will give you a bit of the flavor of what is going on with the attorneys. Mr. Michael Warshauer's email indicates that he has multiple conversations with the Chief Justice and that she will help him anyway that she can and that he has friends in high places. Also, please see Barry Wilkes' email.

/ld  
Attachments

**From:** "Mike Holiman" <mike.holiman@politics.org>  
**To:** "Mike Holiman" <mike.holiman@politics.org>, "Rusty Sewell" <rusty@gacapi...>  
**CC:** "Adams, Dena" <Dena.Adams@GSCCCA.ORG>, "Barry Wilkes" <barry.wilkes@libe...>  
**Date:** 5/18/2010 11:10 AM  
**Subject:** RE: 1055 Solutions

One typo in my original, fifth graph.

Indecency should be indigency.

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**From:** Mike Holiman  
**Sent:** Tuesday, May 18, 2010 11:01 AM  
**To:** Rusty Sewell; 'bryan cavan'; Bill Martin (martinw@gaappeals.us); Bill Clark (bclark@gtia.org); Tom Boller; Jim Grubiak (jgrubiak@accg.org); Debra Nesbit (dnesbit@accg.org); 'Mike Cuccaro'; 'Marla Moore'; Therese S. Barnes (scinfo@supreme.courts.state.ga.us); Lauren Wilkes (lwilkes@gachamber.com)  
**Cc:** Adams, Dena; Barry Wilkes; Lawler, Tom; 'Cindy Mason, Clerk of Superior Court, Columbia County'; Rogers, Jean; Peeler, Mildred; 'Fountain, Chess'; Cheatham, Connie; Logan, Beverly  
**Subject:** 1055 Solutions

Clerks have discussed several options in the last 24 hours, none have been warmly embraced. We discussed the possibility of the counties and clerks drafting an agreement to lower the fee until a date certain early next year. It would have to be a standardized form and used statewide. We're not sure it's legal and would require an AG's opinion or advisory letter at a minimum before final consideration.

We are in agreement that the idea of a court order is not a good one. We have too much history with the judges to advise our members that it is ever acceptable to follow a judicial order that contradicts state law. If you insist on pursuing this idea it must involve the commissioners as well as the clerks. And even if this is the case, I can't guarantee that clerks will consent.

Someone suggested that the Governor had the authority to suspend fees under certain circumstances. I suspect that this applies to states of emergency but one of you should explore. The problem is this may involve voiding the entire bill which he is highly unlikely to do.

And finally, the bar should consider advising its members to prepare to compromise, make agreements, file less frivolous pleadings/repetitive pleadings, and send up portions rather than complete records. Also, many parts of the transcript seem unnecessary. For instance: the openings, closings, and voir dire of jury (except in death penalty).

In many counties the majority of criminal appeals are criminal with "INDIGENCY" applied. The civil appeal can be controlled by the attorney and the pleadings they choose to send up. Transcripts would not be a major issue if the court reporter always files what is paid for (two copies). In those cases where the cost is going to be exorbitant, then the parties could petition the court on an individual bases to deal with that situation.

Please know that we're prepared to aggressively consider any other ideas that this group can generate but most ideas to this point involve the clerk breaking the law.

(5)

**From:** Barry Wilkes <barry.wilkes@libertycountyga.com>  
**To:** Mike Holiman <mike.holiman@politics.org>, Rusty Sewell <rusty@gacapitolp...>  
**CC:** "Adams, Dena" <Dena.Adams@GSCCCA.ORG>, "Lawler, Tom" <Tom.Lawler@GSCCCA....>  
**Date:** 5/18/2010 11:42 AM  
**Subject:** RE: 15-6-77 footnotes

Absent an Attorney General opinion to the contrary, existing case law and AG opinions do not support usurping state law relative to collection of fees via a court order, agreements between stakeholders or by and through any other reason. In other words, the law is the law and, as ministerial officers of the court, we cannot contravene the law for any purpose. A court order compelling us to violate the law is illegal, as we learned from the peril one of our own suffered when a superior court judge ordered him to collect fees inconsistent with the law.

So, it appears to me that the only way to ameliorate the problem is to (1) call a special session of the Georgia General Assembly so that legislators can amend O.C.G.A. § 15-6-77 (g)(12) to reduce the fees relative to preparation of the record on appeal or (2) for someone to file a lawsuit challenging the constitutionality of the statute on grounds that it abridges the rights of individuals to fair protection under the law, etc.

(5) Had we been afforded and opportunity to provide legislators input concerning specific provisions of HB 1055, this problem would probably have been avoided. However, we were told that our input was not needed and that we should stay out of the fray.

F. Barry Wilkes  
 Clerk and Court Administrator  
 Liberty County  
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 Phone 912-876-7235  
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**From:** Mike Holiman [mailto:mike.holiman@politics.org]  
**Sent:** Tuesday, May 18, 2010 11:28 AM  
**To:** Mike Holiman; Rusty Sewell; bryan cavan; martinw@gaappeals.us; bclark@gtla.org; Tom Boller; jgrubiak@accg.org; dnesbit@accg.org; Mike Cuccaro; Maria Moore; scinfo@supreme.courts.state.ga.us; lwilkes@gachamber.com  
**Cc:** Adams, Dena; Barry Wilkes; Lawler, Tom; Cindy Mason, Clerk of Superior Court, Columbia County; Rogers, Jean; Peeler, Mildred; Fountain, Chess; Cheatham, Connie; Logan, Beverly  
**Subject:** 15-6-77 footnotes

JUDICIAL DECISIONS

(6) SUPERIOR COURT CLERKS ARE CHARGED WITH DUTY OF RECEIVING AMOUNTS of all costs due in court. Whitsett v. Hester-Bowman Enters., Inc., 94 Ga. App. 78, 93 S.E.2d 788 (1956).<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=39&\\_butInline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b94%20Ga.%20App.%2078%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=a1bac976bb1d3e14a18218447e121579](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=39&_butInline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b94%20Ga.%20App.%2078%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=a1bac976bb1d3e14a18218447e121579)>

FAILURE TO CHARGE SUFFICIENT COSTS NOT TO AFFECT RIGHTS OF PARTIES. -In cases where the clerks are on a salary basis and the costs belong to the county, failure to charge sufficient costs would be a matter between the clerk and the county, and might subject the clerk to a contempt proceeding, but would not affect the rights of parties litigant. Whitsett v. Hester-Bowman Enters., Inc., 94 Ga. App. 78, 93 S.E.2d 788 (1956);<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=56&\\_butInline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b94%20Ga.%20App.%2078%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=998053d2a8579e24cfcfa8868ebf5e7c](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=56&_butInline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b94%20Ga.%20App.%2078%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=998053d2a8579e24cfcfa8868ebf5e7c)> Sirmans v. Sirmans, 222 Ga. 202, 149 S.E.2d 101 (1966).

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=57&\\_butInline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b222%20Ga.%20202%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=28d5b1865bf154eb9f974ee5b0c33f](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=57&_butInline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b222%20Ga.%20202%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=28d5b1865bf154eb9f974ee5b0c33f)>

WHEN CASES ARE CONSOLIDATED, CLERK IS ENTITLED TO FEE IN EACH CASE. Williams, Birnie & Co. v. Officers of Court, 61 Ga. 95 (1878).<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=46&\\_butInline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b61%20Ga.%2095%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=d8a826852a191c5237309c73c1d82ec6](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=46&_butInline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b61%20Ga.%2095%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=d8a826852a191c5237309c73c1d82ec6)>

CLERK NOT AUTHORIZED TO CHARGE FOR COPY RETAINED BY CLERK. --Under paragraph (g)(12) of O.C.G.A. § 15-6-77<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=47&\\_butInLine=1&\\_butInfo=GACODE%2015-6-77&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=14884ebee9f6ae69462a5624b349c109](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=47&_butInLine=1&_butInfo=GACODE%2015-6-77&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=14884ebee9f6ae69462a5624b349c109)>, the clerk should only have charged for preparing the record to be sent to this court and was not authorized to charge the additional fee for preparing the copy of the record to be retained by the clerk. *Rewis v. Shaw*, 208 Ga. App. 876, 432 S.E.2d 617 (1993).<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=48&\\_butInLine=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b208%20Ga.%20App.%20876%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=95fc680dc239299b94810f3b528d4ba](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=48&_butInLine=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b208%20Ga.%20App.%20876%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=95fc680dc239299b94810f3b528d4ba)>

CLERK NOT ENTITLED TO COSTS FOR TRANSMITTING SURPLUS PARTS OF RECORD not specified in bill of exceptions (see O.C.G.A. §§ 5-6-49<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=49&\\_butInLine=1&\\_butInfo=GACODE%205-6-49&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=959a0ad49cd480f5e8a630e6202f37fc](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=49&_butInLine=1&_butInfo=GACODE%205-6-49&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=959a0ad49cd480f5e8a630e6202f37fc)>, 5-6-50<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=50&\\_butInLine=1&\\_butInfo=GACODE%205-6-50&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=5911cbd933e6822b4abcb6298e343840](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=50&_butInLine=1&_butInfo=GACODE%205-6-50&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=5911cbd933e6822b4abcb6298e343840)>), unless the transmission was at instance of party or counsel. *Waldrop v. Wolff & Happ*, 114 Ga. 610, 40 S.E. 830 (1902);<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=51&\\_butInLine=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b114%20Ga.%20610%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=8e2bf443a203b4be18a8bda22d582755](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=51&_butInLine=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b114%20Ga.%20610%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=8e2bf443a203b4be18a8bda22d582755)> *Riley v. Wrightsville & T.R.R.*, 133 Ga. 413, 65 S.E. 890, 24 L.R.A. (n.s.) 379, 18 Ann. Cas. 208 (1909).<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=52&\\_butInLine=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b133%20Ga.%20413%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=067cdec8b098c352fa504632bd59f966](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=52&_butInLine=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b133%20Ga.%20413%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=067cdec8b098c352fa504632bd59f966)>

CLERK'S FILING WITHOUT FEES IS NOT A WAIVER OF FEES. --Clerk's filing of complaint without having received deposit or affidavit of indigence did not constitute a waiver of assessment of court costs against complainant. *Whitehead v. Lavoie*, 176 Ga. App. 666, 337 S.E.2d 357 (1985).<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=58&\\_butInLine=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b176%20Ga.%20App.%20666%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=abcbfab58c02bd55118184c18a4c4b6d](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=58&_butInLine=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b176%20Ga.%20App.%20666%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=abcbfab58c02bd55118184c18a4c4b6d)>

NO FURTHER AFFIDAVIT OF INDIGENCE REQUIRED FOR RENEWAL ACTION. --Provision in O.C.G.A. § 9-15-2(a)<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=59&\\_butInLine=1&\\_butInfo=GACODE%209-15-2&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=1de8dc10015e426dbd1036df9b187653](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=59&_butInLine=1&_butInfo=GACODE%209-15-2&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=1de8dc10015e426dbd1036df9b187653)> that an affidavit of indigence relieves a party of "any deposit, fee, or other cost" requires that, when a plaintiff files such an affidavit upon bringing an action, takes a voluntary dismissal, then seeks to renew the action, no payment of accrued costs and no further affidavit of indigence are required for the filing of the renewal action. *McKenzie v. Seaboard Sys. R.R.*, 173 Ga. App. 402, 326 S.E.2d 502 (1985).<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=60&\\_butInLine=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b173%20Ga.%20App.%20402%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=fac59a84257116d2a4607325057c23a4](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=60&_butInLine=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b173%20Ga.%20App.%20402%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=fac59a84257116d2a4607325057c23a4)>

#### OPINIONS OF THE ATTORNEY GENERAL

SUPERIOR COURT CLERK CANNOT CHARGE LESS THAN PRESCRIBED. --Superior court clerk does not have discretion to charge less than fees prescribed by this section for preparation of case records on appeal when the clerk is on salary as opposed to "fee system." Under such circumstances the statutory fees are no longer the property of the clerk, but are public property for which the clerk is responsible. 1973 Op. Att'y Gen. No. U73-43 (see O.C.G.A. § 15-6-77<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=71&\\_butInLine=1&\\_butInfo=GACODE%2015-6-77&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=b815331d315256e893cb9dd0104e1680](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=71&_butInLine=1&_butInfo=GACODE%2015-6-77&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=b815331d315256e893cb9dd0104e1680)>).

FAILURE OF SUPERIOR COURT CLERK TO COLLECT COSTS ON APPEAL did not affect outcome of appeal despite former Code 1933, § 24-2729 (see O.C.G.A. §

15-6-80<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=72&\\_butInline=1&\\_butInfo=GACODE%2015-6-80&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=f0addca3c3dcd7a7f29533cfe9e115e0](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=72&_butInline=1&_butInfo=GACODE%2015-6-80&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=f0addca3c3dcd7a7f29533cfe9e115e0)>). 1973 Op. Att'y Gen. No. U73-43.

BURDEN OF COST DEPOSIT ON PARTY FILING NOTICE OF APPEAL. --Party who filed notice of appeal under former Code 1933, § 92-6912 (see O.C.G.A. §

48-5-311(f)<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=74&\\_butInline=1&\\_butInfo=GACODE%2048-5-311&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=25f72b3afb2fa7d79956f575b7a5612](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=74&_butInline=1&_butInfo=GACODE%2048-5-311&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=25f72b3afb2fa7d79956f575b7a5612)>) was party bearing burden of cost of deposit. 1974 Op. Att'y Gen. No. U74-46.

NO FILING OR RECORDING FEE CAN BE CHARGED FOR DEPOSITIONS OR INTERROGATORIES. 1970 Op. Att'y Gen. No. U70-232.

O.C.G.A. §

15-6-77<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=77&\\_butInline=1&\\_butInfo=GACODE%2015-6-77&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=430a59e9f936eff924d74b75c4f58d7f](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=77&_butInline=1&_butInfo=GACODE%2015-6-77&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=430a59e9f936eff924d74b75c4f58d7f)> does not prescribe a fee for filing interrogatories or answers to interrogatories. It follows that no fee may be charged for this service. 1981 Op. Att'y Gen. No. U81-50.

NO FEE CAN BE COLLECTED FOR THE FILING OF INTERROGATORIES. 1971 Op. Att'y Gen. No. U71-93.

No virus found in this incoming message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 8.5.437 / Virus Database: 271.1.1/2873 - Release Date: 05/18/10 06:26:00

**From:** Christina Smith  
**To:** Bill Martin  
**Date:** 5/14/2010 2:03 PM  
**Subject:** GTLA

fyi

----- Original Message -----

**From:** Michael Warshauer  
**To:** GTLA Office News  
**Sent:** Friday, May 14, 2010 10:51 AM  
**Subject:** [gtlamembers] HB 1055 Message from GTLA President

As promised in my first message on this subject, we are not sitting on our hands and waiting for a solution. Instead, over the last 24 hours we have been working, and working hard. Here is where we are:

First, the Good News: I have had multiple conversations with the Chief Justice of the Supreme Court and she tells me that she will help in any way she can. The Chief perceives this as a problem for access to justice for all cases, not just tort cases. So, we are not alone and we have friends in high places. Additionally, Bill Clark, our lobbyist has had contact with key legislators, including the Speaker of the House, and they too are somewhat surprised by the effect of this bill and have indicated they will help us in any way they can. (No, don't even think about a special session as that is not going to happen.) There will be a legislative fix next year, but we have to get this fixed now as we can't wait a year.

Second, the Bad News: There are hundreds of clerks and right now we are at risk of each of them, as elected officials, interpreting this law any way they want. Some are likely to allow the lawyers to prepare the record and take \$35.00 and be done with it, and others are likely to insist on \$10.00 a page. We simply have no idea how this will play out. So, make sure you file the new filing fees (these we reluctantly agreed to as they were inevitable) and pay attention to this list serve for what we hope will be instructions on how to avoid having \$10,000 record costs for \$5,000 disputes.

Third, We Have a Plan: On Tuesday at my office we will have the first meeting of a HB 1055 Challenge Committee. Darren Summerville has agreed to chair this committee so we are in good hands. Our task will be to develop a plan to fix this problem. The fastest solution will be an injunction or change of Appellate Court rules. The Chief Justice anxiously awaits our recommendations as to appellate rule changes and actually looks to this mess as perhaps the impetus to get e-filing in place. I encourage you to come to this meeting. I need all hands on deck for this important project. In the meantime, I have reached out the the leaders of the GA Bar too. We are not alone for once as this affects every kind of civil case from domestic to contract and back. The Chief Justice awaits our suggestions.

Again, please know that we are working on this problem. Also, know that this is an opportunity for you to get involved. Please call Amy in my office if you are interested in digging in and helping.

Michael J. Warshauer  
President GTAL

Michael J. Warshauer  
Board Certified Civil Trial Advocate  
Warshauer Law Group, P.C.  
Suite 2000  
3350 Riverwood Parkway  
Atlanta, GA 30339

**Bill Martin - Clerks and 1055**

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**From:** "Mike Holiman" <mike.holiman@politics.org>  
**To:** "bryan cavan" <bcavan@millermartin.com>, "Rusty Sewell" <rusty@gacapitolpartners.com>, "Tom Boller" <tom@gacapitolpartners.com>, "Marla Moore" <marla.moore@gaaoc.us>, "Mike Cuccaro" <mike.cuccaro@gaaoc.us>, <dnesbit@accg.org>, <jgrubiak@accg.org>, <martinw@gaappeals.us>, <scinfo@supreme.courts.state.ga.us>, <rmalone@pacga.org>, "Chuck Olson" <colson@pacga.org>, <lwilkes@gachamber.com>  
**Date:** 5/18/2010 2:20 PM  
**Subject:** Clerks and 1055  
**CC:** <jean.rogers@gsccca.org>, "Barry Wilkes" <barry.wilkes@libertycountyga.com>, "Lawler, Tom" <Tom.Lawler@GSCCCA.ORG>, "Williams, Carolyn" <Carolyn.Williams@GSCCCA.ORG>, "Cheatham, Connie" <Connie.Cheatham@GSCCCA.ORG>, "Cindy Mason, Clerk of Superior Court, Columbia County" <Cinshine@comcast.net>, "Peeler, Mildred" <mildred.peeler@GSCCCA.ORG>, "Fountain, Chess" <Chess.Fountain@GSCCCA.ORG>, "Adams, Dena" <Dena.Adams@GSCCCA.ORG>

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For the second time in two days it has come to my attention that judges and/or their staff are advising others that the Superior Court Clerks were "instrumental" in the original effort to increase the cost per page for filing an appeal and for the subsequent increase of that fee from \$8.00 to \$10.00.

Let me make this as clear as I can possibly make it ... that is not true.

To the extent that they are hearing that from legislators or lobbyists let me assure you that it does not contribute to a "warm and fuzzy" feeling with my client and is not likely to further their cooperative spirit in attempting to find solutions.

The Superior Court Clerks took NO POSITION on HB 1055 and did not participate AT ANY TIME during the past legislative session in discussions with legislators or other lobbyists regarding the bill. Like many other budget watchers, I followed HB 1055 as it became an integral part of the legislative leaderships' efforts to balance the 2011 budget.

Carolyn Williams, Superior Court Clerk in Pike County, did attend one or two meetings last summer/fall sponsored by ACCG where a general discussion of court fees was undertaken. I attended a similar meeting almost three years ago with a number of others including representatives of the Probate Judges, Tax Commissions, and Sheriffs. At these earlier meetings ACCG had encouraged the COAG representatives to do studies to determine the "true cost" of providing these various services. After discussions with our various memberships, we advised the ACCG that we did not have the resources to undertake such a study.

When Debra Nesbit joined ACCG last fall she inherited this project and, to her credit, took the initiative to come up with a COLA that was ACCG's good faith effort to bring our outdated fee structure into the 21<sup>st</sup> Century. She has been very forthcoming as to how the original \$8 amount was determined.

I do not know how or why the \$8 was increased to \$10 as (once again) I did not speak with ANY legislator about this bill. If anyone cares to determine the "legislative intent" of the General Assembly, I suggest you place a call to Speaker Ralston, Lt. Governor Cagle or any of the other legislative leaders who shepherded this bill through the process.

**Bill Martin - RE: meeting**

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**From:** "Lauren Wilkes" <lwilkes@gachamber.com>  
**To:** <rusty@gacapitolpartners.com>, "Mike Holiman" <mike.holiman@politics.org>, <bclark@gtla.org>, "Debra Nesbit" <dnesbit@accg.org>, "Grubiak, Jim" <JGrubiak@accg.org>, <martinw@gaappeals.us>, "Walker, Henry" <HWalker@kilpatrickstockton.com>  
**Date:** 5/16/2010 8:39 PM  
**Subject:** RE: meeting  
**CC:** "Tom email" <tom@gacapitolpartners.com>, "Mark email" <mark@gacapitolpartners.com>

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I will be there.

Thanks,  
 Lauren

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**From:** rusty@gacapitolpartners.com [mailto:rusty@gacapitolpartners.com]  
**Sent:** Fri 5/14/2010 1:29 PM  
**To:** Mike Holiman; bclark@gtla.org; Debra Nesbit; Grubiak, Jim; Lauren Wilkes; martinw@gaappeals.us; Walker, Henry  
**Cc:** Tom email; Mark email  
**Subject:** Re: meeting

Let's try 2:30 on Monday at the State Bar. Bring anybody with you that you need to. Also please forward this to anyone you think I missed that will help with this problem. Thanks

Sent via BlackBerry by AT&T

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**From:** "Mike Holiman" <mike.holiman@politics.org>  
**Date:** Fri, 14 May 2010 13:13:28 -0400  
**To:** <bclark@gtla.org>; Rusty Sewell<rusty@gacapitolpartners.com>; Debra Nesbit<dnesbit@accg.org>; Grubiak, Jim<JGrubiak@accg.org>; <lwilkes@gachamber.com>; <martinw@gaappeals.us>; Walker, Henry<HWalker@kilpatrickstockton.com>  
**Cc:** Tom Boller<tom@gacapitolpartners.com>; Mark M. Middleton<mark@gacapitolpartners.com>  
**Subject:** RE: meeting

Busy Monday at 1pm for about an hour. Open other times.

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**From:** Bill Clark [mailto:bclark@gtla.org]  
**Sent:** Friday, May 14, 2010 12:39 PM  
**To:** Rusty Sewell; Mike Holiman; Bill Clark; Debra Nesbit; 'Grubiak, Jim'; lwilkes@gachamber.com; martinw@gaappeals.us; 'Walker, Henry'  
**Cc:** Tom Boller; Mark M. Middleton  
**Subject:** Re: meeting

I am any time Monday or any time Tuesday morning.

Bill Clark  
 GTLA  
 Public & Political Affairs

---

**From:** "Rusty Sewell" <rusty@gacapitolpartners.com>  
**Date:** Fri, 14 May 2010 12:20:33 -0400  
**To:** 'Mike Holiman' <mike.holiman@politics.org>; 'William Clark' <bclark@gtla.org>; 'Nesbit, Debra' <DNesbit@ACCG.org>; 'Grubiak, Jim' <JGrubiak@ACCG.org>; <lwilkes@gachamber.com>; <martinw@gaappeals.us>; 'Walker, Henry' <HWalker@kilpatrickstockton.com>  
**Cc:** <tom@gacapitolpartners.com>; 'Mark Middleton' <mark@gacapitolpartners.com>  
**Subject:** meeting

I think it would be a good idea for us to meet face-to-face to talk about this problem with HB 1055 re: copying costs. Are y'all available on Monday or Tuesday of next week?

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**From:** Mike Holiman [mailto:mike.holiman@politics.org]  
**Sent:** Friday, May 14, 2010 11:04 AM  
**To:** William Clark; Nesbit, Debra; rusty@gacapitolpartners.com; tom@gacapitolpartners.com  
**Cc:** Grubiak, Jim; Mueller, Clint  
**Subject:** RE:

This is what happens when a bill is 'sequestered' and then roars back to life with no opportunity for a final, FINAL review. Debra and I were looking at making a couple of changes ourselves although I must admit it wasn't on this particular issue.

---

**From:** William Clark [mailto:bclark@gtla.org]  
**Sent:** Friday, May 14, 2010 10:50 AM  
**To:** 'Nesbit, Debra'; Mike Holiman; rusty@gacapitolpartners.com; tom@gacapitolpartners.com  
**Cc:** 'Grubiak, Jim'; 'Mueller, Clint'  
**Subject:** RE:

The only problem, Debra, is that, unlike most of the other services listed in this code section, copying has become considerably cheaper over the last 3 or 4 decades, not more expensive. So, while inflation was a good formula for raising the fees on many of the services in your list, it is not for copying. Unfortunately, I (and apparently your sponsor and several other legislators with whom I've spoken) simply overlooked or missed altogether this particular item.

Personally, I blame that on your wonderful magnetism and salesmanship! You kept me 'distracted' with your filing fee issue all session so that I'm not sure I ever really read every single one of the service fee increases you included in your bill. I'll have to remember that little trick in the future. ☺

And, by the way, if \$8 per page was the inflation-based fee (as you put in your original bill), how did it get raised up to \$10? Who did that nifty bit of work?

Sincerely,

Bill

William T. Clark  
Director of Political Affairs  
Georgia Trial Lawyers Association  
(404) 522-8487 ext. 30  
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**To:** William Clark; Mike Holiman; rusty@gacapitolpartners.com; tom@gacapitolpartners.com  
**Cc:** Grubiak, Jim; Mueller, Clint; martinw@gaappeals.us  
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Bill,

Just want to be sure you know that we based that increase on the same formula as the others (inflation). It has been on the list everyone has reviewed from the beginning. We are certainly willing to find a way to make it work. Please keep me in the email loop so I can communicate to my folks the final resolution. Thanks to you all for working with us!

**Debra Nesbit**

Associate Legislative Director  
Association County Commissioners of Georgia  
50 Hurt Plaza, Suite 1000  
Atlanta, Georgia 30303  
(404) 522-5022 office (404) 522-2477 fax  
(404) 617-4755 Cell  
[dnesbit@accg.org](mailto:dnesbit@accg.org)

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I appreciate the Clerks' Council's willingness to find a solution to this problem ASAP. And, from the discussions I've had with legislators over the past 48 hours, I assure you there are plenty of them who also would appreciate that willingness to help.

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**From:** Mike Holiman [mailto:mike.holiman@politics.org]  
**Sent:** Friday, May 14, 2010 10:32 AM  
**To:** William Clark; Nesbit, Debra; rusty@gacapitolpartners.com; tom@gacapitolpartners.com  
**Cc:** Grubiak, Jim; Mueller, Clint; martinw@gaappeals.us  
**Subject:** RE:

Copying Bill Martin, Clerk of the Court of Appeals for an answer.

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**From:** William Clark [mailto:bclark@gtla.org]  
**Sent:** Friday, May 14, 2010 10:28 AM  
**To:** Mike Holiman; 'Nesbit, Debra'; rusty@gacapitolpartners.com; tom@gacapitolpartners.com  
**Cc:** 'Grubiak, Jim'; 'Mueller, Clint'  
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Michael: What do the appellate courts require to be sent up to them? Do they require a 'certified copy' of the record below such that the clerks' agreement to only charge the \$35 for the transcript is really not a solution to the problem that this \$10 per page charge is going to create? Any help you can give me as to what is required of appellants regarding the record below would be greatly appreciated.

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**Subject:** RE:

Debra:

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**From:** Nesbit, Debra [mailto:DNesbit@ACCG.org]  
**Sent:** Friday, May 14, 2010 9:38 AM  
**To:** Mike Holiman; rusty@gacapitolpartners.com; tom@gacapitolpartners.com; bclark@gtla.org  
**Cc:** Grubiak, Jim; Mueller, Clint  
**Subject:**

All,

The language in the bill in regarding the fee for preparation of a record and transcript to the Supreme Court and Court of Appeals reads as follows:

15-6-77(g)

(12) Preparation of record and transcript to the Supreme Court and Court of Appeals, per page ~~4.50~~ 10.00

Where a transcript of the evidence and proceedings is filed with the clerk and does not require recopying, the clerk shall not receive the ~~5.00~~ 35.00 fee herein prescribed with respect to such transcript but shall receive, for filing and transmission of such transcript, a fee of

From the above language it appears to me that the attorneys could copy the record themselves and pay the \$35 fee in lieu of the \$10 per page fee – am I off base?

**Debra Nesbit**  
Associate Legislative Director  
Association County Commissioners of Georgia  
50 Hurt Plaza, Suite 1000  
Atlanta, Georgia 30303  
(404) 522-5022 office (404) 522-2477 fax  
(404) 617-4755 Cell

[dnesbit@accg.org](mailto:dnesbit@accg.org)

**Bill Martin - FW: appeals fees**

---

**From:** "Regina McIntyre" <regina.mcintyre@gsccca.org>  
**To:** "Bill Martin" <MARTINW@appeals.courts.state.ga.us>  
**Date:** 5/15/2010 7:38 PM  
**Subject:** FW: appeals fees

---

I assume you are aware of the increase in appeal preparation resulting from the passage of House Bill 1055. Please read the email below about some attorneys discussing "stipulating" to making their own copies for appeals. Can that be done? We couldn't certify their copies. If it can be done, what would we charge for preparing the index and putting everything together? I am just interested in your opinion about all this.

Thanks!  
Regina McIntyre  
Barrow County Clerk of Superior Court

---

**From:** Brannen, Dianne [mailto:Dianne.Brannen@GSCCCA.ORG]  
**Sent:** Friday, May 14, 2010 5:09 PM  
**To:** Taylor, Jackie; Barry Wilkes; Holiman, Mike; All Clerks  
**Subject:** RE: appeals fees

An Atlanta attorney told me today that some attorneys there are discussing "stipulating" to making their own copies for appeals. That way, I suppose, they would not have to be certified by us. Interesting. Might free up some time for handling the Board of Equalization! :-)

Dianne Brannen  
Clerk, Bibb County Superior court  
(478) 621-6512  
(478) 621-6033 - Fax

---

**From:** Taylor, Jackie  
**Sent:** Fri 5/14/2010 10:20 AM  
**To:** Barry Wilkes; Holiman, Mike; All Clerks  
**Subject:** RE: appeals fees

The Clerk's record has to be prepared from original documents. I under the transcript but not this.

**Jackie W. Taylor, Clerk**  
Troup County Superior Court  
Troup County Government Center  
100 Ridley Avenue  
LaGrange, GA 30240  
(706)883-1740  
[www.troupclerkofcourt.com](http://www.troupclerkofcourt.com)

---

**From:** Barry Wilkes [mailto:barry.wilkes@libertycountyga.com]  
**Sent:** Fri 5/14/2010 10:00 AM  
**To:** Holiman, Mike; All Clerks

**Subject:** RE: appeals fees

We included that in the fee schedule. We need to address this through training.

From: Mike Holiman <mike.holiman@politics.org>  
Sent: Friday, May 14, 2010 9:54 AM  
To: dena.adams@gsccca.org <dena.adams@gsccca.org>; Anderson, Pat <Pat.Anderson@GSCCCA.ORG>;  
connie.cheatham@mcduffie.gsccca.org <connie.cheatham@mcduffie.gsccca.org>; Barry Wilkes  
<barry.wilkes@libertycountyga.com>  
Cc: dnesbit@accg.org <dnesbit@accg.org>; Rusty Sewell <rusty@gacapitolpartners.com>  
Subject: appeals fees

There is some serious noise coming out of the state bar concerning estimates of the cost for filing an appeal with the Superior Court for the Court of Appeals and Supreme Court.

As you are aware, the bill states that the new fee is \$10 per page. However, Debra Nesbit (ACCG) and Rusty Sewell (Bar) have noticed a section that seems to allow the filing party to provide their own copies with the cost being \$35.

Here is the applicable language, let me know what you think.

670 (12) Preparation of record and transcript to the Supreme Court and Court of  
671 Appeals, per page. . . . . 1.50 10.00  
page 21

672 Where a transcript of the evidence and proceedings is filed with the clerk and  
673 does not require recopying, the clerk shall not receive the fee herein  
674 prescribed with respect to such transcript but shall receive, for filing and  
675 transmission of such transcript, a fee of. . . . . 5.00 35.00  
No virus found in this incoming message. Checked by AVG - www.avg.com Version: 8.5.437 / Virus Database:  
271.1.1/2859 - Release Date: 05/14/10 06:26:00

**Bill Martin - Re: meeting**

---

**From:** <rusty@gacapitolpartners.com>  
**To:** <bclark@gtla.org>, "Mike Holiman" <mike.holiman@politics.org>, "Grubiak, Jim" <JGrubiak@ACCG.org>  
**Date:** 5/14/2010 6:08 PM  
**Subject:** Re: meeting  
**CC:** "Debra Nesbit" <dnesbit@ACCG.org>, <lwilkes@gachamber.com>, <martinw@gaappeals.us>, "Walker, Henry" <HWalker@kilpatrickstockton.com>, "Tom email" <tom@gacapitolpartners.com>, "Mark email" <mark@gacapitolpartners.com>

---

Glad to see the ideas flowing

Sent via BlackBerry by AT&T

---

**From:** "Bill Clark" <bclark@gtla.org>  
**Date:** Fri, 14 May 2010 21:08:32 +0000  
**To:** Mike Holiman<mike.holiman@politics.org>; Grubiak, Jim<JGrubiak@ACCG.org>; Rusty Sewell<rusty@gacapitolpartners.com>  
**Cc:** Debra Nesbit<dnesbit@ACCG.org>; <lwilkes@gachamber.com>; <martinw@gaappeals.us>; Walker, Henry<HWalker@kilpatrickstockton.com>; Tom Boller<tom@gacapitolpartners.com>; Mark M. Middleton<mark@gacapitolpartners.com>  
**Subject:** Re: meeting

Where's your sense of adventure, Holiman?! Besides, didn't Seabaugh's bill mandate the carrying of a firearm in any place when 2 or more people gather?

Bill Clark  
 GTLA  
 Public & Political Affairs

---

**From:** "Mike Holiman" <mike.holiman@politics.org>  
**Date:** Fri, 14 May 2010 17:00:06 -0400  
**To:** Grubiak, Jim<JGrubiak@ACCG.org>; <bclark@gtla.org>; Rusty Sewell<rusty@gacapitolpartners.com>  
**Cc:** Nesbit, Debra<DNesbit@ACCG.org>; <lwilkes@gachamber.com>; <martinw@gaappeals.us>; Walker, Henry<HWalker@kilpatrickstockton.com>; Tom Boller<tom@gacapitolpartners.com>; Mark M. Middleton<mark@gacapitolpartners.com>  
**Subject:** RE: meeting

As long as no one's bringing a shotgun for a 'wedding' I'll be happy with coffee.

---

**From:** Grubiak, Jim [mailto:JGrubiak@ACCG.org]  
**Sent:** Friday, May 14, 2010 4:54 PM  
**To:** bclark@gtla.org; Rusty Sewell  
**Cc:** Mike Holiman; Nesbit, Debra; lwilkes@gachamber.com; martinw@gaappeals.us; Walker, Henry; Tom Boller;

Mark M. Middleton  
**Subject:** RE: meeting

Maybe the liquor should be the door prize for whomever brings a workable fix!

**JIM GRUBIAK**  
General Counsel  
Association County Commissioners of Georgia  
404-522-5022 (Phone)  
404-525-2477 (FAX)  
[jgrubiak@accg.org](mailto:jgrubiak@accg.org)

---

**From:** Bill Clark [<mailto:bclark@gtla.org>]  
**Sent:** Friday, May 14, 2010 4:53 PM  
**To:** Rusty Sewell  
**Cc:** 'Mike Holiman'; Nesbit, Debra; Grubiak, Jim; [lwilkes@gachamber.com](mailto:lwilkes@gachamber.com); [martinw@gaappeals.us](mailto:martinw@gaappeals.us); 'Walker, Henry'; Tom Boller; Mark M. Middleton  
**Subject:** Re: meeting

And you're bringing the liquor, right Rusty?

Bill Clark  
GTLA  
Public & Political Affairs

---

**From:** Rusty Sewell <[rusty@gacapitolpartners.com](mailto:rusty@gacapitolpartners.com)>  
**Date:** Fri, 14 May 2010 16:48:09 -0400  
**To:** William Clark<[bclark@gtla.org](mailto:bclark@gtla.org)>  
**Cc:** 'Mike Holiman'<[mike.holiman@politics.org](mailto:mike.holiman@politics.org)>; 'Debra Nesbit'<[dnesbit@accg.org](mailto:dnesbit@accg.org)>; 'Grubiak, Jim'<[JGrubiak@accg.org](mailto:JGrubiak@accg.org)>; <[lwilkes@gachamber.com](mailto:lwilkes@gachamber.com)>; <[martinw@gaappeals.us](mailto:martinw@gaappeals.us)>; 'Walker, Henry'<[HWalker@kilpatrickstockton.com](mailto:HWalker@kilpatrickstockton.com)>; 'Tom email'<[tom@gacapitolpartners.com](mailto:tom@gacapitolpartners.com)>; 'Mark email'<[mark@gacapitolpartners.com](mailto:mark@gacapitolpartners.com)>  
**Subject:** Re: meeting

We will meet on the third floor of the Bar Center in the President's Conference Room on Monday.

Thanks, Rusty

On May 14, 2010, at 1:41 PM, William Clark wrote:

I'll be there at 2:30 Monday.

Sincerely,

Bill

William T. Clark  
Director of Political Affairs  
Georgia Trial Lawyers Association  
(404) 522-8487 ext. 30  
[bclark@gtla.org](mailto:bclark@gtla.org)

---

**From:** rusty@gacapitolpartners.com [mailto:rusty@gacapitolpartners.com]  
**Sent:** Friday, May 14, 2010 1:29 PM  
**To:** Mike Holiman; bclark@gtla.org; Debra Nesbit; Grubiak, Jim; lwilkes@gachamber.com; martinw@gaappeals.us; Walker, Henry  
**Cc:** Tom email; Mark email  
**Subject:** Re: meeting

Let's try 2:30 on Monday at the State Bar. Bring anybody with you that you need to. Also please forward this to anyone you think I missed that will help with this problem. Thanks

Sent via BlackBerry by AT&T

---

**From:** "Mike Holiman" <mike.holiman@politics.org>  
**Date:** Fri, 14 May 2010 13:13:28 -0400  
**To:** <bclark@gtla.org>; Rusty Sewell<rusty@gacapitolpartners.com>; Debra Nesbit<dnesbit@accg.org>; Grubiak, Jim<JGrubiak@accg.org>; <lwilkes@gachamber.com>; <martinw@gaappeals.us>; Walker, Henry<HWalker@kilpatrickstockton.com>  
**Cc:** Tom Boller<tom@gacapitolpartners.com>; Mark M. Middleton<mark@gacapitolpartners.com>  
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Busy Monday at 1pm for about an hour. Open other times.

---

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**Sent:** Friday, May 14, 2010 12:39 PM  
**To:** Rusty Sewell; Mike Holiman; Bill Clark; Debra Nesbit; 'Grubiak, Jim'; lwilkes@gachamber.com; martinw@gaappeals.us; 'Walker, Henry'  
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**Cc:** 'Grubiak, Jim'; 'Mueller, Clint'

**Subject:** RE:

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**Subject:** RE:

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Georgia Trial Lawyers Association  
(404) 522-8487 ext. 30  
[bclark@gtla.org](mailto:bclark@gtla.org)

---

**From:** Nesbit, Debra [mailto:DNesbit@ACCG.org]  
**Sent:** Friday, May 14, 2010 9:38 AM  
**To:** Mike Holiman; rusty@gacapitolpartners.com; tom@gacapitolpartners.com; bclark@gtla.org  
**Cc:** Grubiak, Jim; Mueller, Clint  
**Subject:**

All,

The language in the bill in regarding the fee for preparation of a record and transcript to the Supreme Court and Court of Appeals reads as follows:

15-6-77(g)

(12) Preparation of record and transcript to the Supreme Court and Court of Appeals, per page ~~4.50~~ 10.00

Where a transcript of the evidence and proceedings is filed with the clerk and does not require recopying, the clerk shall not receive the ~~5.00~~ 35.00 fee herein prescribed with respect to such transcript but shall receive, for filing and transmission of such transcript, a fee of

From the above language it appears to me that the attorneys could copy the record themselves and pay the \$35 fee in lieu of the \$10 per page fee – am I off base?

**Debra Nesbit**  
Associate Legislative Director  
Association County Commissioners of Georgia  
50 Hurt Plaza, Suite 1000  
Atlanta, Georgia 30303  
(404) 522-5022 office (404) 522-2477 fax  
(404) 617-4755 Cell  
[dnesbit@accg.org](mailto:dnesbit@accg.org)

**Bill Martin - RE: meeting**

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**From:** "Mike Holiman" <mike.holiman@politics.org>  
**To:** "Rusty Sewell" <rusty@gacapitolpartners.com>, "William Clark" <bclark@gtla.org>  
**Date:** 5/14/2010 4:51 PM  
**Subject:** RE: meeting  
**CC:** "Debra Nesbit" <dnesbit@accg.org>, "Grubiak, Jim" <JGrubiak@accg.org>, <lwilkes@gachamber.com>, <martinw@gaappeals.us>, "Walker, Henry" <HWalker@kilpatrickstockton.com>, "Tom email" <tom@gacapitolpartners.com>, "Mark email" <mark@gacapitolpartners.com>

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From the dozen of conversations I had today, it may get crowded in there ☺

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**From:** Rusty Sewell [mailto:rusty@gacapitolpartners.com]  
**Sent:** Friday, May 14, 2010 4:48 PM  
**To:** William Clark  
**Cc:** Mike Holiman; 'Debra Nesbit'; 'Grubiak, Jim'; lwilkes@gachamber.com; martinw@gaappeals.us; 'Walker, Henry'; 'Tom email'; 'Mark email'  
**Subject:** Re: meeting

We will meet on the third floor of the Bar Center in the President's Conference Room on Monday.

Thanks, Rusty

On May 14, 2010, at 1:41 PM, William Clark wrote:

I'll be there at 2:30 Monday.

Sincerely,

Bill

William T. Clark  
 Director of Political Affairs  
 Georgia Trial Lawyers Association  
 (404) 522-8487 ext. 30  
[bclark@gtla.org](mailto:bclark@gtla.org)

---

**From:** [rusty@gacapitolpartners.com](mailto:rusty@gacapitolpartners.com) [mailto:rusty@gacapitolpartners.com]  
**Sent:** Friday, May 14, 2010 1:29 PM  
**To:** Mike Holiman; [bclark@gtla.org](mailto:bclark@gtla.org); Debra Nesbit; Grubiak, Jim; [lwilkes@gachamber.com](mailto:lwilkes@gachamber.com); [martinw@gaappeals.us](mailto:martinw@gaappeals.us); Walker, Henry  
**Cc:** Tom email; Mark email  
**Subject:** Re: meeting

Let's try 2:30 on Monday at the State Bar. Bring anybody with you that you need to. Also please forward this to anyone you think I missed that will help with this problem. Thanks

Sent via BlackBerry by AT&T

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**From:** "Mike Holiman" <mike.holiman@politics.org>  
**Date:** Fri, 14 May 2010 13:13:28 -0400  
**To:** <bclark@gtla.org>; Rusty Sewell<rusty@gacapitolpartners.com>; Debra Nesbit<dnesbit@accg.org>; Grubiak, Jim<JGrubiak@accg.org>; <lwilkes@gachamber.com>; <martinw@gaappeals.us>; Walker, Henry<HWalker@kilpatrickstockton.com>  
**Cc:** Tom Boller<tom@gacapitolpartners.com>; Mark M. Middleton<mark@gacapitolpartners.com>  
**Subject:** RE: meeting

Busy Monday at 1pm for about an hour. Open other times.

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**From:** Bill Clark [mailto:bclark@gtla.org]  
**Sent:** Friday, May 14, 2010 12:39 PM  
**To:** Rusty Sewell; Mike Holiman; Bill Clark; Debra Nesbit; 'Grubiak, Jim'; lwilkes@gachamber.com; martinw@gaappeals.us; 'Walker, Henry'  
**Cc:** Tom Boller; Mark M. Middleton  
**Subject:** Re: meeting

I am any time Monday or any time Tuesday morning.

Bill Clark  
 GTLA  
 Public & Political Affairs

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**From:** "Rusty Sewell" <rusty@gacapitolpartners.com>  
**Date:** Fri, 14 May 2010 12:20:33 -0400  
**To:** 'Mike Holiman'<mike.holiman@politics.org>; 'William Clark'<bclark@gtla.org>; 'Nesbit, Debra'<DNesbit@ACCG.org>; 'Grubiak, Jim'<JGrubiak@ACCG.org>; <lwilkes@gachamber.com>; <martinw@gaappeals.us>; 'Walker, Henry'<HWalker@kilpatrickstockton.com>  
**Cc:** <tom@gacapitolpartners.com>; 'Mark Middleton'<mark@gacapitolpartners.com>  
**Subject:** meeting

I think it would be a good idea for us to meet face-to-face to talk about this problem with HB 1055 re: copying costs. Are y'all available on Monday or Tuesday of next week?

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**From:** Mike Holiman [mailto:mike.holiman@politics.org]  
**Sent:** Friday, May 14, 2010 11:04 AM  
**To:** William Clark; Nesbit, Debra; rusty@gacapitolpartners.com; tom@gacapitolpartners.com  
**Cc:** Grubiak, Jim; Mueller, Clint  
**Subject:** RE:

This is what happens when a bill is 'sequestered' and then roars back to life with no opportunity for a final, FINAL review. Debra and I were looking at making a couple of changes ourselves although I must admit it wasn't on this particular issue.

---

**From:** William Clark [mailto:bclark@gtla.org]  
**Sent:** Friday, May 14, 2010 10:50 AM  
**To:** 'Nesbit, Debra'; Mike Holiman; rusty@gacapitolpartners.com; tom@gacapitolpartners.com  
**Cc:** 'Grubiak, Jim'; 'Mueller, Clint'

**Subject:** RE:

The only problem, Debra, is that, unlike most of the other services listed in this code section, copying has become considerably cheaper over the last 3 or 4 decades, not more expensive. So, while inflation was a good formula for raising the fees on many of the services in your list, it is not for copying. Unfortunately, I (and apparently your sponsor and several other legislators with whom I've spoken) simply overlooked or missed altogether this particular item.

Personally, I blame that on your wonderful magnetism and salesmanship! You kept me 'distracted' with your filing fee issue all session so that I'm not sure I ever really read every single one of the service fee increases you included in your bill. I'll have to remember that little trick in the future. ☺

And, by the way, if \$8 per page was the inflation-based fee (as you put in your original bill), how did it get raised up to \$10? Who did that nifty bit of work?

Sincerely,

Bill

William T. Clark  
Director of Political Affairs  
Georgia Trial Lawyers Association  
(404) 522-8487 ext. 30  
[bclark@gtla.org](mailto:bclark@gtla.org)

---

**From:** Nesbit, Debra [<mailto:DNesbit@ACCG.org>]  
**Sent:** Friday, May 14, 2010 10:37 AM  
**To:** William Clark; Mike Holiman; [rusty@gacapitolpartners.com](mailto:rusty@gacapitolpartners.com); [tom@gacapitolpartners.com](mailto:tom@gacapitolpartners.com)  
**Cc:** Grubiak, Jim; Mueller, Clint; [martinw@gaappeals.us](mailto:martinw@gaappeals.us)  
**Subject:** RE:

Bill,

Just want to be sure you know that we based that increase on the same formula as the others (inflation). It has been on the list everyone has reviewed from the beginning. We are certainly willing to find a way to make it work. Please keep me in the email loop so I can communicate to my folks the final resolution. Thanks to you all for working with us!

**Debra Nesbit**  
Associate Legislative Director  
Association County Commissioners of Georgia  
50 Hurt Plaza, Suite 1000  
Atlanta, Georgia 30303  
(404) 522-5022 office (404) 522-2477 fax  
(404) 617-4755 Cell  
[dnesbit@accg.org](mailto:dnesbit@accg.org)

---

**From:** William Clark [<mailto:bclark@gtla.org>]  
**Sent:** Friday, May 14, 2010 10:38 AM  
**To:** 'Mike Holiman'; Nesbit, Debra; [rusty@gacapitolpartners.com](mailto:rusty@gacapitolpartners.com); [tom@gacapitolpartners.com](mailto:tom@gacapitolpartners.com)  
**Cc:** Grubiak, Jim; Mueller, Clint; [martinw@gaappeals.us](mailto:martinw@gaappeals.us)  
**Subject:** RE:

Thanks, Michael. I think that is where the potential solution to a rapidly escalating problem lies. There is no way parties can, or should have to, pay \$10.00 per page to have anything copied – or certified for that matter. With today's technology, the cost for doing that is probably even less than the \$1.50 that was in the law until this week.

I appreciate the Clerks' Council's willingness to find a solution to this problem ASAP. And, from the discussions I've had with legislators over the past 48 hours, I assure you there are plenty of them who also would appreciate that willingness to help.

Sincerely,

Bill

William T. Clark  
Director of Political Affairs  
Georgia Trial Lawyers Association  
(404) 522-8487 ext. 30  
[bclark@gtla.org](mailto:bclark@gtla.org)

---

**From:** Mike Holiman [<mailto:mike.holiman@politics.org>]  
**Sent:** Friday, May 14, 2010 10:32 AM  
**To:** William Clark; Nesbit, Debra; [rusty@gacapitolpartners.com](mailto:rusty@gacapitolpartners.com); [tom@gacapitolpartners.com](mailto:tom@gacapitolpartners.com)  
**Cc:** Grubiak, Jim; Mueller, Clint; [martinw@gaappeals.us](mailto:martinw@gaappeals.us)  
**Subject:** RE:

Copying Bill Martin, Clerk of the Court of Appeals for an answer.

---

**From:** William Clark [<mailto:bclark@gtla.org>]  
**Sent:** Friday, May 14, 2010 10:28 AM  
**To:** Mike Holiman; 'Nesbit, Debra'; [rusty@gacapitolpartners.com](mailto:rusty@gacapitolpartners.com); [tom@gacapitolpartners.com](mailto:tom@gacapitolpartners.com)  
**Cc:** 'Grubiak, Jim'; 'Mueller, Clint'  
**Subject:** RE:

Michael: What do the appellate courts require to be sent up to them? Do they require a 'certified copy' of the record below such that the clerks' agreement to only charge the \$35 for the transcript is really not a solution to the problem that this \$10 per page charge is going to create? Any help you can give me as to what is required of appellants regarding the record below would be greatly appreciated.

Sincerely,

Bill

William T. Clark  
Director of Political Affairs  
Georgia Trial Lawyers Association  
(404) 522-8487 ext. 30  
[bclark@gtla.org](mailto:bclark@gtla.org)

---

**From:** Mike Holiman [<mailto:mike.holiman@politics.org>]  
**Sent:** Friday, May 14, 2010 10:14 AM  
**To:** William Clark; Nesbit, Debra; [rusty@gacapitolpartners.com](mailto:rusty@gacapitolpartners.com); [tom@gacapitolpartners.com](mailto:tom@gacapitolpartners.com)  
**Cc:** Grubiak, Jim; Mueller, Clint  
**Subject:** RE:

Clerks agree that the \$35 is fine for the transcript where copies are provided but not for creating a certified record. This is because the clerks will only certify a record that they produce. Hope this helps somewhat.

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**From:** William Clark [<mailto:bclark@gtla.org>]  
**Sent:** Friday, May 14, 2010 10:08 AM  
**To:** 'Nesbit, Debra'; Mike Holiman; [rusty@gacapitolpartners.com](mailto:rusty@gacapitolpartners.com); [tom@gacapitolpartners.com](mailto:tom@gacapitolpartners.com)  
**Cc:** 'Grubiak, Jim'; 'Mueller, Clint'  
**Subject:** RE:

Debra:

If ACCG and the Clerks' Association will agree to that, then there is no problem. Michael, what say you, my friend?

Sincerely,

Bill

William T. Clark  
Director of Political Affairs  
Georgia Trial Lawyers Association  
(404) 522-8487 ext. 30  
[bclark@gtla.org](mailto:bclark@gtla.org)

---

**From:** Nesbit, Debra [<mailto:DNesbit@ACCG.org>]  
**Sent:** Friday, May 14, 2010 9:38 AM  
**To:** Mike Holiman; [rusty@gacapitolpartners.com](mailto:rusty@gacapitolpartners.com); [tom@gacapitolpartners.com](mailto:tom@gacapitolpartners.com); [bclark@gtla.org](mailto:bclark@gtla.org)  
**Cc:** Grubiak, Jim; Mueller, Clint  
**Subject:**

All,

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**Debra Nesbit**

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Association County Commissioners of Georgia  
50 Hurt Plaza, Suite 1000  
Atlanta, Georgia 30303  
(404) 522-5022 office (404) 522-2477 fax  
(404) 617-4755 Cell  
[dnesbit@accg.org](mailto:dnesbit@accg.org)

**From:** Jan Kelley  
**To:** Bill Martin; Holly Sparrow  
**CC:** Carrie Anne STEELE  
**Date:** 5/14/2010 4:10 PM  
**Subject:** Judge Blackburn Portrait Unveiling

Judge Blackburn informed the Chief Judge today that his portrait unveiling will be on June 29th at 2:00 p.m.

51

51

**From:** "Mike Holiman" <mike.holiman@politics.org>  
**To:** "Mike Holiman" <mike.holiman@politics.org>, "Rusty Sewell" <rusty@gacapi...>  
**CC:** "Adams, Dena" <Dena.Adams@GCCCA.ORG>, "Barry Wilkes" <barry.wilkes@libe...>  
**Date:** 5/18/2010 11:28 AM  
**Subject:** 15-6-77 footnotes

JUDICIAL DECISIONS

**SUPERIOR COURT CLERKS ARE CHARGED WITH DUTY OF RECEIVING AMOUNTS** of all costs due in court. *Whitsett v. Hester-Bowman Enters., Inc.*, 94 Ga. App. 78, 93 S.E.2d 788 (1956).  
 <[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=39&\\_butNline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b94%20Ga.%20App.%2078%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=a1bac976bb1d3e14a18218447e121579](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=39&_butNline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b94%20Ga.%20App.%2078%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=a1bac976bb1d3e14a18218447e121579)>

**FAILURE TO CHARGE SUFFICIENT COSTS NOT TO AFFECT RIGHTS OF PARTIES.** --In cases where the clerks are on a salary basis and the costs belong to the county, failure to charge sufficient costs would be a matter between the clerk and the county, and might subject the clerk to a contempt proceeding, but would not affect the rights of parties litigant. *Whitsett v. Hester-Bowman Enters., Inc.*, 94 Ga. App. 78, 93 S.E.2d 788 (1956);

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=56&\\_butNline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b94%20Ga.%20App.%2078%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=998053d2a8579e24cfcaf8868ebf5e7c](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=56&_butNline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b94%20Ga.%20App.%2078%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=998053d2a8579e24cfcaf8868ebf5e7c)>

*Sirmans v. Sirmans*, 222 Ga. 202, 149 S.E.2d 101 (1966).  
 <[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=57&\\_butNline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b222%20Ga.%20202%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=28d5b1865bf154eb9f974ee5b0cfff33f](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=57&_butNline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b222%20Ga.%20202%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=28d5b1865bf154eb9f974ee5b0cfff33f)>

**WHEN CASES ARE CONSOLIDATED, CLERK IS ENTITLED TO FEE IN EACH CASE.** *Williams, Birnie & Co. v. Officers of Court*, 61 Ga. 95 (1878).

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=46&\\_butNline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b61%20Ga.%2095%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=d8a826852a191c5237309c73c1d82ec6b](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=46&_butNline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b61%20Ga.%2095%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=d8a826852a191c5237309c73c1d82ec6b)>

**CLERK NOT AUTHORIZED TO CHARGE FOR COPY RETAINED BY CLERK.** --Under paragraph (g)(12) of O.C.G.A. § 15-6-77  
 <[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=47&\\_butNline=1&\\_butInfo=GACODE%2015-6-77&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=14884eb99f6ae69462a5624b349c109](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=47&_butNline=1&_butInfo=GACODE%2015-6-77&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=14884eb99f6ae69462a5624b349c109)>, the clerk should only have charged for preparing the record to be sent to this court and was not authorized to charge the additional fee for preparing the copy of the record to be retained by the clerk. *Rewis v. Shaw*, 208 Ga. App. 876, 432 S.E.2d 617 (1993).

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=48&\\_butNline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b208%20Ga.%20App.%20876%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=95fc680dc239299b94810ff3b528d4ba](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=48&_butNline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b208%20Ga.%20App.%20876%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=95fc680dc239299b94810ff3b528d4ba)>

**CLERK NOT ENTITLED TO COSTS FOR TRANSMITTING SURPLUS PARTS OF RECORD** not specified in bill of exceptions (see O.C.G.A. §§ 5-6-49

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=49&\\_butNline=1&\\_butInfo=GACODE%205-6-49&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=959a0ad49cd480f5e8a630e6202f37fc](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=49&_butNline=1&_butInfo=GACODE%205-6-49&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=959a0ad49cd480f5e8a630e6202f37fc)>, 5-6-50

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=50&\\_butNline=1&\\_butInfo=GACODE%205-6-50&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=5911cbd933e6822b4abcd6298e343840](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=50&_butNline=1&_butInfo=GACODE%205-6-50&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=5911cbd933e6822b4abcd6298e343840)>, unless the transmission was at instance of party or counsel. *Waldrop v. Wolff & Happ*, 114 Ga. 610, 40 S.E. 830 (1902);

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=51&\\_butNline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b114%20Ga.%20610%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=8e2bf443a203b4be18a8bda22d582755](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=51&_butNline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b114%20Ga.%20610%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=8e2bf443a203b4be18a8bda22d582755)> *Riley v. Wrightsville & T.R.R.*, 133 Ga. 413, 65 S.E. 890, 24 L.R.A. (n.s.) 379, 18 Ann. Cas. 208 (1909).

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=52&\\_butNline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b133%20Ga.%20413%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=067cdec8b098c352fa504632bd59f966](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=52&_butNline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b133%20Ga.%20413%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=067cdec8b098c352fa504632bd59f966)>

CLERK'S FILING WITHOUT FEES IS NOT A WAIVER OF FEES. --Clerk's filing of complaint without having received deposit or affidavit of indigence did not constitute a waiver of assessment of court costs against complainant. *Whitehead v. Lavoie*, 176 Ga. App. 666, 337 S.E.2d 357 (1985).

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=58&\\_butInline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b176%20Ga.%20App.%20666%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=abcbfab58c02bd55118184c18aac4b6d](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=58&_butInline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b176%20Ga.%20App.%20666%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=abcbfab58c02bd55118184c18aac4b6d)>

NO FURTHER AFFIDAVIT OF INDIGENCE REQUIRED FOR RENEWAL ACTION. --Provision in O.C.G.A. § 9-15-2(a)

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=59&\\_butInline=1&\\_butInfo=GACODE%209-15-2&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=1de8dc10015e426dbd1036df9b187653](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=59&_butInline=1&_butInfo=GACODE%209-15-2&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=1de8dc10015e426dbd1036df9b187653)> that an affidavit of indigence relieves a party of "any deposit, fee, or other cost" requires that, when a plaintiff files such an affidavit upon bringing an action, takes a voluntary dismissal, then seeks to renew the action, no payment of accrued costs and no further affidavit of indigence are required for the filing of the renewal action. *McKenzie v. Seaboard Sys. R.R.*, 173 Ga. App. 402, 326 S.E.2d 502 (1985).

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=3&\\_butStat=2&\\_butNum=60&\\_butInline=1&\\_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b173%20Ga.%20App.%20402%5d%5d%3e%3c%2fcite%3e&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=fac59a84257116d2a4607325057c23a4](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=60&_butInline=1&_butInfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b173%20Ga.%20App.%20402%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=fac59a84257116d2a4607325057c23a4)>

OPINIONS OF THE ATTORNEY GENERAL

SUPERIOR COURT CLERK CANNOT CHARGE LESS THAN PRESCRIBED. --Superior court clerk does not have discretion to charge less than fees prescribed by this section for preparation of case records on appeal when the clerk is on salary as opposed to "fee system." Under such circumstances the statutory fees are no longer the property of the clerk, but are public property for which the clerk is responsible. 1973 Op. Att'y Gen. No. U73-43 (see O.C.G.A. § 15-6-77

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=71&\\_butInline=1&\\_butInfo=GACODE%2015-6-77&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=b815331d315256e893cb9dd0104e1680](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=71&_butInline=1&_butInfo=GACODE%2015-6-77&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=b815331d315256e893cb9dd0104e1680)> ).

FAILURE OF SUPERIOR COURT CLERK TO COLLECT COSTS ON APPEAL did not affect outcome of appeal despite former Code 1933, § 24-2729 (see O.C.G.A. § 15-6-80

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=72&\\_butInline=1&\\_butInfo=GACODE%2015-6-80&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=f0addca3c3dcd7a7f29533cfe9e115e0](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=72&_butInline=1&_butInfo=GACODE%2015-6-80&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=f0addca3c3dcd7a7f29533cfe9e115e0)> ). 1973 Op. Att'y Gen. No. U73-43.

BURDEN OF COST DEPOSIT ON PARTY FILING NOTICE OF APPEAL. --Party who filed notice of appeal under former Code 1933, § 92-6912 (see O.C.G.A. § 48-5-311(f)

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=74&\\_butInline=1&\\_butInfo=GACODE%2048-5-311&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=25f72b3afb2fa7d79956f575b7a5612](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=74&_butInline=1&_butInfo=GACODE%2048-5-311&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=25f72b3afb2fa7d79956f575b7a5612)> ) was party bearing burden of cost of deposit. 1974 Op. Att'y Gen. No. U74-46.

NO FILING OR RECORDING FEE CAN BE CHARGED FOR DEPOSITIONS OR INTERROGATORIES. 1970 Op. Att'y Gen. No. U70-232.

O.C.G.A. § 15-6-77

<[http://www.lexis.com/research/buttonTFLink?\\_m=ad43af64b6d489c1632e1e6d25756e08&\\_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&\\_butType=4&\\_butStat=0&\\_butNum=77&\\_butInline=1&\\_butInfo=GACODE%2015-6-77&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzb-zSkAW&\\_md5=430a59e9f936eff924d74b75c4f58d7f](http://www.lexis.com/research/buttonTFLink?_m=ad43af64b6d489c1632e1e6d25756e08&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bO.C.G.A.%20%a7%2015-6-77%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=77&_butInline=1&_butInfo=GACODE%2015-6-77&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=430a59e9f936eff924d74b75c4f58d7f)> does not prescribe a fee for filing interrogatories or answers to interrogatories. It follows that no fee may be charged for this service. 1981 Op. Att'y Gen. No. U81-50.

NO FEE CAN BE COLLECTED FOR THE FILING OF INTERROGATORIES. 1971 Op. Att'y Gen. No. U71-93.

**From:** "Mike Holiman" <mike.holiman@politics.org>  
**To:** "Rusty Sewell" <rusty@gacapitolpartners.com>, "bryan cavan" <bcavan@mill...  
**CC:** "Adams, Dena" <Dena.Adams@GSCCCA.ORG>, "Barry Wilkes" <barry.wilkes@libe...  
**Date:** 5/18/2010 11:01 AM  
**Subject:** 1055 Solutions

Clerks have discussed several options in the last 24 hours, none have been warmly embraced. We discussed the possibility of the counties and clerks drafting an agreement to lower the fee until a date certain early next year. It would have to be a standardized form and used statewide. We're not sure it's legal and would require an AG's opinion or advisory letter at a minimum before final consideration.

We are in agreement that the idea of a court order is not a good one. We have too much history with the judges to advise our members that it is ever acceptable to follow a judicial order that contradicts state law. If you insist on pursuing this idea it must involve the commissioners as well as the clerks. And even if this is the case, I can't guarantee that clerks will consent.

Someone suggested that the Governor had the authority to suspend fees under certain circumstances. I suspect that this applies to states of emergency but one of you should explore. The problem is this may involve voiding the entire bill which he is highly unlikely to do.

And finally, the bar should consider advising its members to prepare to compromise, make agreements, file less frivolous pleadings/repetitive pleadings, and send up portions rather than complete records. Also, many parts of the transcript seem unnecessary. For instance: the openings, closings, and voir dire of jury (except in death penalty).

In many counties the majority of criminal appeals are criminal with indecency applied. The civil appeal can be controlled by the attorney and the pleadings they choose to send up. Transcripts would not be a major issue if the court reporter always files what is paid for (two copies). In those cases where the cost is going to be exorbitant, then the parties could petition the court on an individual bases to deal with that situation.

Please know that we're prepared to aggressively consider any other ideas that this group can generate but most ideas to this point involve the clerk breaking the law.