

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

Wednesday, October 21, 2009 10:30 a.m.

The October 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, October 21, 2009. Those present were:

Chief Judge M. Yvette Miller
Presiding Judge Gary B. Andrews
Presiding Judge G. Alan Blackburn
Presiding Judge J.D. Smith
Judge Anne Elizabeth Barnes
Judge John J. Ellington
Judge Herbert E. Phipps
Judge Charles B. Mikell
Judge A. Harris Adams
Judge Debra Bernes
Judge Sara L. Doyle
Mr. William L. Martin, III, Clerk/Court Administrator (Part of Meeting)

Not in attendance was:

Presiding Judge Edward H. Johnson

I. **CALL MEETING TO ORDER AND APPROVAL OF MINUTES:**

Chief Judge Miller called the meeting to order at 10:35 a.m. and ascertained a quorum was present. She stated Presiding Judge Johnson would not be in attendance because he was undergoing physical therapy and that Jan Kelley had fallen at her home and had injured herself and was scheduled to see the orthopedist today.

II. APPROVAL OF SEPTEMBER 16, 2009 BANC MEETING MINUTES:

Presiding Judge G. Alan Blackburn made a motion to approve the Minutes of the September Banc Meeting and the motion was seconded by Presiding Judge Smith and passed unanimously.

III. BUDGET:

Chief Judge Miller called upon Mr. Martin to make a budget address in the absence of Ms. Kelley. Mr. Martin said the Court had instituted furloughs, however, his concern was furloughs may not be enough to meet the record budget deficit facing the State. Mr. Martin said the State revenues had declined for the tenth straight month and for the period of July, August and September for the current fiscal year, State revenues had declined an average of more than 14% over the same period last year.

Mr. Martin provided to the judges in their Banc Meeting hand out materials the amount of money which must be deducted from the budget to meet a 6, 8 and 10% budget reduction and the corresponding number of furlough days necessary to meet those goals.

Chief Judge Miller stated she had been meeting with Chairman Chuck Martin, the Chair of the House Budget Subcommittee that deals with the Court's budget. Chief Judge Miller said the State is in a dire situation with revenue and she is working with the Legislature to protect the Court and its budget.

Presiding Judge Blackburn said at some point the Courts will have to say no to further budget reductions in order to carry out its Constitutional mandates. Presiding Judge Blackburn inquired if the Governor or Legislature were taking any steps to rectify the consequences of declining State revenues rather than simply budget cuts. Presiding Judge Smith said the Lieutenant Governor Cagle had made the statements in the Gainesville area that the next cuts were not going to be simply across the board cuts but would be tailored to the needs to of the agencies.

Mr. Martin then directed the judges attention to materials in their handouts describing the option of giving up the space on the Sixth Floor of the Judicial Building. After his presentation, Mr. Martin and Chief Judge Miller discussed the necessity of having someone available to act quickly in response to the Legislature's questions and concerns about the Court of Appeals' budget without the necessity of convening a Special Banc Meeting. Mr. Martin suggested the Court may wish to let the Budget Committee, made up of the Chief Judge, the former Chief Judge, Judge Barnes and the judge in line to be Chief Judge, Judge Ellington.

Judge Mikell stated he felt the IOM already addressed this situation and that was to have matters such as this referred to the Executive Council. Judge Phipps also agreed this was the most logical body to act as counsel and advisor to the Chief Judge in lieu of a full Banc Meeting.

Presiding Judge Smith said historically that had always been how the Court operated, that is, the Chief Judge meeting with the Executive Council to deal with matters which were not deemed necessary to come before the Banc or when the Court did not have time for a Banc Meeting. Presiding Judge Smith said for some reason the Court had gotten away from the Chief Judge and the Executive Council meeting.

Chief Judge Miller said she had called the Executive Council to meet to discuss deferring the pay raises until the matter could be reconsidered by the Banc. Chief Judge Miller said she had a concern that the Court should not be giving raises to some individuals while furloughing personnel. She felt this would cause unnecessary irritation among the Legislative leadership.

Several judges indicated they had reconsidered their earlier position and Judge Mikell made a motion to reconsider the earlier vote. Presiding Judge Andrews seconded that motion and it passed unanimously. Thereafter, Presiding Judge Blackburn made a motion to institute a **temporary** freeze of raises until the economic climate improved, which motion was seconded by Judge Mikell. The motion passed with seven judges voting in favor, three judges voting against and one judge abstaining.

The Banc went into Executive Session at 11:30 a.m. and Mr. Martin left the room. Mr. Martin was called back into the room at 11:50 a.m. Presiding Judge Andrews suggested the Chief Judge should not give up anything in the budget until we absolutely have to. He suggested the response to the Legislature should be that we are addressing any budget shortfall with furloughs. Presiding Judge Andrews also said Chief Judge Miller would have to use her judgment on when to make a unilateral decision; when to call upon the Executive Council and when to come to the entire Banc.

IV. IOM CHANGES

Presiding Judge Smith said he would circulate the IOM changes to the Court by memorandum.

V. E-FILING UPDATE

Presiding Judge Smith said the number of meetings Mr. Ruggeri is calling is impacting the work of his staff attorneys. Judge Doyle suggested the feedback from the administrative assistants resulted in a lot negative push back and it may not be helpful for John to keep meeting with the administrative assistants. Judge Phipps stated at the meeting with TriVir that the IT was going to develop the e-filing and new docket system and the Court is going to have to adapt to it. Of course, he realized that change could come about if it resulted in improvements or was necessary.

VI. NEW BUSINESS

Chief Judge Miller said the Institute of Continuing Legal Education had agreed to a 30% discount on all CLE's for lawyers on the Supreme Court and staff attorneys on the Court of Appeals. Likewise, the Atlanta Bar Association has agreed to a 50% discount for lawyers of the Court of Appeals.

Presiding Judge Andrews asked the judges to think about two things: first, the necessity of a Reporters Office. The Reporters Office is costing the Court of Appeals between \$225,000 and \$300,000 year. He said basically the Reporters Office is simply doing the editing for the publishers who publish our opinions and he asked the judges to think about whether we need this expense. He did, however, say there is a statute which says the Court of Appeals shall pay half of the cost. Secondly, Presiding Judge Andrews asked the judges to consider the possibility of judges sharing administrative assistants. He said the big law firms in Atlanta had always used one administrative assistant for two lawyers. Now some are using one administrative assistant for six lawyers. He said this might be a way to deal with the budget situation, particularly in a long term fashion. He asked the judges think about this concept of one administrative assistant for two judges.

Judge Phipps made a motion to change the IOM so that Banc Meeting votes should be recorded by number only and not by name. After a short discussion, the question was called and the motion passed with nine judges voting for, one against and one abstaining. The motion was made effective with this meeting.

VII. ADJOURNMENT

There being no further business, 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