

# **UNIFORM RULES**

## **SUPERIOR COURTS OF THE STATE OF GEORGIA**



**COUNCIL OF SUPERIOR COURT JUDGES**

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# UNIFORM SUPERIOR COURT RULES

Effective July 1, 1985

Including Amendments Received Through  
September 29, 2011

## Rule 1. PREAMBLE

Pursuant to the inherent powers of the Court and Article VI, Section IX, Paragraph I of the Georgia Constitution of 1983, and in order to provide for the speedy, efficient and inexpensive resolution of disputes and prosecutions, these rules are promulgated. It is not the intention, nor shall it be the effect, of these rules to conflict with the Constitution or substantive law, either per se or in individual actions and these rules shall be so construed and in case of conflict shall yield to substantive law. It is the intention of these rules and the policy of this State that these rules prevail over local practices and procedures and shall be in force uniformly throughout the State.

Amended effective September 19, 1986; October 7, 2010.

### Rule 1.1. Repeal of Local Rules

All local rules, internal operating procedures and experimental rules of the superior courts except those relating to drawing of jurors by mechanical or electronic means pursuant to OCGA §§ 15-12-40 (b) and 15-12-42 (b) et seq. shall expire effective December 31, 2010.

Amended effective May 5, 1994; October 7, 2010.

### Rule 1.2. Authority to Enact Rules Which Deviate From the Uniform Superior Court Rules

(A) The terms “local rules,” “internal operating procedures” and “experimental rules” will no longer be used in the context of the Uniform Superior Court Rules. Any deviation from these rules is disallowed.

(B) Notwithstanding the expiration of local rules, internal operating procedures and experimental rules on December 31, 2010, courts may continue to maintain practices and standing orders to regulate the internal processes of the court in matters which are not susceptible to uniformity, which relate only to internal procedure and which do not affect the rights of any party substantially or materially, either to unreasonably delay or deny such rights. Such internal processes include but are not limited to case management, court administration, case assignment, traverse and grand jury management, court-annexed alternative dispute resolution programs (which are subject to approval by the Georgia Commission on Dispute Resolution), specialty courts, indigent defense programs, court security, emergency planning, judicial assistance requests, appointments of chief judges, law libraries, and other similar matters. The Clerk of Court shall maintain the originals of such standing orders and provide copies of them, upon request.

(C) The above provisions notwithstanding, each superior court may retain or adopt a local rule relating to drawing of jurors by mechanical or electronic means pursuant to OCGA §§ 15-12-40 (b) and 15-12-42 (b) et seq. and an order establishing guidelines governing excuses from jury duty pursuant to OCGA § 15-12-10.

(D) Notwithstanding these uniform rules, a majority of judges in a circuit may adopt pilot projects, upon approval of the Supreme Court, adequately advertised to the local bar, with copies to the State Bar of Georgia, not to exceed a period of one year, subject to extension for one additional year upon approval of the circuit judges and the Supreme Court. At the end of the second year, any such pilot projects will either be approved by the Supreme Court or will be allowed to sunset. Programs developed under the Alternative Dispute Resolution Rules of the Supreme Court will be approved by the Georgia Commission on Dispute Resolution before attaining permanent status under these rules.

(E) Notwithstanding the expiration of all local rules, internal operating procedures and experimental rules, effective December 31, 2010, courts may promulgate standing orders as to matters not addressed by these uniform rules and which are not inconsistent with a uniform rule only if actual notice of such order is provided to all parties. Such orders include, but are not limited to, orders to attend educational seminars contemplated by Uniform Superior Court Rule 24.8, orders governing or mandating alternative dispute resolution, orders governing payments into the registry of the court, orders governing electronic filing, and similar matters. "Actual notice" shall be deemed to have been satisfied by providing copies of such orders to attorneys and pro se litigants, service by a party upon opposing parties and publicized dissemination in such locations as the offices of the clerks of court, law libraries, legal aid societies and public libraries. Mere filing of standing orders and posting in prominent places in the courthouse shall not suffice as actual notice.

(F) No person shall be denied access to the court nor be prejudiced in any way for failure to comply with a standing order of which the person does not have actual notice.

Amended effective May 5, 1994; April 3, 1998, October 7, 2010.

### **Rule 1.3. Repeal of Earlier "Rules of the Superior Court"**

Each of the "Rules of the Superior Court" set out in (former) Ga. Code Ann. §§ 24-3301 through 24-3389, inclusive, not earlier repealed is hereby expressly repealed.

### **Rule 1.4. Matters of Statewide Concern**

The following rules, to be known as "Uniform Superior Court Rules," are to be given statewide application.

### **Rule 1.5. Deviation**

These rules are not subject to local deviation. A specific rule may be superseded in a specific action or case or by an order of the court entered in such case explaining the necessity for deviation and served upon the attorneys in the case. Nothing herein is intended to prevent the courts from adopting standing orders regarding matters not addressed in these rules so long as they do not conflict with these rules.

Amended effective October 7, 2010.

### **Rule 1.6. Amendments**

The Council of Superior Court Judges shall have a permanent committee to recommend to the Supreme Court such changes and additions to these rules as may from time to time appear necessary or desirable.

The State Bar of Georgia and the Uniform Rules committee chairpersons for the other classes of courts shall receive notice of the proposed changes and additions and be given the opportunity to comment.

Amended effective March 9, 1989.

### **Rule 1.7. Publication of Rules and Amendments**

These rules and any amendments to these rules shall be published in the advance sheets to the Georgia Reports. Unless otherwise provided, the effective date of any amendment to these rules is the date of publication in the advance sheets to the Georgia Reports.

Amended effective June 7, 1990.

## **Rule 2. DEFINITIONS**

### **Rule 2.1. Attorney**

The word "attorney" as used in these rules refers to any person admitted to practice in the superior courts of Georgia, and to any person who is permitted, in accordance with law, to represent a party in an action pending in a superior court of the State of Georgia, and to any person proceeding pro se in an action pending in a superior court of this state. The word "attorney" is synonymous with "counsel" in these rules.

Amended effective October 9, 1997.

### **Rule 2.2. Judge**

The word "judge" as used in these rules refers to any of the several active judges of the superior courts of Georgia, and to any senior or other judge authorized to serve as a judge of a superior court of this state.

### **Rule 2.3. Clerk**

The word "clerk" as used in these rules refers to the clerk of any of the several superior courts in this state and to the staff members serving as deputy clerks.

Amended effective October 9, 1997.

### **Rule 2.4. Calendar Clerk**

The term "calendar clerk" as used in these rules refers to that person who is charged with the responsibility of setting and scheduling all hearings and trials in actions assigned to a particular judge. Each calendar clerk carries out those duties under the supervision of the assigned judge, or the designee of that judge.

Amended effective October 9, 1997.

### **Rule 2.5. Assigned Judge**

The term "assigned judge" as used in these rules refers to the judge to whom an action is assigned in accordance with these rules; or, if the context permits, in circuits having a general calendaring system, to the trial judge responsible for the matter at any particular time.

Amended effective October 7, 2010.

### **Rule 2.6. Non Sexist Pronouns [Deleted]**

Deleted effective October 9, 1997.

## **Rule 3. ASSIGNMENT OF CASES AND ACTIONS**

### **Rule 3.1. Method of Assignment**

In multi-judge circuits, unless a majority of the judges in a circuit elect to adopt a different system, all actions, civil and criminal, shall be assigned by the clerk of each superior court according to a plan approved by such judges to the end that each judge is allocated an equal number of cases. The clerk shall have no power or discretion in determining the judge to whom any case is assigned; the clerk's duties are ministerial only in this respect and the clerk's responsibility is to carry out the method of assignment established by the judges. The assignment system is designed to prevent any persons choosing the judge to whom an action is to be assigned; all persons are directed to refrain from attempting to affect such assignment in any way. If the order or the timing of filing is a factor in determining case assignment, neither the clerk nor any member of the clerk's staff shall disclose to any person the judge to whom a case is or will be assigned until such time as the case is in fact filed and assigned.

Amended effective October 9, 1997; October 26, 2006.

### **Rule 3.2. Companion and Related Actions**

When practical, all actions involving substantially the same parties, or substantially the same subject matter, or substantially the same factual issues, whether pending simultaneously or not, shall be assigned to the same judge. Whenever such action is refiled, or a derivative or companion action is filed or refiled, or a defendant is reindicted on a previous charge, or is indicted on a subsequent charge while still under charges or serving a confinement or probated sentence on a previous action, or co defendants are indicted separately, such actions shall be assigned to the judge to whom the original action was or is assigned. Generally, such actions will be assigned to the judge to whom the action with the lower action number is assigned.

### **Rule 3.3. Exclusive Control**

The judge to whom any action is assigned shall have exclusive control of such action, except as provided in these rules, and no person shall change any assignment except by order of the judge affected and as provided in these rules. In this regard an assigned judge may transfer an assigned action to another judge with the latter's consent in which event the latter becomes the assigned judge.

Amended effective March 9, 1989.

### **Rule 3.4. Local Authority**

The method of assignment and the procedures necessary for an orderly transition from one calendaring system to another shall be established by each multi-judge circuit. All such systems shall be adequately published to the local bar; copies shall be filed with the respective clerk(s) and with the Supreme Court of Georgia.

Amended effective October 7, 2010.

## **Rule 4. ATTORNEYS APPEARANCE, WITHDRAWAL AND DUTIES**

### **Rule 4.1. Prohibition on Ex Parte Communications**

Except as authorized by law or by rule, judges shall neither initiate nor consider ex parte communications by interested parties or their attorneys concerning a pending or impending proceeding.

### **Rule 4.2. Entry of Appearance and Pleadings**

No attorney shall appear in that capacity before a superior court until the attorney has entered an appearance by filing a signed entry of appearance form or by filing a signed pleading in a pending action. An entry of appearance and all pleadings shall state:

- (1) the style and number of the case;
- (2) the identity of the party for whom the appearance is made; and
- (3) the name, assigned state bar number, current office address, telephone number, fax number, and e-mail address of the attorney (the attorney's e-mail address shall be the e-mail address registered with the State Bar of Georgia).

The filing of any pleading shall contain the information required by this paragraph and shall constitute an appearance by the person(s) signing such pleading, unless otherwise specified by the court. The filing of a signed entry of appearance alone shall not be a substitute for the filing of an answer or any other required pleading. The filing of an indictment or accusation shall constitute an entry of appearance by the district attorney.

Any attorney who has been admitted to practice in this state but who fails to maintain active membership in good standing in the State Bar of Georgia and who makes or files any appearance or pleading in a superior court of this state while not in good standing shall be subject to the contempt powers of the court.

Within forty-eight hours after being retained, an attorney shall mail to the court and opposing counsel or file with the court the entry of his appearance in the pending matter. Failure to timely file shall not prohibit the appearance and representation by said counsel.

Amended effective March 9, 1989; May 26, 1994; May 5, 2011.



### **Rule 4.3. Withdrawal**

(1) An attorney appearing of record in any action pending in any superior court, who wishes to withdraw as counsel for any party therein, shall submit a written request to an appropriate judge of the court for an order of court permitting such withdrawal. Such request shall state that the attorney has given due written notice to the affected client respecting such intention to withdraw 10 days (or such lesser time as the court may permit in any specific instance) prior to submitting the request to the court or that such withdrawal is with the client's consent. Such request will be granted unless in the judge's discretion to do so would delay the trial of the action or otherwise interrupt the orderly operation of the court or be manifestly unfair to the client. The attorney requesting an order permitting withdrawal shall give notice to opposing counsel and shall file with the clerk in each such action and serve upon the client, personally or at that client's last known address, a notice which shall contain at least the following information:

(A) That the attorney wishes to withdraw;

(B) That the court retains jurisdiction of the action;

(C) That the client has the burden of keeping the court informed respecting where notices, pleadings or other papers may be served;

(D) That the client has the obligation to prepare for trial or hire other counsel to prepare for trial when the trial date has been set;

(E) That if the client fails or refuses to meet these burdens, the client may suffer adverse consequences, including, in criminal cases, bond forfeiture and arrest;

(F) The dates of any scheduled proceedings, including trial, and that holding of such proceedings will not be affected by the withdrawal of counsel;

(G) That service of notices may be made upon the client at the client's last known address, and,

(H) If the client is a corporation, that a corporation may only be represented in court by an attorney, that an attorney must sign all pleadings submitted to the court, and that a corporate officer may not represent the corporation in court unless that officer is also an attorney licensed to practice law in the state of Georgia;

(I) Unless the withdrawal is with the client's consent, the client's right to object within 10 days of the date of the notice.

The attorney seeking to withdraw shall prepare a written notification certificate stating that the above notification requirements have been met, the manner by which such notification was given to the client and the client's last known address and telephone number. The notification certificate shall be filed with the court and a copy mailed to the client and all other parties. The client shall have 10 days prior to entry of an order permitting withdrawal or such lesser time as the court may permit within which to file objections to the withdrawal. After the entry of an order permitting withdrawal, the client shall be notified by the withdrawing attorney of the effective date of the withdrawal; thereafter all notices or other papers may be served on the party directly by mail at the last known address of the party until new counsel enters an appearance.

(2) When an attorney has already filed an entry of appearance and the client wishes to substitute counsel, it will not be necessary for the former attorney to comply with rule 4.3(a). Instead, the former attorney may file with the clerk of court a notice of substitution of counsel signed by the party and the former attorney. The notice shall contain the style of the case, the name, address, phone number and bar number of the substitute counsel. A copy of the notice shall be served on the substitute counsel, opposing counsel or party if unrepresented, and the assigned judge. No other or further action shall be required by the former attorney to withdraw from representing the party. The substitution shall not delay any proceeding or hearing in the case.

The notice may be in substantially the following form:

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

SAM SPADE, )

)

Plaintiff, )

) CIVIL ACTION

v. )

) FILE NO. 99-CV-0000

DAVID ROBICHEAUX, )

)

Defendant. )

NOTICE OF SUBSTITUTION OF COUNSEL

Please substitute (name of substitute counsel) as counsel for (name of party) in this case.

Substitute counsel's address, phone number and bar number are as follows:

\_\_\_\_\_.

All further pleadings, orders and notices should be sent to substitute counsel.

This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

signature

signature

Name of former attorney

Name of party

Address

Address

Phone number

Phone number

## CERTIFICATE OF SERVICE

Certificate of service on: substitute counsel, opposing counsel or party, assigned judge.

Amended effective October 9, 1997; amended November 4, 1999, effective December 16, 1999.

### **Rule 4.4. Admission Pro Hac Vice**

#### A. Definitions

1.a. A "Domestic Lawyer" is a person not admitted to practice law in this state but who is admitted in another state or territory of the United States or the District of Columbia and not disbarred or suspended from practice in any jurisdiction.

b. A "Foreign Lawyer" is a person authorized to practice law by the duly constituted and authorized governmental body of any foreign nation but not authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia and is not suspended from practice in any domestic or foreign jurisdiction.

2. A Domestic Lawyer or Foreign Lawyer is "eligible" for admission pro hac vice if that lawyer:

a. lawfully practices solely on behalf of the lawyer's employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work; or

b. neither resides nor is regularly employed at an office in this state; or

c. resides in this state but (i) lawfully practices from offices in one or more other states and (ii) practices no more than temporarily in this state, whether pursuant to admission pro hac vice or in other lawful ways and, in the case of a Foreign Lawyer, is and remains in the United States in lawful immigration status.

3. A "client" is a person or entity for whom the Domestic Lawyer or Foreign Lawyer has rendered services or by whom the lawyer has been retained prior to the lawyer's performance of services in this state.

4. "This state" refers to Georgia. This rule does not govern proceedings before a federal court or federal agency located in this state unless that body adopts or incorporates this rule.

B. Authority of Court To Permit Appearance By Domestic Lawyer or Foreign Lawyer in Court Proceeding. A court of this state may, in its discretion, admit an eligible Domestic Lawyer or Foreign Lawyer retained to appear in a particular proceeding pending before such court to appear pro hac vice as counsel in that proceeding.

C. In-State Lawyer's Duties. When a Domestic Lawyer or Foreign Lawyer appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the in-state lawyer, or in an advisory or consultative role, the in-state lawyer who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the in-state lawyer to advise the client of the in-state lawyer's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Domestic Lawyer or Foreign Lawyer.

#### D. Application Procedure

1. Verified Application. An eligible Domestic Lawyer or Foreign Lawyer seeking to appear in a proceeding pending in this state as counsel pro hac vice shall file a verified application with the court where the litigation is filed. The application shall be served on all parties who have appeared in the case and the Office of General Counsel of the State Bar of Georgia. The application shall include proof of service. The court has the discretion to grant or deny the application summarily if there is no opposition.

2. **Objection to Application.** The Office of General Counsel of the State Bar of Georgia or a party to the proceeding may file an objection to the application or seek the court's imposition of conditions to its being granted. The Office of General Counsel or objecting party must file with its objection information establishing a factual basis for the objection. The Office of General Counsel or objecting party may seek denial of the application or modification of it. If the application has already been granted, the Office of General Counsel or objecting party may move that the pro hac vice admission be withdrawn.

3. **Standard for Admission and Revocation of Admission.** The court has discretion as to whether to grant applications for admission pro hac vice and to set the terms and conditions of such admission. An application ordinarily should be granted unless the court or agency finds reason to believe that such admission:

a. may be detrimental to the prompt, fair and efficient administration of justice,

b. may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent,

c. one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk,

d. the applicant has engaged in such frequent appearances as to constitute regular practice in this state, or

e. should be denied, if that applicant had, prior to the application, filed or appeared in an action in the courts of this State without having secured approval pursuant to the Uniform Superior Court Rules.

4. **Revocation of Admission.** Admission to appear as counsel pro hac vice in a proceeding may be revoked for any of the reasons listed in Rule 4.4 D.3 above.

#### E. Application

1. **Required Information.** An application shall state the information listed in Appendix A to this rule. The applicant may also include any other matters supporting admission pro hac vice.

2. **Application Fee.** An applicant for permission to appear as counsel pro hac vice under this rule shall pay a non-refundable fee as set by the Investigative Panel of the State Bar of Georgia at the time of filing the application.

3. **Exemption for Pro Bono Representation.** An applicant shall not be required to pay the fee established by Rule 4.4 E.2 above if the applicant will not charge an attorney fee to the client(s) and is:

a. employed or associated with a pro bono project or nonprofit legal services organization in a civil case involving the client(s) of such programs; or

b. involved in a criminal case or a habeas proceeding for an indigent defendant.

#### F. Authority of the Office of General Counsel of the State Bar of Georgia and Court: Application of Ethical Rules, Discipline, Contempt, and Sanctions

1. **Authority over Domestic Lawyer or Foreign Lawyer and Applicant.**

a. During pendency of an application for admission pro hac vice and upon the granting of such application, a Domestic Lawyer or Foreign Lawyer submits to the authority of the courts and the Office of General Counsel of the State Bar of Georgia of this state for all conduct relating in any way to the proceeding in which the Domestic Lawyer or Foreign Lawyer seeks to appear. The applicant, Domestic Lawyer or Foreign Lawyer who has obtained pro hac vice admission in a proceeding, submits to this authority for all that lawyer's conduct (i) within the state while the proceeding is pending or (ii) arising out of or relating to the application or the proceeding. An

applicant, Domestic Lawyer or Foreign Lawyer who has pro hac vice authority for a proceeding, may be disciplined in the same manner as an in-state lawyer.

b. The court's and Office of General Counsel's authority includes, without limitation, the court's and State Bar of Georgia's Rules of Professional Conduct, contempt and sanctions orders, local court rules, and court policies and procedures.

2. Familiarity With Rules. An applicant shall become familiar with the Georgia Rules of Professional Conduct, local court rules, and policies and procedures of the court before which the applicant seeks to practice.

G. Temporary Practice. An out-of-state lawyer will only be eligible for admission pro hac vice, or to practice in another lawful way only on a temporary basis.

H. Conflicts. The conflicts of the Domestic Lawyer or Foreign Lawyer shall not delay any deadlines, depositions, mediation, hearings, or trials in connection with the case for which admission has been granted.

## **APPENDIX A**

The Domestic Lawyer's or Foreign Lawyer's application shall include:

1. the applicant's residence and business address;
2. the name, address and phone number of each client sought to be represented;
3. the courts before which the applicant has been admitted to practice and the respective period(s) of admission, and contact information as to each such court;
4. whether the applicant (a) has been denied admission pro hac vice in this state, (b) had admission pro hac vice revoked in this state, or (c) has otherwise formally been disciplined or sanctioned by any court in this state. If so, specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings; the date filed; and what findings were made and what action was taken in connection with those proceedings;
5. whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary authority in any other jurisdiction and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings and contact information as to such person or authority; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;
6. whether the applicant has been held formally in contempt or otherwise sanctioned by any court in a written order for disobedience to its rules or orders, and, if so: the nature of the allegations; the name and contact information of the court before which such proceedings were conducted; the date of the contempt order or sanction; the caption of the proceedings; and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application);
7. the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this state within the preceding two years; the date of each application; and the outcome of the application;
8. an averment as to the applicant's familiarity with the Georgia Rules of Professional Conduct, local court rules and court procedures of the court before which the applicant seeks to practice;
9. the name, address, telephone number and bar number of an active member in good standing of the bar of this state who will sponsor the applicant's pro hac vice request. The bar member shall appear of record together with the Domestic Lawyer or Foreign Lawyer; and

10. The Foreign Lawyer's application shall include an affidavit attesting that the applicant shall throughout the period of appearance pro hac vice comply with all relevant provisions of the United States immigration laws and shall maintain valid immigration status.

The Domestic Lawyer's or Foreign Lawyer's application may provide the following optional information:

11. the applicant's prior or continuing representation in other matters of one or more of the clients the applicant proposes to represent and any relationship between such other matter(s) and the proceeding for which applicant seeks admission.

12. any special experience, expertise, or other factor deemed to make it particularly desirable that the applicant be permitted to represent the client(s) the applicant proposes to represent in the particular cause.

Amended effective October 9, 1997; November 10, 2005; April 23, 2009; October 7, 2010; September 29, 2011.

#### **Rule 4.5. Entries of Appearance and Withdrawals by Members or Employees of Law Firms or Professional Corporations**

The entry of an appearance or request for withdrawal by an attorney who is a member or an employee of a law firm or professional corporation shall relieve the other members or employees of the same law firm or professional corporation from the necessity of filing additional entries of appearance or requests for withdrawal in the same action.

#### **Rule 4.6. To Notify of Representation**

In any matter pending in a superior court, promptly upon agreeing to represent any client, the new attorney shall notify the appropriate calendar clerk in writing (and, in criminal actions, the district attorney; and, in civil actions the opposing attorney(s)) of the fact of such representation, the name of the client, the name and number of the action, the attorneys firm name, office address and telephone number.

Each such attorney shall notify the calendar clerk (and, in criminal actions, the district attorney; and, in civil actions, the opposing attorney(s)) immediately upon any change of representation, name, address or telephone number.

#### **Rule 4.7. To Utilize Assigned Judge**

Attorneys shall not present to any judge any matter or issue in any action which has been assigned to another judge, except under the most compelling circumstances. In that event, any attorney doing so shall first advise the judge to whom the matter is presented that the action is assigned to another judge. Counsel shall also inform the assigned judge as soon as possible that the matter was presented to another judge.

#### **Rule 4.8. To Notify of Related Cases**

At any time an attorney is counsel in any action which the attorney knows is or may be related to another action either previously or presently pending in and assigned to a particular judge of a superior court in the same circuit involving some or all of the same subject matter, or some or all of the same factual issues, such attorney immediately shall so advise the judges involved, who

will then make an appropriate determination as to which judge the action or actions should be assigned.

Amended effective October 9, 1997.

**Rule 4.9. To Notify of Previous Presentation to Another Judge**

Attorneys shall not present to a judge any matter which has been previously presented to another judge without first advising the former of the fact and result of such previous presentation.

**Rule 4.10. To Notify of Settlements and Dismissals**

Immediately upon the settlement or dismissal of any civil action the involved attorneys shall notify the assigned judge and, where appropriate, the calendar clerk of such event.

**Rule 4.11. Attorneys: Appearance, Withdrawal and Duties; to Attend and Remain**

Subject to the provisions of Rule 17, attorneys having matters on calendars, or who are otherwise directed to do so, unless excused by the court, are required to be in court at the call of the matter and to remain until otherwise directed by the court. Should the judge excuse counsel from the courtroom before the matter is concluded such attorney(s) shall return as directed. So that the court can provide timely direction, counsel shall contact the trial court daily during the remainder of any ongoing calendar. Failure of any attorney in this respect shall subject that attorney to the contempt powers of the court.

Amended effective October 9, 1997; November 10, 2005.

**Rule 4.12. Binding Authority**

Attorneys of record have apparent authority to enter into agreements on behalf of their clients in civil actions. Oral agreements, if established, are enforceable.

Amended effective October 9, 1997.

**Rule 5. DISCOVERY IN CIVIL ACTIONS<sup>1</sup>**

<sup>1</sup>Rule 5 shall not be applied in any case prior to January 1, 1986.

**Rule 5.1. Prompt Completion**

In order for a party to utilize the court's compulsory process to compel discovery, any desired discovery procedures must first be commenced promptly, pursued diligently and completed without unnecessary delay and within 6 months after the filing of the answer. At any time, the court, in its discretion, may extend, reopen or shorten the time to utilize the court's compulsory process to compel discovery.

Amended effective January 18, 1990; January 31, 1991; designated as Rule 5.1 effective November 12, 1992.

### **Rule 5.2. Filing Requirements**

(1) Depositions and other original discovery material shall not be filed with the court unless or until required by the provisions of OCGA § 9-11-29.1(a) (1) (5).

(2) A party serving Interrogatories, Requests for Production of Documents, Requests for Admission and Answers or responses thereto upon counsel, a party or a non party shall file with the court a certificate indicating the pleading which was served, the date of service (or that the same has been delivered for service with the summons) and the persons served.

Adopted effective November 12, 1992.

### **Rule 5.3. Depositions Upon Oral Examination-Duration**

Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. The court must allow additional time if needed for a fair examination of the deponent or if the deponent or another person or other circumstance impedes or delays the examination.

Adopted effective May 8, 2003.

## **Rule 6. MOTIONS IN CIVIL ACTIONS**

### **Rule 6.1. Filing**

In civil actions every motion made prior to trial, except those consented to by all parties, when filed shall include or be accompanied by citations of supporting authorities and, where allegations of unstipulated fact are relied upon, supporting affidavits, or citations to evidentiary materials of record. In circuits utilizing an individual assignment system, the clerk shall promptly upon filing furnish a copy provided by the attorney of such motions and related materials to the judge.

### **Rule 6.2. Reply**

Unless otherwise ordered by the judge, each party opposing a motion shall serve and file a response, reply memorandum, affidavits, or other responsive material not later than 30 days after service of the motion. Such response shall include or be accompanied by citations of supporting authorities and, where allegations of unstipulated facts are relied upon, supporting affidavits or citations to evidentiary materials of record. [In State Court, see State Court Rule 6.2.]

Amended effective May 5, 2011.

### **Rule 6.3. Hearing**

Unless otherwise ordered by the court, all motions in civil actions, including those for summary judgment, shall be decided by the court without oral hearing, except motions for new trial and motions for judgment notwithstanding the verdict.

However, oral argument on a motion for summary judgment shall be permitted upon written request made in a separate pleading bearing the caption of the case and entitled "Request for Oral Hearing," and provided that such pleading is filed with the motion for summary judgment or filed not later than five (5) days after the time for response.



Amended May 7, 1987; amended effective November 9, 1995.

**Rule 6.4. Failure to Make Discovery and Motion to Compel Discovery**

(A) Motions to compel discovery in accordance with OCGA § 9-11-37 shall:

- (1) Quote verbatim or attach a copy as an exhibit of each interrogatory, request for admission, or request for production to which objection is taken;
- (2) Include the specific objection or response said to be insufficient;
- (3) Include the grounds assigned for the objection (if not apparent from the objection); and,
- (4) Include the reasons assigned as supporting the motion. Such objections and grounds shall be addressed to the specific interrogatory, request for admission, or request for production and may not be made generally.

(B) Prior to filing any motion seeking resolution of a discovery dispute, counsel for the moving party shall confer with counsel for the opposing party in a good faith effort to resolve the matters involved. At the time of filing the motion, counsel shall also file a statement certifying that such conference has occurred and that the effort to resolve by agreement the issues raised failed. This rule also applies to motions to quash, motions for protective order and cases where no discovery has been provided.

Amended effective November 28, 1996.

**Rule 6.5. Motions for Summary Judgment**

Upon any motion for summary judgment pursuant to the Georgia Civil Practice Act, there shall be annexed to the notice of motion a separate, short and concise statement of each theory of recovery and of each of the material facts as to which the moving party contends there is no genuine issue to be tried. The response shall include a separate, short and concise statement of each of the material facts as to which it is contended there exists a genuine issue to be tried.

**Rule 6.6. Time for Filing Summary Judgment Motions**

Motions for summary judgment shall be filed sufficiently early so as not to delay the trial. No trial shall be continued by reason of the delayed filing of a motion for summary judgment.

**Rule 6.7. Motions in Emergencies**

Upon written notice and good cause shown, the assigned judge may shorten or waive the time requirement applicable to emergency motions, except motions for summary judgment, or grant an immediate hearing on any matter requiring such expedited procedure. The motion shall set forth in detail the necessity for such expedited procedure.

## **Rule 7. PRE TRIAL CONFERENCES**

### **Rule 7.1. Civil**

The assigned judge may set pre trial conferences sua sponte or upon motion. In scheduling actions for pre trial conferences the court shall give consideration to the nature of the action, its complexity and the reasonable time requirements for preparation for pre trial. In the event a pre trial conference is ordered, the following shall apply.

A calendar will be published or a written order issued specifying the time and place for the pre trial conference. The court will consider the issues stated in Rule 16 of the Civil Practice Act (OCGA § 9-11-16) among others. Subject to the provisions of Rule 17, the pre trial hearing shall be attended by the attorneys who will actually try the action; with the consent of the court, another attorney of record in the action may attend if authorized to define the issues and enter into stipulations. At the commencement of the pre trial conference, or prior thereto upon written order of the court, counsel for each party shall present to the court a written proposed pre trial order in substantially the form required by the rules. Failure of counsel to appear at the pre trial conference without legal excuse or to present a proposed pre trial order shall authorize the court to remove the action from any trial calendar, enter such pre trial order as the court shall deem appropriate, or impose any other appropriate sanction, except dismissal of the action with prejudice.

### **Rule 7.2. Civil Pre Trial Order**

At the pre trial conference, or prior to that day if specified in the pre trial calendar, counsel for each party shall have prepared and shall file with the court a proposed pre trial order in substantially the following form:

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

CIVIL ACTION, CASE NO. \_\_\_\_\_

(STYLE OF CASE)

#### **PRE TRIAL ORDER**

The following constitutes a Pre Trial Order entered in the above styled case after conference with counsel for the parties:

(1) The name, address and phone number of the attorneys who will conduct the trial are as follows:

Plaintiff \_\_\_\_\_

Defendant \_\_\_\_\_

Other \_\_\_\_\_

(2) The estimated time required for trial is \_\_\_\_\_

(3) There are no motions or other matters pending for consideration by the court except as follows: \_\_\_\_\_  
\_\_\_\_\_

(4) The jury will be qualified as to relationship with the following:

(5)a. All discovery has been completed, unless otherwise noted, and the court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.

b. Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or nonjoinder of any parties.

(6) The following is the Plaintiff's brief and succinct outline of the case and contentions: (USE SPACE AS NEEDED)  
\_\_\_\_\_  
\_\_\_\_\_

(7) The following is the Defendant's brief and succinct outline of the case and contentions: (USE SPACE AS NEEDED)  
\_\_\_\_\_  
\_\_\_\_\_

(8) The issues for determination by the jury are as follows:  
\_\_\_\_\_  
\_\_\_\_\_

(9) Specifications of negligence including applicable code sections are as follows:  
\_\_\_\_\_  
\_\_\_\_\_

(10) If the case is based on a contract, either oral or written, the terms of the contract are as follows (or, the contract is attached as an Exhibit to this order):  
\_\_\_\_\_  
\_\_\_\_\_

(11) The types of damages and the applicable measure of those damages are stated as follows:  
\_\_\_\_\_  
\_\_\_\_\_

(12) If the case involves divorce, each party shall present to the court at the pre trial conference the affidavits required by Rule 24.2.

(13) The following facts are stipulated:  
\_\_\_\_\_  
\_\_\_\_\_

(14) The following is a list of all documentary and physical evidence that will be tendered at the trial by the Plaintiff or Defendant. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of

authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

a. By the Plaintiff:

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b. By the Defendant:

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(15) Special authorities relied upon by Plaintiff relating to peculiar evidentiary or other legal questions are as follows:

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(16) Special authorities relied upon by Defendant relating to peculiar evidentiary or other legal questions are as follows:

---

(17) All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

(18) The testimony of the following persons may be introduced by depositions: \_\_\_\_\_ Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of the court prior to trial.

(19) The following are lists of witnesses the

a. Plaintiff will have present at trial: \_\_\_\_\_

b. Plaintiff may have present at trial: \_\_\_\_\_

c. Defendant will have present at trial: \_\_\_\_\_

d. Defendant may have present at trial: \_\_\_\_\_

Opposing counsel may rely on representation that the designated party will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

(20) The form of all possible verdicts to be considered by the jury are as follows:

---

(21)a. The possibilities of settling the case are: \_\_\_\_\_

b. The parties do/do not want the case reported.

c. The cost of take down will be paid by: \_\_\_\_\_

d. Other matters:

Submitted by:

\_\_\_\_\_

\_\_\_\_\_

It is hereby ordered that the foregoing, including the attachments thereto, constitutes the PRE TRIAL ORDER in the above case and supersedes the pleadings which may not be further amended except by order of the court to prevent manifest injustice.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Judge, Superior Court

\_\_\_\_\_ Judicial Circuit

Amended effective October 9, 1997.

### **Rule 7.3. Interpreters**

Any proposed pre-trial order submitted by any party shall designate any witnesses whose testimony will need the services of an interpreter and the language, including sign language for the deaf, for which the interpreter is required. If known, the name, address, and telephone number of the interpreter or interpreting service intended to be used shall be listed. If this information is not known at the time the pre-trial order is signed, it shall be promptly provided to court and opposing counsel once known. Where notice is not provided, the Court may, among other sanctions, refuse the use of any non-certified interpreter and then exclude the use of the witness's testimony if the witness cannot readily communicate in English.

Amended effective November 8, 2001.

### **Rule 7.4. Criminal Matters**

At or after the arraignment, pre trial conferences may be scheduled as the judge deems appropriate. Such pre trial conferences shall be attended by the attorneys who will actually try the case. At the pre trial conference:

(A) All motions, special pleas and demurrers not previously determined shall be presented to and heard by the judge. Any and all pending motions not called to the judge's attention at the pre trial conference shall be deemed to have been abandoned and waived; however, at the judge's discretion and for good cause, such matters may subsequently be heard. At the discretion of the judge, the disposition of any matter brought before the court may be postponed.

(B) To the extent possible without revealing confidential trial strategies, the attorneys shall inform the judge of probable evidentiary problems known to them or any other matter which might delay the trial so the judge may take any necessary action before the trial to avoid a delay.

(C) If possible, the judge shall set a firm trial date.

(D) Counsel are encouraged to enter into reasonable stipulations.

Amended effective October 9, 1997; renumbered from 7.3 effective November 8, 2001.

## **Rule 8. CIVIL JURY TRIAL CALENDAR**

### **Rule 8.1. Scheduling Trials**

The assigned judge has the sole responsibility for setting hearings in all actions assigned to that judge, for the scheduling of all trials in such actions and for the publication of all necessary calendars in advance of trial dates. In scheduling actions for trial the assigned judge shall give consideration to the nature of the action, its complexity and the reasonable time requirements of the action for trial. It is the intent of these rules that no matter be allowed to languish, and the assigned judge is responsible for the orderly movement and disposition of all matters.

Amended effective October 9, 1997.

### **Rule 8.2. Ready List**

All actions ready for trial in accordance with OCGA § 9-11-40 shall be placed upon a list of actions ready for final jury trial to be maintained as a "ready list" by the calendar clerk.

Actions may be placed on the ready list by:

- (A) The assigned judge upon notice to the parties; or
- (B) A party, after the entry of a pre trial order, upon notice to the other parties.

Except for cause, actions shall be placed on the ready list in chronological order in accordance with filing dates, except that actions previously on the ready list shall retain their superior position; however, actions entitled thereto by statute shall be given precedence.

### **Rule 8.3. Trial Calendar**

The calendar clerk shall prepare a trial calendar from the actions appearing on the ready list, in the order appearing on such list. The calendar shall state the place of trial and the date and time during which the actions shall be tried. The trial calendar shall be delivered to the clerk of the court and distributed or published a sufficient period of time, but not less than 20 days, prior to the session of court at which the actions listed thereon are to be tried. [In State Court, see State Court Rule 8.3.]

### **Rule 8.4. Trial Date**

The parties and counsel in the first 10 actions on the published trial calendar shall appear ready for trial on the date specified unless otherwise directed by the assigned judge. Parties in all other actions on the calendar are expected to be ready for trial but may contact the calendar clerk to obtain:

- (A) A specific date and time for trial during the trial term specified in the calendar; or
- (B) Permission to await the call by the calendar clerk of the action for trial upon reasonable notice to counsel.

Amended effective March 9, 1989.

### **Rule 8.5. Continuance After Scheduled for Trial**

Continuances will not be granted merely by agreement of counsel. Actions will not be removed from a published trial calendar except by court direction upon such terms as reasonably may be imposed, including the possible imposition of a penalty of up to \$50 upon the moving party if, absent statutory grounds or good cause, a motion for continuance of an action is first made within 5 days of the trial week scheduled.

### **Rule 8.6. Special Settings**

Special settings of actions for jury trial are not favored.

## **RULE 9. TELEPHONE AND VIDEO-CONFERENCING**

### **Rule 9.1. Telephone Conferencing**

The trial court on its own motion or upon the request of any party may in its discretion conduct pre-trial or post-trial proceedings in civil actions by telephone conference with attorneys for all affected parties. The trial judge may specify:

- (A) The time and the person who will initiate the conference;
- (B) The party which is to incur the initial expense of the conference call, or the apportionment of such costs among the parties, while retaining the discretion to make an adjustment of such costs upon final resolution of the case by taxing same as part of the costs; and
- (C) Any other matter or requirement necessary to accomplish or facilitate the telephone conference.

Adopted effective July 15, 2004.

### **Rule 9.2. Video-Conferencing**

(A) The following matters may be conducted by video-conference:

1. Determination of indigence and appointment of counsel;
2. Hearings on appearance and appeal bonds;
3. Initial appearance hearings;
4. Probable cause hearings;
5. Applications for arrest warrants;
6. Applications for search warrants;
7. Arraignment or waiver of arraignment;
8. Pretrial diversion and post-sentencing compliance hearings;
9. Entry of pleas in criminal cases;

10. Impositions of sentences upon pleas of guilty or *nolo contendere*;
11. Probation revocation hearings in felony cases in which the probationer admits the violation and in all misdemeanor cases;
12. Post-sentencing proceedings in criminal cases;
13. Acceptance of special pleas of insanity (incompetency to stand trial);
14. Situations involving inmates with highly sensitive medical problems or who pose a high security risk; and
15. Testimony of youthful witnesses;
16. *Ex-parte* applications for Temporary Protective Orders under the Family Violence Act and the Stalking Statute;
17. Appearances of interpreters.

Notwithstanding any other provisions of this rule, a judge may order a defendant's personal appearance in court for any hearing.

(B) Confidential Attorney-Client Communication. Provision shall be made to preserve the confidentiality of attorney-client communications and privilege in accordance with Georgia law. In all criminal proceedings, the defendant and defense counsel shall be provided with a private means of communications when in different locations.

(C) Witnesses. In any pending matter, a witness may testify via video conference. Any party desiring to call a witness by video conference shall file a notice of intention to present testimony by video conference at least thirty (30) days prior to the date scheduled for such testimony. Any other party may file an objection to the testimony of a witness by video conference within ten (10) days of the filing of the notice of intention. In civil matters, the discretion to allow testimony via video conference shall rest with the trial judge. In any criminal matter, a timely objection shall be sustained; however, such objection shall act as a motion for continuance and a waiver of any speedy trial demand.

(D) Recording of Hearings. A record of any proceedings conducted by video conference shall be made in the same manner as all such similar proceedings not conducted by video conference. However, upon the consent of all parties, that portion of the proceedings conducted by video conference may be recorded by an audio-visual recording system and such recording shall be part of the record of the case and transmitted to courts of appeal as if part of a transcript.

(E) Technical Standards. Any video-conferencing system utilized under this rule must conform to the following minimum requirements:

1. All participants must be able to see, hear, and communicate with each other simultaneously;
2. All participants must be able to see, hear, and otherwise observe any physical evidence or exhibits presented during the proceeding, either by video, facsimile, or other method;



3. Video quality must be adequate to allow participants to observe each other's demeanor and nonverbal communications; and

4. The location from which the trial judge is presiding shall be accessible to the public to the same extent as such proceeding would if not conducted by video conference. The court shall accommodate any request by interested parties to observe the entire proceeding.

Adopted effective July 15, 2004.

## **Rule 10. TRIALS**

### **Rule 10.1. Voir Dire**

The court may propound, or cause to be propounded by counsel such questions of the jurors as provided in OCGA § 15-12-133; however, the form time required and number of such questions is within the discretion of the court. The court may require that questions be asked once only to the full array of the jurors, rather than to every juror – one at a time – provided that the question be framed and the response given in a manner that will provide the propounder with an individual response prior to the interposition of challenge. Hypothetical questions are discouraged, but may be allowed in the discretion of the court. It is improper to ask how a juror would act in certain contingencies or on a certain hypothetical state of facts. No question shall be framed so as to require a response from a juror which might amount to a prejudgment of the action. Questions calling for an opinion by a juror on matters of law are improper. The court will exclude questions which have been answered in substance previously by the same juror. It is discretionary with the court to permit examination of each juror without the presence of the remainder of the panel. Objections to the mode and conduct of voir dire must be raised promptly or they will be regarded as waived.

In cases in which the death penalty is sought, the trial judge shall address all Witherspoon and reverse Witherspoon questions to prospective jurors individually. Prior to ruling upon any motion to strike a juror under Witherspoon, the trial judge shall confer with counsel for the state and for the accused as to any additional inquiries. Failure to object to the court's ruling on whether or not a juror is qualified shall be a waiver of any such objection.

Amended effective October 9, 1997.

### **Rule 10.2. Opening Statements in Criminal Matters**

The district attorney may make an opening statement prior to the introduction of evidence. This statement shall be limited to expected proof by legally admissible evidence. Defense counsel may make an opening statement immediately after the state's opening statement and prior to introduction of evidence, or following the conclusion of the state's presentation of evidence. Defense counsel's statement shall be restricted to expected proof by legally admissible evidence, or the lack of evidence.

### **Rule 10.3. Requests and Exceptions to Charge**

All requests to charge shall be numbered consecutively on separate sheets of paper and submitted to the court in duplicate by counsel for all parties at the commencement of trial, unless otherwise

provided by pre trial order; provided, however, that additional requests may be submitted to cover unanticipated points which arise thereafter.

#### **Rule 10.4. Excusals From Courtroom**

During the course of a proceeding no one except the judge may excuse from the courtroom a party, a witness (including one who has testified), or counsel.

### **Rule 11. SELECTION OF JURIES**

After completion of the examination of jurors upon their voir dire, the parties and their counsel shall be entitled, upon request, to 15 minutes to prepare for jury selection; thereafter, during the selection of jurors, the court in its discretion, upon first warning counsel, may restrict to not less than 1 minute the time within which each party may exercise a peremptory challenge; a party shall forfeit a challenge by failing to exercise it within the time allowed.

Amended effective October 9, 1997.

### **Rule 12. VOLUNTARY DISMISSAL OF ACTIONS**

If a civil action is voluntarily dismissed (other than as a result of final settlement agreement, the terms of which are dictated, in court or in chambers, into the record) after the trial jury has been empaneled, all court costs including juror fees incurred for all panels from which the trial jury was selected shall be taxed against the dismissing party.

### **Rule 13. ARGUMENTS**

#### **Rule 13.1. Time Limitations**

Counsel shall be limited in their arguments as follows:

- (A) Felony cases punishable by the death penalty or life in prison 2 hours each side.
- (B) Any other felony case 1 hour each side.
- (C) Misdemeanor case 30 minutes each side.
- (D) Civil cases other than appeals from magistrate courts 2 hours each side.
- (E) Appeals from magistrate courts 30 minutes each side.

Amended effective September 2, 1999; May 1, 2008.

#### **Rule 13.2. Extensions**

Before arguments begin, counsel may apply to the court for an extension of the time prescribed for argument. The applicant shall state the reason that additional time is needed; the court in its discretion may grant extensions.

### **Rule 13.3. Number of Arguments**

Not more than two attorneys shall be permitted to argue any case for any party except by leave of court; in no event shall more than one attorney for each party be heard in concluding argument.

### **Rule 13.4. Conclusion**

In civil actions, where the burden of proof rests with the plaintiff, the plaintiff is entitled to the opening and concluding arguments except that if the defendant introduces no evidence or admits a prima facie case, then the defendant shall be entitled to open and conclude.

Amended effective October 9, 1997.

## **Rule 14. DISMISSAL**

On its own motion or upon motion of the opposite party, the court may dismiss without prejudice any civil action, or where appropriate, any pleading filed on behalf of any party upon the failure to properly respond to the call of the action for trial or other proceeding. In civil actions or criminal cases the court may adjudge any attorney in contempt for failure to appear without legal excuse upon the call of any proceeding.

## **Rule 15. DEFAULT JUDGMENTS**

The party seeking entry of a default judgment in any action shall certify to the court the date and type of service effected and that no defensive pleading has been filed by the defendant as shown by court records. This certificate shall be in writing and must be attached to the proposed default judgment when presented to the judge for signature. [In State Court, see State Court Rule 15 (in main volume).]

Amended effective May 8, 2003.

### **Rule 15.1. Garnishments**

In accordance with OCGA §18-4-61 (5), the clerk of superior court is authorized to supervise initiation of the garnishment proceedings and the affidavit, provided the clerk determines:

- (A) That the affidavit is on personal knowledge and contains all elements required by Georgia law;
- (B) That the garnishment proceedings are carried out through the use of proper forms in the filing of garnishments and in accord with Georgia law;
- (C) That any questionable matter concerning these procedures be presented to the presiding judge for determination and in all cases a judge's facsimile signature may be affixed to an affidavit of garnishment as determined by the presiding judge.

Rule 15.1 adopted effective January 31, 1991.

## **Rule 16. LEAVES OF ABSENCE**

### **Rule 16.1. Leaves for Thirty (30) Calendar Days or Less**

An attorney of record shall be entitled to a leave of absence for thirty days or less from court appearance in pending matters which are neither on a published calendar for court appearance, nor noticed for a hearing during the requested time, by submitting to the clerk of the court at least thirty (30) calendar days prior to the effective date for the proposed leave, a written notice containing:

- (a) a list of the actions to be protected, including the action numbers;
- (b) the reason for leave of absence; and
- (c) the duration of the requested leave of absence.

A copy of the notice shall be sent, contemporaneously, to the judge before whom an action is pending and all opposing counsel. Unless opposing counsel files a written objection within ten (10) days with the clerk of the court, with a copy to the court and all counsel of record, or the court responds denying the leave, such leave will stand granted without entry of an order. If objection is filed, the court, upon request of any counsel, will conduct a conference with all counsel to determine whether the court will, by order, grant the requested leave of absence.

The clerk of the court shall retain leave of absence notices in a chronological file two (2) calendar years; thereafter, the notices may be discarded.

### **Rule 16.2. Leaves for More Than Thirty (30) Calendar Days or Those Either on a Published Calendar, Noticed for a Hearing, or not Meeting the Time Requirements of 16.1**

Application for leaves of absence for more than thirty (30) days, or those either on a published calendar, noticed for a hearing, or not submitted within the time limits contained in 16.1 above, must be in writing, filed with the clerk of the court, and served upon opposing counsel at least ten (10) days prior to submission to the appropriate judge of the court in which an action pends. This time period may be waived if opposing counsel consents in writing to the application. This procedure permits opposing counsel to object or to consent to the grant of the application, but the application is addressed to the discretion of the court. Such application for leave of absence shall contain:

- (a) a list of the actions to be protected, including the action numbers;
- (b) the reason for leave of absence; and
- (c) the duration of the requested leave of absence.

### **Rule 16.3. 16.1 or 16.2 Leave**

A 16.1 or 16.2 leave when granted shall relieve any attorney from all trials, hearings, depositions and other legal proceedings in that matter. This rule shall not extend any deadline set by law or the court.

**Rule 16.4. Denial of Application for Leave**

Any application for leave not filed in conformance with this rule will be denied. Notice shall be provided substantially as on the attached form.

To: All Judges, Clerk of Court, and Counsel of Record

From: Name of Attorney

RE: Notice of Leave of Absence

Date:

Comes now (attorney’s name) and respectfully notifies all judges before whom s/he has cases pending, all affected clerks of court, and all opposing counsel, that s/he will be on leave pursuant to Georgia Uniform Court Rule 16.

1. The period of leave during which time Applicant will be away from the practice of law, is: (dates of leave). The purpose of the leave is:
2. All affected judges and opposing counsel shall have ten days from the date of this Notice to object to it. If no objections are filed, the leave shall be granted.

name of attorney

Bar no.

address of attorney

phone number of attorney

**CERTIFICATE OF SERVICE**

This is to certify that I have this date served a copy of the foregoing Notice of Leave of Absence upon all judges, clerks and opposing counsel listed on the attached Exhibit A, by depositing the same in the U.S. Mail with adequate postage affixed thereto.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_

Name of attorney

**EXHIBIT A**

(Sample)

Name of Case  
Case Number

Name of Judge  
Court/County

Opposing Counsel

Jones v. Jones 98-3333	Brown DeKalb/Superior	opp. atty. A (address)
Smith v. Exxon 97A-454545	Black Cobb/State	opp. atty. B (address)
Schwartz v. Craig & Co. E-6789	Grey Fulton/Superior	opp. atty. C (address)

Amended effective September 23, 1998.

## **Rule 17. CONFLICTS—STATE AND FEDERAL COURTS**

### **Rule 17.1. Method of Resolution**

(A) An attorney shall not be deemed to have a conflict unless:

- (1) the attorney is lead counsel in two or more of the actions affected; and,
- (2) the attorney certifies that the matters cannot be adequately handled, and the client's interest adequately protected, by other counsel for the party in the action or by other attorneys in lead counsel's firm; certifies that in spite of compliance with this rule, the attorney has been unable to resolve these conflicts; and certifies in the notice a proposed resolution by list of such cases in the order of priority specified by this rule.

(B) When an attorney is scheduled for a day certain by trial calendar, special setting or court order to appear in two or more courts (trial or appellate; state or federal), the attorney shall give prompt written notice as specified in (A) above of the conflict to opposing counsel, to the clerk of each court and to the judge before whom each action is set for hearing (or, to an appropriate judge if there has been no designation of a presiding judge). The written notice shall contain the attorney's proposed resolution of the appearance conflicts in accordance with the priorities established by this rule and shall set forth the order of cases to be tried with a listing of the date and data required by (B)(1)-(4) as to each case arranged in the order in which the cases should prevail under this rule. In the absence of objection from opposing counsel or the courts affected, the proposed order of conflict resolution shall stand as offered. Should a judge wish to change the order of cases to be tried, such notice shall be given promptly after agreement is reached between the affected judges. Attorneys confronted by such conflicts are expected to give written notice such that it will be received at least seven (7) days prior to the date of conflict. Absent agreement, conflicts shall be promptly resolved by the judge or the clerk of each affected court in accordance with the following order of priorities:

- (1) Criminal (felony) actions shall prevail over civil actions. Criminal actions in which a demand for speedy trial has been timely filed pursuant to O.C.G.A. §§ 17-7-170 and/or 17-7-171 shall automatically take precedence over all other actions unless otherwise directed by the Court in which the speedy trial demand is pending;
- (2) Jury trials shall prevail over non-jury matters, including trials and administrative proceedings;

(3) Within the category of non-jury matters, the following will have priority: (a) parental terminations, (b) trials, (c) all other non-jury matters including appellate arguments, hearings and conferences;

(4) Within each of the above categories only, the action which was first filed shall take precedence.

(C) Conflict resolution shall not require the continuance of the other matter or matters not having priority. In the event any matter listed in the letter notice is disposed of prior to the scheduled time set for any other matter listed or subsequent to the scheduled time set but prior to the end of the calendar, the attorney shall immediately notify all affected parties, including the court affected, of the disposal and shall, absent good cause shown to the court, proceed with the remaining case or cases in which the conflict was resolved by the disposal in the order of priorities as set forth heretofore.

Amended effective March 9, 1989; October 9, 1997; January 17, 2008; October 23, 2008.

### **Rule 17.2. Attorneys Serving as Part time Judges**

A judge presiding in a civil matter shall give prompt consideration to resolving scheduling conflicts resulting from an attorney's serving as a part time judge of a court of record. The presiding judge should be mindful of the strict time limitations of juvenile proceedings. See, e.g., Ga. Unif. Juvenile Court Rules 6.8, 7.3, and 23.5. However, a continuance by reason of such scheduling conflicts should not be granted in a scheduled Superior Court civil matter involving the safety of a child or the need of a custodial parent for temporary support.

Amended effective September 2, 1999.

## **Rule 18. RULES FOR SERVICE OF SENIOR JUDGES**

### **Rule 18.1. Definitions**

For the purposes of this section of the uniform rules, the following definitions shall apply:

(A) "Active judge" means a superior court judge in active service.

(B) "Senior judge" means a superior court judge retired from active service, yet authorized by law to serve as a superior court judge.

(C) "Defeated senior judge" means a senior judge who retired from active service after failing to be reelected at a primary or election.

### **Rule 18.2. Requests for Assistance**

The chief judge of any superior court of this state may make a written request for assistance to the chief judge of any other superior court, a senior judge of the superior court, a retired judge, or a judge emeritus of any court. The request by the chief judge may be made if one of the following circumstances arise:

(A) A judge of the requesting court is disqualified for any cause from presiding in any matter pending before the court;

(B) A judge of the requesting court is unable to preside because of disability, illness, or absence; or,

(C) A majority of the judges of the requesting court determines that the business of the court requires the temporary assistance of an additional judge or additional judges. OCGA § 15-1-9.1(b).

An active judge may, except as hereinafter provided, call upon a senior judge to serve in an emergency or when the volume of cases or other unusual circumstances cause such service to be necessary in order to provide for the speedy and efficient disposition of the business of the circuit.

### **Rule 18.3. Certificate of Need**

Except in cases of emergency, having determined the necessity for the service of a senior judge, the requesting judge shall certify the reason such service is required, which shall include an order of appointment giving the scope and tenure of such requested service as in the discretion of the requesting judge is necessary to meet the need. Such certificate and order shall be filed in the office of clerk of superior court of the county in which service is to be performed and with the district administrative judge of such district.

### **Rule 18.4. Emergency Requests**

In case of an unforeseen emergency requiring the immediate service of a senior judge, the requesting judge may act without prior certificate or order of appointment, later ratifying such designation of service by an appropriate order.

### **Rule 18.5. Residence of Senior Judge**

No active judge shall call to serve any senior judge who is not a bona fide resident of and domiciled in this state.

### **Rule 18.6. Defeated Senior Judges**

An active judge, with the concurrence of the district administrative judge, or any district administrative judge alone where the need arises, may request the service of any defeated senior judge under the same circumstances and procedures as heretofore set out for active judges requesting the service of undefeated senior judges, except that no judge shall request the services of a defeated senior judge unless such defeated senior judge shall be first approved for such service by the Supreme Court of Georgia pursuant to rules promulgated by the Supreme Court. Such approval shall be reviewed periodically by the Supreme Court, but after once having been approved by the Supreme Court, a defeated senior judge could continue to serve until such approval is withdrawn or revoked.

Amended effective October 9, 1997.

### **Rule 18.7. Fiscal Eligibility [Deleted]**



### **Rule 18.8. Election of Ineligibility**

In view of the foregoing limitations upon service and compensation of senior judges, senior judges may elect to declare themselves ineligible to serve as judges and may engage in the private practice of law if and when authorized by law. Such election shall be made in writing delivered to the Supreme Court. Senior judges shall be entitled to draw their earned retirement pay and shall be entitled to additional compensation for serving as arbitrators, mediators and any other neutral in an alternative dispute process and as special masters, receivers, auditors and referees.

A senior judge who has elected to practice law shall not thereafter be eligible to serve as a judge except upon petition showing good cause to and with the approval of the Supreme Court. Having once been reinstated as eligible to serve as judge by the Supreme Court, no second such petition shall be granted.

No judge shall call upon any senior judge to serve who is exercising the right to practice law and no senior judge who is exercising the right to practice law shall agree to serve as a judge.

Amended effective November 12, 1992; October 7, 2010.

## **Rule 19. TRANSFER/CHANGE OF VENUE**

### **Rule 19.1. Civil**

(A) Subject to the provisions of OCGA § 9-11-12 and section (C) of this rule, a timely motion in any pending civil action or proceeding (1) by any party, that jurisdiction is lacking or that venue is improper, or (2) by the court, sua sponte, that subject matter jurisdiction is lacking, shall be treated as a motion to transfer the action to another court, whether in the same or another county of this state.

(B) The moving party shall specify the court(s) having jurisdiction and in which venue properly would lie.

(C) If the basis of the motion is that a party necessary to the court's jurisdiction has been dismissed during or at the conclusion of the trial, the motion shall be made immediately and orally; any opposition shall be made orally. Should the motion to transfer be granted as to the remaining parties the claim against the party dismissed shall be severed, so that the order of dismissal will be final for purposes of appeal.

(D) Unless otherwise ordered by the court, notice of a written motion to transfer shall be served upon all parties, including any who failed to file pleadings in the matter at least 10 days before the motion is heard. A party opposing a written motion to transfer shall notify the court and all other parties in writing within 10 days after service upon that party of the motion to transfer; such notice shall designate the basis upon which it is claimed that the court in which the action pends has jurisdiction and upon which venue is claimed to be proper.

(E) When a motion to transfer is filed, the court may stay all other proceedings in the pending action until determination of the motion.

(F) No action or proceeding may be transferred except upon written order of the court in which the action pends (transferor court), reasonable notice of which shall be given to all parties. This order shall specify the court to which the matter is to be transferred (transferee court) and shall state that unless plaintiff pays all accrued court costs within 20 days of mailing or delivery of the cost bill to plaintiff, the action shall automatically stand dismissed without prejudice.

The court ruling upon a motion to transfer may award reasonable attorney's fees to the prevailing party; if the court grants the motion, transfer costs of \$50 shall be taxed, unless the court expressly determines otherwise, in its discretion.

(G) When an order transferring an action is filed with the clerk of the court entering such order, the clerk shall promptly compute the court costs, including the costs incident to preparing and transferring the record as provided in subparagraph (H) of this rule, and shall notify counsel for plaintiff (or, the plaintiff, if there is no counsel of record) in writing of the amount of the court costs. Plaintiff shall pay the costs within 20 days of mailing or delivery of the cost bill; if costs are not paid within that time, the action shall automatically stand dismissed, without prejudice.

(H) Upon timely payment of costs, the clerk of the transferor court shall make and retain copies of (1) the complaint or initial pleading, (2) the motion to transfer if in writing, and (3) the order of transfer. The originals of all pleadings, orders, depositions and other papers on file shall be indexed and certified by the clerk of the transferor court and transmitted, with the transfer cost (if applicable), to the clerk of the transferee court in the manner provided by law for transmittal of records to appellate courts.

(I) Upon receipt of the items specified in subparagraph (H) of this rule, the clerk of the transferee court shall assign the action an appropriate number and notify all parties and their respective counsel of record thereof. The action thereafter shall continue in the transferee court as though initially commenced there; all items specified in subparagraph (H) of this rule shall be deemed amended accordingly. It shall not be necessary that service of process be perfected a second time upon parties defendant, except that any publication required to be made in a newspaper in the proper venue shall be republished. Any interlocutory or other order theretofore entered in the action, upon the motion of any party, shall be reviewed, and thereafter reissued or vacated by the court to which the action was transferred.

Amended effective October 9, 1997.

### **Rule 19.2. Criminal**

When a criminal action is to be transferred to the superior court of a county different from that in which initially brought, the superior court judge granting the venue change, unless disqualified, shall continue as presiding judge in the action.

### **Rule 19.3. Contested Election Results**

In respect of actions contesting election results, venue change is not limited to the county adjoining that in which the action commenced, but may be made to an appropriate court in any county of the state; costs incident to the further handling and trial of such action shall be borne by the transferor county.

Amended effective March 14, 1996.

## **Rule 20. PEREMPTORY CALENDAR**

Periodically the assigned judge may cause to be delivered to the clerk of the court and published a list of pending civil actions in which the discovery period has expired or criminal cases upon reasonable notice requiring the parties (including the state) or their attorneys to announce whether the actions or cases appearing thereon are ready for trial and when trial should be scheduled. Failure to appear at the calendar sounding or otherwise to advise the judge or appropriate calendar clerk may result in the following disposition:

(A) In civil actions, the dismissal without prejudice of plaintiff's action or defendant's answer, counterclaim, or cross claim; and,

(B) In criminal cases, the acquitting of the accused defendant or the dead docketing of the case.

## **Rule 21. LIMITATION OF ACCESS TO COURT FILES**

All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below.

### **Rule 21.1. Motions and Orders**

Upon motion by any party to any civil or criminal action, or upon the court's own motion, after hearing, the court may limit access to court files respecting that action. The order of limitation shall specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for limitation.

Amended effective October 7, 2010.

### **Rule 21.2. Finding of Harm**

An order limiting access shall not be granted except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest.

### **Rule 21.3. Ex Parte Orders**

Under compelling circumstances, a motion for temporary limitation of access, not to exceed 30 days, may be granted, ex parte, upon motion accompanied by supporting affidavit.

### **Rule 21.4. Review**

An order limiting access may be reviewed by interlocutory application to the Supreme Court.

### **Rule 21.5. Amendments**

Upon notice to all parties of record and after hearing, an order limiting access may be reviewed and amended by the court entering such order or by the Supreme Court at any time on its own motion or upon the motion of any person for good cause.

## **Rule 22. ELECTRONIC AND PHOTOGRAPHIC NEWS COVERAGE OF JUDICIAL PROCEEDINGS**

Unless otherwise provided by rule of the Supreme Court or otherwise ordered by the assigned judge after appropriate hearing (conducted after notice to all parties and counsel of record) and findings, representatives of the print and electronic public media may be present at and unobtrusively make written notes and sketches pertaining to any judicial proceedings in the superior courts. However, due to the distractive nature of electronic or photographic equipment, representatives of the public media utilizing such equipment are subject to the following restrictions and conditions:

(A) Persons desiring to broadcast/record/photograph official court proceedings must file a timely written request (form attached as Exhibit "A") with the judge involved prior to the hearing or trial, specifying the particular calendar/case or proceedings for which such coverage is intended; the type equipment to be used in the courtroom; the trial, hearing or proceeding to be covered; and the person responsible for installation and operation of such equipment.

(B) Approval of the judge to broadcast/record/photograph a proceeding, if granted, shall be granted without partiality or preference to any person, news agency, or type of electronic or photographic coverage, who agrees to abide by and conform to these rules, up to the capacity of the space designated therefor in the courtroom. Violation of these rules will be grounds for a reporter/technician to be removed or excluded from the courtroom and held in contempt.

(C) The judge may exercise discretion and require pooled coverage which would allow only one still photographer, one television camera and attendant, and one radio or tape recorder outlet and attendant. Photographers, electronic reporters and technicians shall be expected to arrange among themselves pooled coverage if so directed by the judge and to present the judge with a schedule and description of the pooled coverage. If the covering persons cannot agree on such a schedule or arrangement, the schedule and arrangements for pooled coverage may be designated at the judge's discretion.

(D) The positioning and removal of cameras and electronic devices shall be done quietly and, if possible, before or after the court session or during recesses; in no event shall such disturb the proceedings of the court. In every such case, equipment should be in place and ready to operate before the time court is scheduled to be called to order.

(E) Overhead lights in the courtroom shall be switched on and off only by court personnel. No other lights, flashbulbs, flashes or sudden light changes may be used unless the judge approves beforehand.

(F) No adjustment of central audio system shall be made except by persons authorized by the judge. Audio recordings of the court proceedings will be from one source, normally by connection to the courts central audio system. Upon prior approval of the court, other microphones may be added in an unobtrusive manner to the court's public address system.

(G) All television cameras, still cameras and tape recorders shall be assigned to a specific portion of the public area of the courtroom or specially designed access areas, and such equipment will not be permitted to be removed or relocated during the court proceedings.

(H) Still cameras must have quiet functioning shutters and advancers. Movie and television cameras and broadcasting and recording devices must be quiet running. If any equipment is determined by the judge to be of such noise as to be distracting to the court proceedings, then such equipment can be excluded from the courtroom by the judge.

(I) Pictures of the jury, whether by still, movie, or television cameras, shall not be taken except where the jury happens to be in the background of other topics being photographed. Audio recordings of the jury foreperson's announcement of the verdict, statements or questions to the judge may be made. Photographs and televising of the public and the courtroom are allowed, if done without disruption to the court proceedings.

(J) Reporters, photographers, and technicians must have and produce upon request of court officials credentials identifying them and the media company for which they work.

(K) Court proceedings shall not be interrupted by a reporter or technician with a technical or an equipment problem.

(L) Reporters, photographers, and technicians should do everything possible to avoid attracting attention to themselves. Reporters, photographers, and technicians will be accorded full right of access to court proceedings for obtaining public information within the requirements of due process of law, so long as it is done without detracting from the dignity and decorum of the court.

(M) Other than as permitted by these rules and guidelines, there will be no photographing, radio or television broadcasting, including videotaping pertaining to any judicial proceedings on the courthouse floor where the trial, hearing or proceeding is being held or any other courthouse floor whereon is located a superior court courtroom, whether or not the court is actually in session.

(N) No interviews pertaining to a particular judicial proceeding will be conducted in the courtroom except with the permission of the judge.

(O) All media plans heretofore approved by the Supreme Court for superior courts are hereby repealed.

(P) A request for installation and use of electronic recording, transmission, videotaping or motion picture or still photography of any judicial proceeding shall be evaluated pursuant to the standards set forth in OCGA § 15-1-10.1.

EXHIBIT "A"

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

(STYLE OF CASE)

CASE NO. \_\_\_\_

REQUEST TO INSTALL RECORDING AND/OR PHOTOGRAPHING EQUIPMENT  
PURSUANT TO RULES AND GUIDELINES FOR ELECTRONIC AND PHOTOGRAPHIC  
NEWS COVERAGE OF JUDICIAL PROCEEDINGS.

Pursuant to Rule 22 of the Electronic and Photographic News Coverage of Judicial Proceedings in the Uniform Superior Court Rules, the undersigned hereby requests permission to install equipment in courtroom \_\_\_\_\_ in order to record, photograph or televise all or portions of the proceedings in the above captioned case.

Consistent with the provisions of the rules and guidelines, the undersigned desires to install the following described equipment: \_\_\_\_\_ in the following locations: \_\_\_\_\_. The proceedings that the undersigned desires to record, photograph or televise commence on (date) . Subject to direction from the court regarding possible pooled coverage, the undersigned wishes to install this equipment in the courtroom on (date) .The personnel who will be responsible for the installation and operation of this equipment during its use are: (identify appropriate personnel) .

The undersigned hereby certifies that the equipment to be installed and the locations and operation of such equipment will be in conformity with the rules and guidelines issued by the court.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Individual Signature)

\_\_\_\_\_  
(Representing/Firm)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

APPROVED:

Judge, Superior Court  
\_\_\_\_\_ Judicial Circuit

## **Rule 23. WITHDRAWAL OF FUNDS FROM COURT**

Upon any order being presented to a judge requiring the court clerk to pay out funds from the registry of the court, except in garnishment proceedings, counsel for the parties presenting the order shall at the same time submit to the court the following certificate executed by counsel:

I hereby certify that the order presented in case no. \_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, to draw down funds from the registry of court, is done with written consent of all parties, or their counsel, who have filed claims of record in this case, and whose interest has not previously been foreclosed by judicial decree. In condemnation matters only, I further certify that provision is made in this order for the payment of all local, state and federal government taxes, or assessments of record.

I understand that the truth of the statements contained in this certificate is a condition precedent to the issuance of a valid order to pay the funds from the registry of the court.

Date \_\_\_\_\_

Signed \_\_\_\_\_

Attorney for \_\_\_\_\_

## **Rule 24. DOMESTIC RELATIONS**

### **Rule 24.1. Scope of Domestic Relations Actions**

Domestic relations actions shall include actions for divorce, alimony, equitable division of assets and liabilities, child custody, child support, legitimation, annulment, paternity actions, termination of parental rights in connection with adoption proceedings filed in superior court, contempt proceedings relating to enforcement of decrees and orders, petitions in respect to modification of decrees and orders, actions under the Family Violence Act, actions on foreign judgments based on alimony or child support, and adoptions. Domestic relations actions shall also include any direct or collateral attacks on judgments or orders entered in any such actions.

Amended effective May 15, 1997.

### **Rule 24.2. Financial Data Required; Scheduling and Notice of Temporary Hearing**

Except as noted below, at least fifteen (15) days before any temporary or final hearing in any action for temporary or permanent child support, alimony, equitable division of property, modification of child support or alimony or attorneys fees, the party requesting such hearing shall file with the Clerk of Court and serve upon the opposing party the affidavit specifying his or her financial circumstances in the form set forth herein. In cases involving child support, the worksheet and schedules required by OCGA § 19-6-15 and only as promulgated by the Georgia Child Support Commission, shall be completed insofar as possible and filed with the clerk and shall be served upon the opposing party contemporaneously with the filing of the affidavit required above. In emergency actions, the affidavit, worksheet and schedules may be filed and served on or before the date of the hearing or at such other time as the Court orders.

In cases filed with complete separation agreements or consent orders resolving all issues but the issue of divorce, the parties are not required to file financial affidavits, unless otherwise ordered by the Court. In cases involving child support the parties must attach to the proposed final judgment a completed worksheet and any applicable schedules. In addition, the separation agreement must include the parties' gross and adjusted incomes.

The Office of Child Support Services is exempt from filing financial affidavits.

Notice of the date of any temporary hearing shall be served upon the adverse party at least fifteen (15) days before the date of the hearing, unless otherwise ordered by the Court.

Within five (5) days of service of the affidavit and worksheet and schedules (where applicable) unless the Court shortens or enlarges the time, the opposing party shall file with the clerk and serve upon the other party the affidavit specifying his or her financial circumstances in the form set forth herein and the worksheet and schedules, completed insofar as possible.

The parties shall file with the clerk and serve upon each other the affidavit and worksheet and schedules (where applicable) at least ten (10) days prior to any court-ordered mediation or other alternative dispute resolution proceeding.

In any case in which a party has previously filed and served the affidavit, worksheet and schedules and thereafter amends the affidavit or worksheet and schedules, any such amendments shall be served upon the opposing party at least ten (10) days prior to final hearing or trial and shall be filed with the Clerk of Court at or before trial.

On the request of either party, and upon good cause shown to the Court, the affidavits, worksheets, schedules, and any other financial information may be sealed, upon order of the Court.

No social security numbers or account numbers shall be included in any document filed with the Court pursuant to this rule. Each account shall be specified by financial institution and a partial account number. No party shall be required to include full account numbers.

Failure of any party to furnish the above financial information, in the discretion of the Court, may subject the offending party to the penalties of contempt and may result in continuance of the hearing until such time as the required financial information is furnished or such other sanctions or remedies deemed appropriate in the Court's discretion.

Notwithstanding the time limits contained in this rule, the Court may decide a matter without strict adherence to a time limitation, if the financial information was known or reasonably available to the other party, or if a continuance would result in a manifest injustice to a party.

The affidavit shall be under oath and in substantially the following form:



In the Superior Court of \_\_\_\_\_ County, Georgia

)

\_\_\_\_\_, Plaintiff )

vs. )

Civil Action No. \_\_\_\_\_

)

\_\_\_\_\_, Defendant )

DOMESTIC RELATIONS FINANCIAL AFFIDAVIT

1. AFFIANT'S NAME: \_\_\_\_\_ Age \_\_\_\_\_

Spouse's Name: \_\_\_\_\_ Age \_\_\_\_\_

Date of Marriage: \_\_\_\_\_ Date of Separation \_\_\_\_\_

Names and birth dates of children for whom support is to be determined in this action:

Name	Date of Birth	Resides with
------	---------------	--------------

_____	_____	_____
_____	_____	_____
_____	_____	_____

Names and birth dates of affiant's other children:

Name	Date of Birth	Resides with
------	---------------	--------------

_____	_____	_____
_____	_____	_____
_____	_____	_____

2. SUMMARY OF AFFIANT'S INCOME AND NEEDS

(a) Gross monthly income (from item 3A) \$ \_\_\_\_\_

(b) Net monthly income (from item 3B) \_\_\_\_\_

(c) Average monthly expenses (item 5A) \$ \_\_\_\_\_

Monthly payments to creditors + \_\_\_\_\_

Total monthly expenses and payments to creditors (item 5C) \_\_\_\_\_

3. A. AFFIANT'S GROSS MONTHLY INCOME (complete this section or attach Child Support Schedule A)

(All income must be entered based on monthly average regardless of date of receipt.)

Salary or Wages \$ \_\_\_\_\_

ATTACH COPIES OF 2 MOST RECENT WAGE STATEMENTS

Commissions, Fees, Tips \$ \_\_\_\_\_

Income from self-employment, partnership, close corporations,  
and independent contracts (gross receipts minus ordinary  
and necessary expenses required to produce income)

ATTACH SHEET ITEMIZING YOUR CALCULATIONS \$ \_\_\_\_\_

Rental Income (gross receipts minus ordinary and  
necessary expenses required to produce income)

ATTACH SHEET ITEMIZING YOUR CALCULATIONS \$ \_\_\_\_\_

Bonuses \$ \_\_\_\_\_

Overtime Payments \$ \_\_\_\_\_

Severance Pay \$ \_\_\_\_\_

Recurring Income from Pensions or Retirement Plans \$ \_\_\_\_\_

Interest and Dividends \$ \_\_\_\_\_

Trust Income \$ \_\_\_\_\_

Income from Annuities \$ \_\_\_\_\_

Capital Gains \$ \_\_\_\_\_

Social Security Disability or Retirement Benefits \$ \_\_\_\_\_

Workers' Compensation Benefits \$ \_\_\_\_\_

Unemployment Benefits \$ \_\_\_\_\_

Judgments from Personal Injury or Other Civil Cases \$ \_\_\_\_\_

Gifts (cash or other gifts that can be converted to cash) \$ \_\_\_\_\_

Prizes/Lottery Winnings \$ \_\_\_\_\_

Alimony and maintenance from persons not in this case \$ \_\_\_\_\_

Assets which are used for support of family \$ \_\_\_\_\_

Fringe Benefits (if significantly reduce living expenses) \$ \_\_\_\_\_

Any other income (do NOT include means-tested Public assistance, such as TANF or food stamps) \$ \_\_\_\_\_

GROSS MONTHLY INCOME \$ \_\_\_\_\_

B. Affiant's Net Monthly Income from employment (deducting only state and federal taxes and FICA) \$ \_\_\_\_\_

Affiant's pay period (i.e., weekly, monthly, etc.) \_\_\_\_\_

Number of exemptions claimed \_\_\_\_\_

4. ASSETS

(If you claim or agree that all or part of an asset is non-marital, indicate the non-marital portion under the appropriate spouse's column and state the amount and the basis: pre-marital, gift, inheritance, source of funds, etc.).

Description	Value	Separate Asset of the Husband	Separate Asset of the Wife	Basis of the Claim
Cash	\$ _____	_____	_____	_____
Stocks, bonds	\$ _____	_____	_____	_____
CD's/Money Market Accounts	\$ _____	_____	_____	_____
Bank Accounts (list each account):				
_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	_____	_____
Retirement Pensions, 401K, IRA, or Profit Sharing	\$ _____	_____	_____	_____
Money owed you:	\$ _____	_____	_____	_____
Tax Refund owed you:	\$ _____	_____	_____	_____

Real Estate:				
home:	\$ _____	_____	_____	_____
debt owed:	\$ _____			
other:	\$ _____	_____	_____	_____
debt owed:	\$ _____			
Automobiles/Vehicles:				
Vehicle 1:	\$ _____	_____	_____	_____
debt owed:	\$ _____			
Vehicle 2:	\$ _____	_____	_____	_____
debt owed:	\$ _____			
Life Insurance				
(net cash value):	\$ _____	_____	_____	_____
Furniture/furnishings:	\$ _____	_____	_____	_____
Jewelry:	\$ _____	_____	_____	_____
Collectibles:	\$ _____	_____	_____	_____
Other Assets:	\$ _____	_____	_____	_____
_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	_____	_____
Total Assets:	\$ _____	_____	_____	_____

5. A. AVERAGE MONTHLY EXPENSES

HOUSEHOLD

Mortgage or rent payments	\$ _____
Property taxes	\$ _____
Homeowner/Renter Insurance	\$ _____
Electricity	\$ _____
Water	\$ _____
Garbage and Sewer	\$ _____
Telephone:	
residential line:	\$ _____
cellular telephone:	\$ _____
Gas	\$ _____
Repairs and maintenance	\$ _____
Lawn Care	\$ _____
Pest Control	\$ _____
Cable TV	\$ _____

Misc. household and grocery items	\$ _____
Meals outside the home	\$ _____
Other	\$ _____

**AUTOMOBILE**

Gasoline and oil	\$ _____
Repairs	\$ _____
Auto tags and license	\$ _____
Insurance	\$ _____

**OTHER VEHICLES**

(boats, trailers, RVs, etc.)

Gasoline and oil	\$ _____
Repairs	\$ _____
Tags and license	\$ _____
Insurance	\$ _____

**CHILDREN’S EXPENSES**

Child care (total monthly cost)	\$ _____
School tuition	\$ _____
Tutoring	\$ _____
Private lessons (e.g., music, dance)	\$ _____
School supplies/expenses	\$ _____
Lunch Money	\$ _____
Other Educational Expenses (list)	\$ _____

_____	\$ _____
_____	\$ _____

Allowance	\$ _____
Clothing	\$ _____
Diapers	\$ _____
Medical, dental, prescription (out of pocket/uncovered expenses)	\$ _____
Grooming, hygiene	\$ _____
Gifts from children to others	\$ _____
Entertainment	\$ _____
Activities (including extra-curricular, school, religious, cultural, etc.)	\$ _____
Summer Camps	\$ _____

**AFFIANT’S OTHER EXPENSES**

Dry cleaning/laundry	\$ _____
Clothing	\$ _____
Medical, dental, prescription (out of pocket/uncovered expenses)	\$ _____
Affiant’s gifts (special holidays)	\$ _____
Entertainment	\$ _____

Recreational Expenses (e.g., fitness) \$ \_\_\_\_\_  
 Vacations \$ \_\_\_\_\_  
 Travel Expenses for Visitation \$ \_\_\_\_\_  
 Publications \$ \_\_\_\_\_  
 Dues, clubs \$ \_\_\_\_\_  
 Religious and charities \$ \_\_\_\_\_  
 Pet expenses \$ \_\_\_\_\_  
 Alimony paid to former spouse \$ \_\_\_\_\_  
 Child support paid for other children \$ \_\_\_\_\_  
 Date of initial order: \_\_\_\_\_  
 Other (attach sheet) \$ \_\_\_\_\_

**OTHER INSURANCE**

Health \$ \_\_\_\_\_  
 Child(ren)'s portion: \$ \_\_\_\_\_

Dental \$ \_\_\_\_\_  
 Child(ren)'s portion: \$ \_\_\_\_\_

Vision \$ \_\_\_\_\_  
 Child(ren)'s portion: \$ \_\_\_\_\_

Life \$ \_\_\_\_\_  
 Relationship of Beneficiary: \_\_\_\_\_

Disability \$ \_\_\_\_\_

Other (specify): \$ \_\_\_\_\_  
**TOTAL ABOVE EXPENSES** \$ \_\_\_\_\_

**B. PAYMENTS TO CREDITORS**

(please check one)

To Whom:	Balance Due	Monthly Payment	Joint Plaintiff	Defendant
_____				
_____				
_____				
_____				

**TOTAL MONTHLY PAYMENTS TO CREDITORS:** \$ \_\_\_\_\_

**C. TOTAL MONTHLY EXPENSES:** \$ \_\_\_\_\_

Personally appeared before me, an officer authorized to administer oaths, the undersigned affiant, who upon being sworn, swears that he/she is legally competent to make this affidavit,

that the affidavit is based upon personal knowledge, and that the contents of the affidavit are true.

\_\_\_\_\_  
Affiant

Sworn to and subscribed  
before me, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_

Amended effective January 18, 1990; October 28, 1993; amended November 4, 1999, effective December 16, 1999; amended effective August 12, 2004; January 18, 2007; May 24, 2007; January 17, 2008; October 23, 2008; September 17, 2009; October 7, 2010; September 29, 2011.

### **Rule 24.2A. Monthly Figures Required; Week to Month Multipliers**

In all domestic cases in which a conversion of economic data from weekly to monthly must be made, a conversion factor of 4.35 weeks per month shall be used.

In calculating monthly income based upon a forty hour work week, hourly salary shall be multiplied by 174 hours.

Adopted effective January 17, 2008.

### **Rule 24.3. Acknowledgement and Waivers**

All acknowledgements of service must be witnessed by an official attesting officer or the parties' counsel. Consent of the parties must be signed by both parties and each signature witnessed in the same manner as required for acknowledgements of service.

Amended effective March 9, 1989.

### **Rule 24.4. Notice of Temporary Hearings in Cases Not Involving Financial Matters**

Notice of temporary hearings in all domestic relations cases not involving financial matters shall be given to the opposing party in accordance with the notice provisions of Rule 24.2.

Adopted effective September 29, 2011.

### **Rule 24.5. Witnesses in Domestic Relations Actions**

(A) At temporary hearings the parties involved and one additional witness for each side may give oral testimony. Additional witnesses must testify by deposition or affidavit unless otherwise ordered by the court. Any affidavit shall be served on opposing counsel at least 24 hours prior to hearing.

(B) Except by leave of court, the minor child/children of the parties shall not be permitted to give oral testimony at temporary hearings; such child/children will be excluded from the courtroom or

other place of hearing. When custody is in dispute, if directed by the court, minor child/children of the parties shall be available for consultation with the court. At any such consultation, attorneys for both parties may be in attendance but shall not interrogate such child/children except by express permission from the court. Upon request, the proceedings in chambers shall be recorded.

#### **Rule 24.6. Uncontested Divorce Actions**

Uncontested divorce actions may be heard at times agreeable to counsel and the court, subject to the following rules:

(A) By written consent of both parties to a hearing a divorce may be granted any time 31 days after service or filing acknowledgment of service.

(B) In an unanswered action, a divorce may be granted any time 46 days after service, unless the time for response has been extended by court order.

(C) A divorce action served by publication may be granted any time suitable to the judge and attorneys 61 days or more after date of the first publication.

(D) All divorce actions with orders for publication or acknowledgments of service should be filed prior to or contemporaneously with the signing of the order or acknowledgment.

#### **Rule 24.7. Contested Divorce Actions**

Although the court may, in appropriate cases, grant judgment on the pleadings or summary judgment that the moving party is entitled to a divorce as a matter of law, no divorce decree shall be granted unless all contestable issues in the case have been finally resolved.

#### **Rule 24.8. Court Mandated Programs in Domestic Relations Cases**

(A) There may be established by any superior court circuit a program designed to educate the parties to domestic relations actions in regard to the effects of divorce on minor children of the marriage. Establishment of the program shall be by majority vote of the judges of the circuit or by the chief judge, in the event of a tie vote by all judges.

(B) The superior court judges, under whose authority the program shall function, may require any or all parties to attend an educational seminar of no more than four hours in any domestic relations action before the court. The program may be administered by the court or by contract with a private agency. The seminar shall be conducted by qualified personnel whose professional and educational experiences include a knowledge of children and families.

(C) The seminar shall focus on the effects of divorce on children, specifically as it relates to the parents' actions during and after the separation, and as it relates to the children at different developmental stages. Specific attention should be given to the effects of the economics of divorce on children.



(D) The court or contracted agency may charge each participant a fee, provided there is a fee waiver procedure in cases of indigent parties. The fee may be assessed in addition to court costs against either party in the discretion of the judge. The program shall be non profit.

(E) The mandate of attendance shall be by court order with the assigned judge retaining the discretion to waive attendance for good cause shown. Such good cause may include: a party's non residence in Georgia or in the county in which the action is pending or the reasonable availability of a similar program to the party or other such reasonable causes which indicate to the court that a party should not be required to complete the program. The court may, in its discretion, accept alternative counseling covering the subject matter of the required seminar. Unless waived, the failure to successfully complete the seminar shall be cause for appropriate action by the assigned judge, including but not limited to, withholding the final decree of divorce, attachment for contempt and award of attorneys' fees and costs.

(F) The assigned judge may, as a discretionary matter, grant a final decree of divorce completion of the seminar, but shall retain authority to impose sanctions upon either party who fails or refuses to comply with the order to attend and complete the seminar.

(G) The various courts which have established a seminar may make reciprocal agreements which would allow a party to attend an approved out of county seminar as a substitute for attending the seminar held in the county in which the action is pending.

Rule 24.8 adopted effective May 26, 1994.

## **Rule 24.9. Appointment, Qualification and Role of a Guardian ad Litem**

### **1. Appointment**

The Guardian ad Litem ("GAL") is appointed to assist in a domestic relations case by the superior court judge assigned to hear that particular case, or otherwise having the responsibility to hear such case. The appointing judge has the discretion to appoint any person as a GAL so long as the person so selected has been trained as a GAL or is otherwise familiar with the role, duties, and responsibilities as determined by the judge. The GAL may be selected through an intermediary.

### **2. Qualifications**

A GAL shall receive such training as provided by or approved by the Circuit in which the GAL serves. This training should include, but not be limited to, instruction in the following subjects: domestic relations law and procedure, including the appropriate standard to be applied in the case; domestic relations courtroom procedure; role, duties, and responsibilities of a GAL; recognition and assessment of a child's best interests; methods of performing a child custody/visitation investigation; methods of obtaining relevant information concerning a child's best interest; the ethical obligations of a GAL, including the relationship between the GAL and counsel, the GAL and the child, and the GAL and the court; recognition of cultural and economic diversity in families and communities; base child development, needs, and abilities at different ages; interviewing techniques; communicating with children; family dynamics and dysfunction, domestic violence and substance abuse; recognition of issues of child abuse; and available

services for child welfare, family preservation, medical, mental health, educational, and special needs, including placement/evaluation/diagnostic treatment services.

### **3. Role and Responsibilities**

The GAL shall represent the best interests of the child. The GAL is an officer of the court and shall assist the court and the parties in reaching a decision regarding child custody, visitation and child-related issues. Should the issue of child custody and/or visitation be tried, the GAL shall be available to offer testimony in accordance with provision 6 and 7 herein.

The GAL holds a position of trust with respect to the minor child at issue, and must exercise due diligence in the performance of his/her duties. A GAL should be respectful of, and should become educated concerning, cultural and economic diversity as may be relevant to assessing a child's best interests.

A GAL's appointment, unless ordered otherwise by the Court for a specific designated period, terminates upon final disposition of all matters pertaining to child custody, visitation and child-related issues. The GAL shall have the authority to bring a contempt action, or other appropriate remedy, to recover court-ordered fees for the GAL's services.

### **4. Duties**

By virtue of the order appointing a GAL, a GAL shall have the right to request all records relating to the minor child maintained by the Clerk of the Court in this and any other jurisdiction, other social and human service agencies, the Department of Family and Children Services, and the Juvenile Court. Upon written release and/or waiver by a party or appropriate court order, the GAL shall have the right to examine all records maintained by any school, financial institution, hospital, doctor or other mental health provider, any other social or human services agency or financial institution pertaining to the child which are deemed confidential by the service provider. The GAL shall have the right to examine any residence wherein any person seeking custody or visitation rights proposes to house the minor child. The GAL may request the court to order examination of the child, parents or anyone seeking custody of the child, by a medical or mental health professional, if appropriate. The GAL shall be entitled to notice of, and shall be entitled to participate in all hearings, trials, investigations, depositions, settlement negotiations, or other proceedings concerning the child.

### **5. Release to GAL of a Party's Confidential Information from Non-Parties**

A GAL's right to request and receive documents and information from mental health professionals, counselors, and others with knowledge of a confidential nature concerning a party is conditional upon the party agreeing to sign a release allowing the GAL access to such records and information.

### **6. Written Report**

Unless otherwise directed by the appointing judge, the GAL shall submit to the parties or counsel and to the Court a written report detailing the GAL 's findings and recommendations at such time as may be directed by the assigned judge. At trial, the report shall be admitted into evidence for direct evidence and impeachment purposes, or for any other purposes allowed by the laws of this

state. The court will consider the report, including the recommendations, in making its decision. However, the recommendations of the GAL are not a substitute for the court's independent discretion and judgment, nor is the report a substitute for the GAL's attendance and testimony at the final hearing, unless all parties otherwise agree.

*a. Contents of Report*

The report shall summarize the GAL's investigation, including identifying all sources the GAL contacted or relied upon in preparing the report. The GAL shall offer recommendations concerning child custody, visitation, and child-related issues and the reasons supporting those recommendations.

*b. Release of Report to Counsel and Parties*

The Report shall be released to counsel (including counsel's staff and experts) and parties only, and shall not be further disseminated unless otherwise ordered by the Court.

*c. Release of GAL's File to Counsel*

If ordered by the Court, the parties and their counsel shall be allowed to review and/or copy (and shall pay the cost of same) the contents of the GAL's file.

*d. Unauthorized Dissemination of GAL's Report and Contents of File*

Any unauthorized dissemination of the GAL's Report, its contents or the contents of the GAL's file by a party or counsel to any person, shall be subject to sanctions, including a finding of contempt by the Court.

*e. Sealing of Written Report*

If filed, the Report shall be filed under seal by the Clerk of Superior Court in order to preserve the security, privacy, and best interests of the children at issue.

**7. Role at Hearing and Trial**

It is expected that the GAL shall be called as the Court's witness at trial unless otherwise directed by the Court. The GAL shall be subject to examination by the parties and the court. The GAL is qualified as an expert witness on the best interest of the child(ren) in question.

The GAL may testify as to the foundation provided by witnesses and sources, and the results of the GAL's investigation, including a recommendation as to what is in a child's best interest. The GAL shall not be allowed to question witnesses or present argument, absent exceptional circumstances and upon express approval of the Court.

**8. General and Miscellaneous Provisions**

*a. Requesting Mental Fitness and Custody Evaluations*

Based upon the facts and circumstances of the case, a GAL may request the Court to order the parties to undergo mental fitness and/or custody evaluations to be performed by a mental health expert approved by the Court. The Court shall provide for the parties' responsibility for payment of fees to the appointed experts.

*b. Filing Motions and Pleadings*

If appropriate, the GAL may file motions and pleadings if the GAL determines that the filing of such motion or pleading is necessary to preserve, promote, or protect the best interest of a child. This would include the GAL's right to file appropriate discovery requests and request the issuance of subpoenas. Upon the filing of any such motions or pleadings, the GAL shall promptly serve all parties with copies of such filings.

*c. Right to Receive Notice of Mediations, Hearings and Trials*

Counsel shall notify the GAL of the date and time of all mediations, depositions, hearings and trials or other proceedings concerning the child(ren). Counsel shall serve the GAL with proper notice of all legal proceedings, court proceedings wherein the child(ren)'s interests are involved and shall provide the GAL with proper and timely written notice of all noncourt proceedings involving the child(ren)'s interests.

*d. Approval of Settlement Agreements*

If the parties reach an Agreement concerning issues affecting the best interest of a child, the GAL shall be so informed and shall have the right and opportunity to make objections to the Court to any proposed settlement of issues relating to the children prior to the Court approving the Agreement.

*e. Communications Between GAL and Counsel*

A GAL may communicate with a party's counsel without including the other counsel in the same conversation, meeting or, if by writing, notice of the communication. When communicating with the GAL, counsel is not required to notify opposing counsel of the communication or, if in writing, provide opposing counsel with a copy of the communication to the GAL.

*f. Ex Parte Communication Between GAL and the Court*

The GAL shall not have *ex parte* communications with the Court except in matters of emergency concerning the child's welfare or upon the consent of the parties or counsel. Upon making emergency concerns known to the Court, the GAL may request an immediate hearing to address the emergency. Notification shall be provided immediately to the parties and counsel of the nature of the emergency and time of hearing.

*g. Payment of GAL Fees and Expenses*

It shall be within the Court's discretion to determine the amount of fees awarded to the GAL, and how payment of the fees shall be apportioned between the parties. The GAL's requests for fees shall be considered, upon application properly served upon the parties and after an opportunity to be heard, unless waived. In the event the GAL determines that extensive travel outside of the circuit in which the GAL is appointed or other extraordinary expenditures are necessary, the GAL may petition the Court in advance for payment of such expenses by the parties.

*h. Removal of GAL from the Case*

Upon motion of either party or upon the court’s own motion, the court may consider removing the GAL from the case for good cause shown.

Adopted effective May 19, 2005; amended effective April 23, 2009.

**Rule 24.10. Parenting Plans**

In all cases involving permanent custody or custody modification (except when a parent seeks emergency relief for family violence), each parent shall prepare and submit a parenting plan, or the parties may jointly submit a parenting plan, as directed by the judge.

The parenting plan should be tailored to fit the needs of each individual family but must at a minimum contain the information required by OCGA section 19-9-1 (b) and be presented in substantially the following form:

\_\_\_\_\_ COUNTY SUPERIOR COURT  
STATE OF GEORGIA

Plaintiff, )  
 ) Civil Action  
 )  
vs. ) Case Number \_\_\_\_\_  
 )  
Defendant. )

**PARENTING PLAN**

( ) The parties have agreed to the terms of this plan and this information has been furnished by both parties to meet the requirements of OCGA Section 19-9-1. The parties agree on the terms of the plan and affirm the accuracy of the information provided, as shown by their signatures at the end of this order.

( ) This plan has been prepared by the judge.

This plan ( ) is a new plan.  
( ) modifies an existing Parenting Plan dated \_\_\_\_\_.  
( ) modifies an existing Order dated \_\_\_\_\_.

Child’s Name	Date of Birth


**I. Custody and Decision Making:**

**A. Legal Custody shall be (choose one):**

- with the Mother
- with the Father
- Joint

**B. Primary Physical Custodian**

For each of the children named below the primary physical custodian shall be:

	d/o/b:	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Joint
	d/o/b:	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Joint
	d/o/b:	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Joint
	d/o/b:	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Joint
	d/o/b:	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Joint

WHERE JOINT PHYSICAL CUSTODY IS CHOSEN BY THE PARENTS OR ORDERED BY THE COURT, A DETAILED PLAN OF THE LIVING ARRANGEMENTS OF THE CHILD(REN) SHALL BE ATTACHED AND MADE A PART OF THIS PARENTING PLAN.

**C. Day-To-Day Decisions**

Each parent shall make decisions regarding the day-to-day care of a child while the child is residing with that parent, including any emergency decisions affecting the health or safety of a child.

**D. Major Decisions**

Major decisions regarding each child shall be made as follows:

- Educational decisions                     mother       father       joint
- Non-emergency health care             mother       father       joint

Religious upbringing	<input type="checkbox"/> mother	<input type="checkbox"/> father	<input type="checkbox"/> joint
Extracurricular activities	<input type="checkbox"/> mother	<input type="checkbox"/> father	<input type="checkbox"/> joint
_____	<input type="checkbox"/> mother	<input type="checkbox"/> father	<input type="checkbox"/> joint
_____	<input type="checkbox"/> mother	<input type="checkbox"/> father	<input type="checkbox"/> joint

**E. Disagreements**

Where parents have elected joint decision making in Section I.D above, please explain how any disagreements in decision-making will be resolved.

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**II. Parenting Time/Visitation Schedules**

**A. Parenting Time/Visitation**

During the term of this parenting plan the non-custodial parent shall have at a minimum the following rights of parenting time/visitation (choose an item):

- The weekend of the first and third Friday of each month.
- The weekend of the first, third, and fifth Friday of each month.
- The weekend of the second and fourth Friday of each month.
- Every other weekend starting on \_\_\_\_\_.
- Each \_\_\_\_\_ starting at \_\_\_\_\_ a.m./p.m. and ending \_\_\_\_\_ a.m./p.m.
- Other: \_\_\_\_\_

- and weekday parenting time/visitation on (choose an item):
- None
- Every Wednesday Evening
- Every other Wednesday during the week prior to a non-visitation weekend.
- Every \_\_\_\_\_ and \_\_\_\_\_ evening.
- Other: \_\_\_\_\_

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For purposes of this parenting plan, a weekend will start at \_\_\_\_\_ a.m./p.m. on [Thursday / Friday / Saturday / Other: \_\_\_\_\_ ] and end at \_\_\_\_\_ a.m./p.m. on [Sunday / Monday / Other: \_\_\_\_\_ ].

Weekday visitation will begin at \_\_\_\_ a.m./p.m. and will end [\_\_p.m. / when the child(ren) return(s) to school or day care the next morning / Other:\_\_\_\_\_ ].

This parenting schedule begins:

( ) \_\_\_\_\_ OR ( ) date of the Court's Order  
(day and time)

**B. Major Holidays and Vacation Periods**

**Thanksgiving**

The day to day schedule shall apply unless other arrangements are set forth:

\_\_\_\_\_  
\_\_\_\_\_  
beginning \_\_\_\_\_.

**Winter Vacation**

The ( ) mother ( ) father shall have the child(ren) for the first period from the day and time school is dismissed until December \_\_\_\_ at \_\_\_\_\_ a.m./p.m. in ( ) odd numbered years ( ) even numbered years ( ) every year. The other parent will have the child(ren) for the second period from the day and time indicated above until 6:00 p.m. on the evening before school resumes. Unless otherwise indicated, the parties shall alternate the first and second periods each year.

Other agreement of the parents:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**Summer Vacation**

Define summer vacation period: \_\_\_\_\_

The day to day schedule shall apply unless other arrangements are set forth:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ beginning \_\_\_\_\_.

**Spring Vacation (if applicable)**

Define: \_\_\_\_\_

The day to day schedule shall apply unless other arrangements are set forth:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ beginning \_\_\_\_\_.



**Fall Vacation (if applicable)**

Define: \_\_\_\_\_

The day to day schedule shall apply unless other arrangements are set forth:

\_\_\_\_\_

beginning \_\_\_\_\_.

**C. Other Holiday Schedule (if applicable)**

*Indicate if child(ren) will be with the parent in ODD or EVEN numbered years or indicate EVERY year:*

	<b>MOTHER</b>	<b>FATHER</b>
Martin Luther King Day	_____	_____
Presidents' Day	_____	_____
Mother's Day	_____	_____
Memorial Day	_____	_____
Father's Day	_____	_____
July Fourth	_____	_____
Labor Day	_____	_____
Halloween	_____	_____
Child(ren)'s Birthday(s)	_____	_____
Mother's Birthday	_____	_____
Father's Birthday	_____	_____
Religious Holidays:	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Other: _____	_____	_____
	_____	_____
	_____	_____
Other: _____	_____	_____
Other: _____	_____	_____
	_____	_____

**D. Other extended periods of time during school, etc. (refer to the school schedule)**

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**E. Start and end dates for holiday visitation**

For the purposes of this parenting plan, the holiday will start and end as follows (choose one):

- ( ) Holidays that fall on Friday will include the following Saturday and Sunday
- ( ) Holidays that fall on Monday will include the preceding Saturday and Sunday
- ( ) Other: \_\_\_\_\_

**F. Coordination of Parenting Schedules**

Check if applicable:

- ( ) The holiday parenting time/visitation schedule takes precedence over the regular parenting time/visitation schedule.
- ( ) When the child(ren) is/are with a parent for an extended parenting time/visitation period (such as summer), the other parent shall be entitled to visit with the child(ren) during the extended period, as follows:

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**G. Transportation Arrangements**

For visitation, the place of meeting for the exchange of the child(ren) shall be:

---

---

The \_\_\_\_\_ will be responsible for transportation of the child at the beginning of visitation.

The \_\_\_\_\_ will be responsible for transportation of the child at the conclusion of visitation.

Transportation costs, if any, will be allocated as follows:

---

---

Other provisions: \_\_\_\_\_

**H. Contacting the Child**

When the child or children are in the physical custody of one parent, the other parent will have the right to contact the child or children as follows:

Telephone

Other: \_\_\_\_\_

Limitations on contact:

\_\_\_\_\_

**I. Supervision of Parenting Time (if applicable)**

Check here if Applicable

Supervised parenting time shall apply during the day-to-day schedule as follows:

Place: \_\_\_\_\_

Person/Organization supervising: \_\_\_\_\_

Responsibility for cost:

mother       father       both equally

**J. Communication Provisions**

Please check:

Each parent shall promptly notify the other parent of a change of address, phone number or cell phone number. A parent changing residence must give at least 30 days notice of the change and provide the full address of the new residence.

Due to prior acts of family violence, the address of the child(ren) and victim of family violence shall be kept confidential. The protected parent shall promptly notify the other parent, through a third party, of any change in contact information necessary to conduct visitation.

**III. Access to Records and Information**

**Rights of the Parents**

Absent agreement to limitations or court ordered limitations, pursuant to O.C.G.A. § 19-9-1 (b) (1) (D), both parents are entitled to access to all of the child(ren)'s records and information, including, but not limited to, education, health, extracurricular activities, and religious communications. Designation as a non-custodial parent does not affect a parent's right to equal access to these records.

Limitations on access rights: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Other Information Sharing Provisions:

\_\_\_\_\_

\_\_\_\_\_

---

**IV. Modification of Plan or Disagreements**

Parties may, by mutual agreement, vary the parenting time/visitation; however, such agreement shall not be a binding court order. Custody shall only be modified by court order.

Should the parents disagree about this parenting plan or wish to modify it, they must make a good faith effort to resolve the issue between them.

**V. Special Considerations**

Please attach an addendum detailing any special circumstances of which the Court should be aware (e.g., health issues, educational issues, etc.)

---

**VI. Parents' Consent**

Please review the following and initial:

1. We recognize that a close and continuing parent-child relationship and continuity in the child's life is in the child's best interest.

Mother's Initials: \_\_\_\_\_ Father's Initials: \_\_\_\_\_

1. We recognize that our child's needs will change and grow as the child matures; we have made a good faith effort to take these changing needs into account so that the need for future modifications to the parenting plan are minimized.

Mother's Initials: \_\_\_\_\_ Father's Initials: \_\_\_\_\_

3. We recognize that the parent with physical custody will make the day-to-day decisions and emergency decisions while the child is residing with such parent.

Mother's Initials: \_\_\_\_\_ Father's Initials: \_\_\_\_\_

( ) We knowingly and voluntarily agree on the terms of this Parenting Plan. Each of us affirms that the information we have provided in this Plan is true and correct.

---

Father's Signature

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Mother's Signature

**ORDER**

The Court has reviewed the foregoing Parenting Plan, and it is hereby made the order of this Court.

This Order entered on \_\_\_\_\_, 20 \_\_\_\_ .

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JUDGE

\_\_\_\_\_ COUNTY SUPERIOR COURT

Adopted effective May 1, 2008.

## **Rule 25. RECUSAL**

### **Rule 25.1. Motions**

All motions to recuse or disqualify a judge presiding in a particular case or proceeding shall be timely filed in writing and all evidence thereon shall be presented by accompanying affidavit(s) which shall fully assert the facts upon which the motion is founded. Filing and presentation to the judge shall be not later than five (5) days after the affiant first learned of the alleged grounds for disqualification, and not later than ten (10) days prior to the hearing or trial which is the subject of recusal or disqualification, unless good cause be shown for failure to meet such time requirements. In no event shall the motion be allowed to delay the trial or proceeding.

Amended effective January 31, 1991.

### **Rule 25.2. Affidavit**

The affidavit shall clearly state the facts and reasons for the belief that bias or prejudice exists, being definite and specific as to time, place, persons and circumstances of extra judicial conduct or statements, which demonstrate either bias in favor of any adverse party, or prejudice toward the moving party in particular, or a systematic pattern of prejudicial conduct toward persons similarly situated to the moving party, which would influence the judge and impede or prevent impartiality in that action. Allegations consisting of bare conclusions and opinions shall not be legally sufficient to support the motion or warrant further proceedings.

Amended effective January 31, 1991.

### **Rule 25.3. Duty of the Trial Judge**

When a judge is presented with a motion to recuse, or disqualify, accompanied by an affidavit, the judge shall temporarily cease to act upon the merits of the matter and shall immediately determine the timeliness of the motion and the legal sufficiency of the affidavit, and make a determination, assuming any of the facts alleged in the affidavit to be true, whether recusal would be warranted. If it is found that the motion is timely, the affidavit sufficient and that recusal would be authorized if some or all of the facts set forth in the affidavit are true, another judge shall be assigned to hear the motion to recuse. The allegations of the motion shall stand denied automatically. The trial judge shall not otherwise oppose the motion.

Former Rule 25.2 renumbered as Rule 25.3 and amended effective January 31, 1991.

### **Rule 25.4. Procedure Upon a Motion for Disqualification**

The motion shall be assigned for hearing to another judge, who shall be selected in the following manner:

- (A) If within a single judge circuit, the district administrative judge shall select the judge;
- (B) If within a two judge circuit, the other judge, unless disqualified, shall hear the motion;

(C) If within a multi judge circuit, composed of three (3) or more judges, selection shall be made by use of the circuits existing random, impartial case assignment method. If the circuit does not have random, impartial case assignment rules, then assignment shall be made as follows:

(1) The chief judge of the circuit shall select a judge within the circuit to hear the motion, unless the chief judge is the one against whom the motion is filed; or

(2) In the event the chief judge is the one against whom the motion is filed, the assignment shall be made by the judge of the circuit who is most senior in terms of service other than the chief judge and who is not also a judge against whom the motion is filed; or

(3) When the motion pertains to all active judges in the circuit, the district administrative judge shall select a judge outside the circuit to hear the motion.

(D) If the district administrative judge is the one against whom the motion is filed, the available judge within the district senior in time of service (or next senior in time of service, if the administrative judge is the one senior in the time of service) shall serve in this selection process instead of the district administrative judge.

(E) If all judges within a judicial administrative district are disqualified, including the administrative judge, the matter shall be referred by the disqualified administrative judge to the administrative judge of an adjacent district for the appointment of a judge who is not a member of the district to preside over the motion or case.

If the motion is sustained, the selection of another judge to hear the case shall follow the same procedure as outlined above.

Former Rule 25.4 deleted effective January 31, 1991. Former Rule 25.3 renumbered as Rule 25.4 effective January 31, 1991; amended effective May 19, 2005.

### **Rule 25.5. Selection of Judge**

In the instance of any hearing on a motion to recuse or disqualify a judge, the challenged judge shall neither select nor participate in the selection of the judge to hear the motion; if recused or disqualified, the recused or disqualified judge shall not select nor participate in the selection of the judge assigned to hear further proceedings in the involved action.

### **Rule 25.6. Findings and Ruling**

The judge assigned may consider the motion solely upon the affidavits, but may, in the exercise of discretion, convene an evidentiary hearing. After consideration of the evidence, the judge assigned shall rule on the merits of the motion and shall make written findings and conclusions. If the motion is sustained, the selection of another judge to hear the case shall follow the same procedure as established in Rule 25.4. Any determination of disqualification shall not be competent evidence in any other case or proceedings.

Amended effective January 31, 1991.

### **Rule 25.7. Voluntary Recusal**

If a judge, either on the motion of one of the parties or the judge's own motion, voluntarily disqualifies, another judge, selected by the procedure set forth in Rule 25.4 above, shall be assigned to hear the matter involved. A voluntary recusal shall not be construed as either an admission or denial to any allegations which have been set out in the motion.

Amended effective January 31, 1991.

## **Rule 26. PRE-INDICTMENT PROCEEDINGS**

### **Rule 26.1. Bonds and First Appearance**

Immediately following any arrest but not later than 48 hours if the arrest was without a warrant, or 72 hours following an arrest with a warrant, unless the accused has made bond in the meantime, the arresting officer or the law officer having custody of the accused shall present the accused in person before a magistrate or other judicial officer for first appearance.

At the first appearance, the judicial officer shall:

- (A) Inform the accused of the charges;
- (B) Inform the accused of the right to remain silent, that any statement made may be used against the accused, and of the right to the presence and advice of an attorney, either retained or appointed;
- (C) Determine whether or not the accused desires and is in need of an appointed attorney and, if appropriate, advise the accused of the necessity for filing a written application;
- (D) Inform the accused of his or her right to a later pre indictment commitment hearing, unless the first appearance covers the commitment hearing issues, and inform the accused that giving a bond shall be a waiver of the right to a commitment hearing;
- (E) In the case of warrantless arrest, make a fair and reliable determination of the probable cause for the arrest unless a warrant has been issued before the first appearance;
- (F) Inform the accused of the right to grand jury indictment in felony cases and the right to trial by jury, and when the next grand jury will convene; [In state court, see State Court Rule 26.1(F).]
- (G) Inform the accused that if he or she desires to waive these rights and plead guilty, then the accused shall so notify the judge or the law officer having custody, who shall in turn notify the judge.
- (H) Set the amount of bail if the offense is not one bailable only by a superior court judge, or so inform the accused if it is.

Amended effective October 28, 1993; October 9, 1997.

## **Rule 26.2. Commitment Hearing by Court of Inquiry**

(A) At the commitment hearing by the court of inquiry, the judicial officer shall perform the following duties:

- (1) Explain the probable cause purpose of the hearing;
- (2) Repeat to the accused the rights explained at the first appearance;
- (3) Determine whether the accused intends to plead "guilty" or "not guilty," or waives the commitment hearing;
- (4) If the accused intends to plead guilty or waives the hearing, the court shall immediately bind the entire case over to the court having jurisdiction of the most serious offense charged;
- (5) If the accused pleads "not guilty" the court shall immediately proceed to conduct the commitment evidentiary hearing unless, for good cause shown, the hearing is continued to a later scheduled date;
- (6) Cause an accurate record to be made of the testimony and proceeding by any reliable method.
- (7) The judicial officer shall bind the entire case over to the court having jurisdiction of the most serious offense for which probable cause has been shown by sufficient evidence and dismiss any charge for which probable cause has not been shown.
- (8) On each case which is bound over, a memorandum of the commitment shall be entered on the warrant by the judicial officer. The warrant, bail bond, and all other papers pertaining to the case shall be forwarded to the clerk of the appropriate court having jurisdiction over the offense for delivery to the district attorney. Each bail bond shall contain the full name, telephone number, residence, business and mailing address(es) of the accused and any surety.
- (9) A copy of the record of any testimony and the proceedings of the first appearance and the commitment hearing shall be provided to the proper prosecuting officer and to the accused upon payment of the reasonable cost for preparation of the record.
- (10) A judicial officer, conducting a commitment hearing, is without jurisdiction to make final disposition of the case or cases at the hearing by imposing any fine or punishment, except where the only charge arising out of the transaction at issue is the violation of a county ordinance.

(B) At the commitment hearing, the following procedures shall be utilized:

- (1) The rules of evidence shall apply except that hearsay may be allowed;
- (2) The prosecuting entity shall have the burden of proving probable cause; and may be represented by a law enforcement officer, a district attorney, a solicitor, a private attorney or otherwise as is customary in that court;
- (3) The accused may be represented by an attorney or may appear pro se; and
- (4) The accused shall be permitted to introduce evidence.



Amended effective October 28, 1993.

### **Rule 26.3. Delayed Indictments**

The district attorney shall notify the chief judge in writing of the name of any unindicted accused who has been in custody under criminal felony charges for 45 days within 2 business days after said 45 day period has run. The chief judge may take any action deemed necessary or appropriate under the circumstances.

### **Rule 27. PRE–TRIAL RELEASE PROGRAM**

This program may be established in any county by the superior court judges of the circuit within which that county lies and the appropriate county governing authorities.

#### **Rule 27.1. Structure**

The superior court judges, under whose authority the program shall function, shall appoint a director, setting the qualifications deemed necessary and appropriate for the office. The director shall:

- (A) Be responsible for the supervision and execution of the duties enumerated hereinafter in connection with the program;
- (B) Receive such compensation as may be set by the superior court judges from time to time subject to the approval of the governing authority;
- (C) Hold office at the pleasure of the superior court judges;
- (D) Employ such assisting and clerical staff as may be authorized and assign them as needed to discharge the functions of the program; and,
- (E) Develop and promulgate rules, regulations and procedures pertaining to conditional release under the program, subject to the approval of the superior court judges, including such as pertain to the issuance of a bench warrant for the arrest of any individual released under the program who fails to comply with the conditions of the release.

#### **Rule 27.2. Duties**

The duties involved in the proper functioning of the program shall include:

- (A) Securing pertinent data and providing reports containing verified information respecting an accused who has agreed to be considered for release under the program;
- (B) Conducting such investigation and interviews as may be necessary for the compilation of such reports and submitting the reports to an appropriate judicial officer;
- (C) Monitoring and reporting to the court the compliance or noncompliance of an accused released under the program with the conditions of release;
- (D) Providing appropriate documentation to the court respecting performance by an accused

complying with the conditions of release so that upon full performance by the accused the sheriff shall return to the party posting deposit bail that portion of the deposit not retained to defray administrative costs; and,

(E) Providing appropriate documentation to the court respecting performance by an accused not complying with the conditions of release so that the court having jurisdiction may:

(1) enter an order declaring the bond forfeit and requiring that any deposit held in escrow by the sheriff be paid into the county general fund;

(2) issue a bench warrant for the arrest of the accused.

### **Rule 27.3. Release Under the Program**

(A) After reviewing available reports provided pursuant to Rule 27.2(B), upon determination of eligibility, a judicial officer having bail jurisdiction may order an accused person released conditionally and/or released under supervision in lieu of requiring the accused to post a money bond or equivalent security; alternatively the judicial officer may require the accused, prior to release, to deposit with the sheriff a sum of money or equivalent security equal to 10% of the principal amount of the bond which otherwise would be required, referred to hereinafter as "10% bail."

(B) No person may receive compensation for acting as surety in respect of posting 10% bail under Rule 27.

(C) of the amount deposited as 10% bail under Rule 27, \$10.00 or 10%, whichever is greater, will be transferred immediately to the general fund of the county to defray administrative costs; the amount remaining will be held by the sheriff in an escrow account pending final disposition as provided in Rule 27.2(D) and (E).

### **Rule 27.4. Security Bail Other Than 10% Bail**

In lieu of the bail deposit provided for above, any person for whom bail has been set may execute the bail bond with or without sureties which bond may be secured by:

(1) Cash—by a deposit with the sheriff of an amount equal to the required cash bail; or

(2) Property—by real estate located within the State of Georgia with unencumbered equity, not exempted, owned by the accused or surety, valued at double the amount of bail set in the bond; or

(3) Professional—by a professional bail bondsman authorized by the sheriff and in compliance with the rules and regulations for execution of a surety bail bond.

### **Rule 27.5. Exoneration of Bondsman After Forfeiture**

The surety in an appearance bond shall not be relieved from the liability of said bond except upon the filing of a written motion and the entering of an order by the court or one of the judges thereof exonerating said bondsman and payment of all accrued costs. The bondsman shall be

responsible for informing the district attorney, in writing, of the reason for failure to produce the body of the defendant as provided in the bond.

## **Rule 28. JAIL CENSUS**

The sheriff or court administrator of each county shall furnish to the chief judge, or designee, and the district attorney at least once a week, a list of all prisoners in the county jail or held elsewhere at the sheriff's direction. Such lists shall include, as to each prisoner:

- (A) The prisoner's name;
- (B) The date of arrest;
- (C) The offense charged, or other reason for being held;
- (D) The amount of bond;
- (E) Whether or not the prisoner is represented by counsel, and if so, the name of such counsel; and
- (F) If not represented by counsel, whether such confined person desires appointed counsel.

Amended effective October 9, 1997.

## **Rule 29. APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS**

### **Rule 29.1. Counties to Which This Rule is Applicable**

Pursuant to OCGA § 17-12-1 et seq., the following rule is promulgated to provide representation by competent legal counsel of indigent persons in criminal proceedings for those counties not receiving state funds under "The Georgia Indigent Defense Act" (Ga. L. 1979, p. 367, § 1; OCGA § 17-12-30 et seq.).

### **Rule 29.2. Application and Appointment of Counsel**

When an accused person, contending to be financially unable to employ an attorney to defend against pending criminal charges or to appeal a conviction, desires to have an attorney appointed, the accused shall make a request in writing to the court or its designee for an attorney to be appointed. The request shall be in the form of an application for appointment of counsel and certificate of financial resources, made under oath and signed by the accused which shall contain information as to the accused's assets, liabilities, employment, earnings, other income, number and ages of dependents, the charges against the accused and such other information as shall be required by the court. The purpose of the application and certification is to provide the court or its designee with sufficient information from which to determine the financial ability of the accused to employ counsel.

The determination of indigency or not shall be made by a judge of a superior court or designee.

Upon a determination of indigency the court shall, in writing, authorize the appointment of counsel for the indigent accused. The original authorization of appointment shall be filed with

the indictment or warrant in the case; a copy of the authorization shall be forwarded to the clerk, court administrator, public defender or such other person designated by the court to assign an attorney to an indigent defendant. Such person shall notify the accused, the appointed attorney, the sheriff and the district attorney of the appointment. [In state court, see State Court Rule 29.2.]

**Rule 29.3. The Role of Law Enforcement**

Any law enforcement authority having custody of any person shall:

(A) Allow a person claiming to be indigent and without counsel to immediately complete an application for an attorney and certificate of financial resources and forward such to the court or its designee, for a determination of indigency or not;

(B) Clearly advise detained persons of their right to have counsel and that if they cannot afford a lawyer one will be provided to assist them;

(C) Accomplish the above procedures as soon as possible after detention; and,

(D) Complete an application for an attorney and certificate of financial resources in substantially the following form:

IN THE SUPERIOR COURT OF \_\_\_\_ COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

INDICTMENT NO.

v.

CHARGE(S):

\_\_\_\_\_

APPLICATION FOR APPOINTMENT OF COUNSEL AND

CERTIFICATE OF FINANCIAL RESOURCES

I am the defendant in the above styled action. I am charged with the offense(s) of \_\_\_\_\_ which is/are a felony/misdemeanor. I can/cannot afford to hire a lawyer to assist me. I do/do not want the court to provide me with a lawyer. I understand that I am providing this information in this declaration in order for the court to determine my eligibility for a court appointed lawyer, paid by \_\_\_\_\_ County, to defend me on the above charges.

In jail \_\_\_\_\_ Out on bond \_\_\_\_\_ Arrest Date \_\_\_\_\_

1. Name \_\_\_\_\_ Telephone No. \_\_\_\_\_

Mailing address \_\_\_\_\_

Birth date \_\_\_\_\_ Age \_\_\_\_\_ Soc. Sec. No. \_\_\_\_\_

Highest grade in school completed \_\_\_\_\_

2. If employed, employer is \_\_\_\_\_

Net take home pay is (gross pay minus state, federal and social security taxes): \_\_\_\_\_ (weekly) \_\_\_\_\_ (monthly)

3. If unemployed, how long? \_\_\_\_\_ List other sources of income such as unemployment compensation, welfare or disability income and the amounts received per week or month: \_\_\_\_\_.

4. Are you married \_\_\_\_\_ Is spouse employed? \_\_\_\_\_

If yes, by whom \_\_\_\_\_ Spouse's net income (week) \_\_\_\_\_

5. Number of children living in home: \_\_\_\_\_ Ages \_\_\_\_\_

6. Dependents (other than spouse or children) in home, names, relationship, amount contributed to their support \_\_\_\_\_

7. Do you own a motor vehicle? \_\_\_\_ Year and model \_\_\_\_\_

How much do you owe on it? \_\_\_\_\_

8. Do you own a home? \_\_\_\_\_ Value \_\_\_\_\_ How much do you owe on it? \_\_\_\_\_

9. Amount of house payment or rent payment each month \_\_\_\_\_

10. List checking or savings accounts or other deposits with any bank or financial institution and the amount of deposits:

\_\_\_\_\_  
\_\_\_\_\_

11. List other assets or property, including real estate, jewelry, notes, bonds or stocks

\_\_\_\_\_

12. List indebtedness and amount of payments

\_\_\_\_\_

13. List any extraordinary living expenses and amount (such as regularly occurring medical expenses) \_\_\_\_\_

14. Child support payable under any court order \_\_\_\_\_

15. Do you understand that whether you are convicted or acquitted \_\_\_\_\_ County may seek reimbursement of attorney's fees paid for you if you become financially able to pay or reimburse the county but refuse to do so? \_\_\_\_\_

I have read (had read to me) the above questions and answers and they are correct and true.

The undersigned swears that the information given herein is true and correct and understands that a false answer to any item may result in charge of perjury.

The \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Defendant's Signature

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

#### ORDER

Having considered the above matter, it is the finding of this court that the above named defendant is/is not indigent under criteria of the Georgia Criminal Justice Act and appropriate court rules and is/is not entitled to have appointed counsel.

It is ordered that the clerk, panel administrator, or court administrator assign an attorney practicing in this county to represent the defendant in the above case.

Let the defendant and the assigned attorney be notified hereof and furnished a copy of this application and order.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Superior Court Judge

\_\_\_\_\_ Judicial Circuit

#### **Rule 29.4. Responsibility for Determination of Eligibility**

The financial eligibility of a person for publicly provided counsel should be determined by the court or its designee. The court may appoint counsel in cases where the defendant does not qualify and cannot be provided counsel under provisions of the above.

#### **Rule 29.5. Uniform Eligibility Guidelines**

Income eligibility—Eligible accused persons include all applicants for an attorney with net income below a level set by the applicable superior court and revised periodically.

The following special needs of a family unit may be deducted from net income in determining eligibility:

- (1) Child care expenses for working custodial parents; and,
- (2) Legally required support payments to dependents, including alimony for the support of a child/children.

"Net income" shall include only a client's take home pay, which is the gross income earned by a client minus those deductions required by law or as a condition of employment.

"Family unit" includes the defendant, a spouse, if the couple lives together, any minors who are unemployed and unmarried, and any infirm or permanently disabled person living with the defendant and for whom the defendant has assumed financial responsibility. The income of a minor who is attending school full time, but has after school employment or does odd jobs, shall not be attributed to that of the family unit. No other persons, even if living within the same household, will be deemed members of the family unit.

In the event an accused person is discovered to have been ineligible at the time of the appointment of an attorney, the court shall be notified. The court may discharge the appointed attorney and refer the matter to the private bar. The attorney should be paid for the time spent on the case and recoupment sought from the ineligible person.

Regardless of the prima facie eligibility on the basis of income, a person who has sufficient assets that are easily converted to cash by sale or mortgage may not be qualified for representation.

The court may appoint counsel for representation for any accused person who is unable to obtain counsel due to special circumstances such as emergency, hardship, or documented refusal of the case by members of the private bar because of financial inability to pay for counsel.

If the accused is determined to be eligible for defense services in accordance with approved financial eligibility criteria and procedures, and if, at the time that the determination is made, the accused is able to provide a cash contribution to offset defense costs without imposing a substantial financial hardship either personally or upon dependents, such contribution may be required as a condition of continued representation at public expense. The court should determine the amount to be contributed. The contribution shall be paid directly to the fund for indigent defense of the affected county.

Amended effective October 9, 1997.

#### **Rule 29.6. Standards of Performance for Appointed Attorneys [Reserved]**

#### **Rule 29.7. County May Select Method of Providing Counsel**

A county may use a public defender system, legal aid and defender society, agency for indigent defense, a panel of private attorneys, a combination of the above, or other means, to provide adequate legal defense for indigents accused of felonies.

#### **Rule 29.8. Assignment of Cases to Private Attorneys**

- (A) Appointments of private attorneys shall be made on an impartial and equitable basis;
- (B) The cases shall be distributed among the attorneys to ensure balanced workloads through a rotation system;
- (C) More difficult or complex cases shall be assigned to attorneys with sufficient levels of experience and competence to afford adequate representation;
- (D) Less experienced attorneys should be assigned cases which are within their capabilities, but should be given the opportunity to expand their experience under supervision; and,
- (E) Cases in which the death penalty is sought shall be assigned only to attorneys of sufficient experience, skill and competence to render effective assistance of counsel to defendants in such cases.

Amended effective October 9, 1997.

### **Rule 29.9. Fees Paid to Lawyers Under a Panel Program**

The judge or judges of a multi judge circuit shall determine the method of compensation to be paid under a panel program.

Each program shall prescribe minimum fees to be paid as a total fee, regardless of hours, in certain categories of cases, governed by these rules. In prescribing such minimums, the court shall take into consideration the complexity of the case categories and the corresponding fee that is presently being obtained by competent members of the local bar for such representation where privately retained. While the fee paid under the panel program need not equate that of a corresponding fee obtained by a private practitioner, there should be a reasonable relationship.

Compensation for a capital felony case in which the death penalty is sought shall be at the same hourly rate as other cases, but each case should be examined by the court and the fee total should be based on a complete examination of the individual case. Special attention should be given to continuing counsel obligations in death penalty cases when conviction and imposition of the death penalty occur.

The court may establish a committee composed of a designee of the chief judge, the local county governing authority and the local bar association to perform the functions of establishing fee guidelines and approval of fees.

### **Rule 29.10. Fee Disputes**

All fee vouchers or requests from panel attorneys shall be submitted to the judge assigned the case or a person or committee designated to review fee requests prior to their submission to the county for payment.

### **Rule 29.11. Independence of Counsel**

Any indigent defense program shall operate independently and be structured to preserve independence. Independent counsel shall be politically autonomous and free from influence, guidance or control from any other authority in the discharge of professional duties, within the bounds of the law and the Code of Professional Responsibility.

## **Rule 30. ARRAIGNMENT**

### **Rule 30.1. Calendar**

The judge, or the judge's designee, shall set the time of arraignment unless arraignment is waived either by the defendant or by operation of law. Notice of the date, time, and place of arraignment shall be delivered to the clerk of the court and sent to attorneys of record, defendants, and bondsmen.

Amended effective October 9, 1997.



### **Rule 30.2. Call for Arraignment**

Before arraignment the court shall inquire whether the accused is represented by counsel and, if not, inquire into the defendant's desires and financial circumstances. If the defendant desires an attorney and is indigent, the court shall authorize the immediate appointment of counsel.

Upon the call of a case for arraignment, unless continued for good cause, the accused, or the attorney for the accused, shall answer whether the accused pleads "guilty," "not guilty" or desires to enter a plea of *nolo contendere* to the offense or offenses charged; a plea of not guilty shall constitute the joining of the issue.

Upon arraignment, the attorney, if any, who announces for or on behalf of an accused, or who is entered as counsel of record, shall represent the accused in that case throughout the trial, unless other counsel and the defendant notify the judge prior to trial that such other counsel represents the accused and is ready to proceed, or counsel is otherwise relieved by the judge.

Amended effective October 9, 1997.

### **Rule 30.3. List of Witnesses**

Upon request of defense counsel, the district attorney shall furnish to defense counsel as an officer of the court, in confidence, the addresses and telephone numbers of the state's witnesses to the extent such are within the knowledge of the district attorney, unless for good cause the judge allows an exception to this requirement, in which event defense counsel shall be afforded an opportunity to interview such witnesses prior to the witness being called to testify.

## **Rule 31. MOTIONS, DEMURRERS, SPECIAL PLEAS, AND SIMILAR ITEMS IN CRIMINAL MATTERS**

### **Rule 31.1. Time for Filing; Requirements.**

All motions, demurrers, and special pleas shall be made and filed at or before the time set by law unless time therefor is extended by the judge in writing prior to trial. Notices of the state's intention to present evidence of similar transactions or occurrences and notices of the intention of the defense to raise the issue of insanity or mental illness, or the intention of the defense to introduce evidence of specific acts of violence by the victim against third persons, shall be given and filed at least ten [10] days before trial unless the time is shortened or lengthened by the judge. Such filing shall be in accordance with the following procedures.

Amended effective December 30, 1993; amended November 4, 1999, effective December 16, 1999; amended effective August 12, 2004.

### **Rule 31.2. Time for Hearing**

All such motions, demurrers, special pleas and notices shall be heard and considered at such time, date, and place as set by the judge. Generally, such will be heard at or after the time of arraignment and prior to the time at which such case is scheduled for trial.

### **Rule 31.3. Notice of Prosecution's Intent to Present Evidence of Similar Transactions**

(A) The prosecution may, upon notice filed in accordance with section 31.1 of these rules, request of the court in which the accusation or indictment is pending leave to present during the trial of the pending case evidence of similar transactions or occurrences.

(B) The notice shall be in writing, served upon the defendant's counsel, and shall state the transaction, date, county, and the name(s) of the victim(s) for each similar transaction or occurrence sought to be introduced. Copies of accusations or indictments, if any, and guilty pleas or verdicts, if any, shall be attached to the notice. The judge shall hold a hearing at such time as may be appropriate, and may receive evidence on any issue of fact necessary to determine the request, out of the presence of the jury. The burden of proving that the evidence of similar transactions or occurrences should be admitted shall be upon the prosecution. The state may present during the trial evidence of only those similar transactions or occurrences specifically approved by the judge.

(C) Evidence of similar transactions or occurrences not approved shall be inadmissible. In every case, the prosecuting attorney and defense attorney shall instruct their witnesses not to refer to similar crimes, transactions or occurrences, or otherwise place the defendant's character in issue, unless specifically authorized by the judge.

(D) If upon the trial of the case the defense places the defendant's character in issue, evidence of similar transactions or occurrences, as shall be admissible according to the rules of evidence, shall be admissible, the above provisions notwithstanding.

(E) Nothing in this rule is intended to prohibit the state from introducing evidence of similar transactions or occurrences which are lesser included alleged offenses of the charge being tried, or are immediately related in time and place to the charge being tried, as part of a single, continuous transaction. Nothing in this rule is intended to alter the rules of evidence relating to impeachment of witnesses.

(F) This rule shall not apply to sentencing hearings.

### **Rule 31.4. Motion and Order for Evaluation Regarding Mental Incompetency to Stand Trial**

(A) In pending superior court cases, except in proceedings for involuntary treatment under OCGA Title 37, or proceedings for the appointment of a guardian under Title 29, where the mental competency of an accused is brought into question, the judge may, upon a proper showing, exercise discretion and require a mental evaluation at public expense. A motion for mental evaluation may be filed in writing, setting out allegations and grounds for such motion, praying for a court-ordered evaluation. The judge may enter an order requiring a mental evaluation of the defendant for the purposes of evaluating competency to stand trial. The judge may direct the Department of Human Resources to perform the evaluation at a time and place to be set by the department in cooperation with the county sheriff. A copy of the order shall be forwarded to the department accompanied by a copy of the indictment, accusation or specification of charges, a copy of the police arrest report, where available, and a brief summary of any known or alleged previous mental health treatment or hospitalization involving this

particular person. Any other background information available to the court shall also be forwarded to the evaluating department to assist in performing adequately the requested services. Unless otherwise ordered by the court the department shall submit its report to the requesting judge, the defendant's attorney and the prosecuting attorney.

(B) Upon the filing of a Plea of Mental Incompetency to Stand Trial, the judge shall determine from the prosecuting attorney and the defense attorney whether a specially empaneled jury is required to determine the issue of mental incompetency to stand trial ahead of the trial of the case on the merits.

(C) Copies of suggested orders are attached as Specimen Order for Mental Evaluation Re: Competency to Stand Trial, and Specimen Judgment and Order of the Court on the Defendant's Plea of Mental Incompetency to Stand Trial.

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

THE STATE OF GEORGIA

INDICTMENT NO.

V. \_\_\_\_\_

CHARGE(S):

ORDER FOR MENTAL EVALUATION  
re: COMPETENCY TO STAND TRIAL

WHEREAS the mental competency to stand trial of the above defendant has been called into question, and evidence presented in the matter, and this court has found that it is appropriate for evaluation to be conducted at public expense;

IT IS HEREBY ORDERED that the Department of Human Resources conduct an evaluation of said defendant, provide treatment of the defendant, if appropriate, and provide to this court, a report of diagnosis, prognosis and its findings, with respect to:

Competency to Stand Trial. Whether the accused is capable of understanding the nature and object of the proceedings; whether the accused comprehends his or her own condition in reference to such proceedings; and, whether the accused is capable of rendering to counsel assistance in providing a proper defense.

IT IS FURTHER ORDERED that the department arrange with the county sheriff, or the sheriff's lawful deputies, for the prompt evaluation of said defendant, either at the county jail or at a designated hospital, with transportation of the defendant to be provided by the sheriff, where necessary, with transportation costs to be borne by the county. Upon completion of the evaluation, the evaluating facility shall notify the sheriff, who shall promptly reassume custody of the defendant. Unless otherwise ordered by the court the department shall submit its report to the requesting judge, the defendant's attorney and the prosecuting attorney.

Observed behaviors that led to this request are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copies of documents supporting this request are attached hereto, as follows:

( ) Indictment/Accusation

- ( ) Summary of previous mental health treatment and prior mental health records
- ( ) Copy of arrest report
- ( ) Other \_\_\_\_\_

So ordered, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
JUDGE, SUPERIOR COURT

\_\_\_\_\_  
JUDICIAL CIRCUIT, GEORGIA

SPECIMEN ORDER FOR MENTAL EVALUATION RE: COMPETENCY TO STAND  
TRIAL IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY  
STATE OF GEORGIA

THE STATE OF GEORGIA  
V. \_\_\_\_\_

INDICTMENT NO.  
CHARGE(S):

JUDGMENT AND ORDER OF THE COURT  
ON THE DEFENDANT'S PLEA OF  
MENTAL INCOMPETENCY TO STAND TRIAL

The above stated case came on regularly before the undersigned for trial this date. The defendant was represented by counsel.

After a hearing on defendant's plea of mental incompetency and due consideration, the plea of Mental Incompetency to Stand Trial is sustained.

IT IS, THEREFORE, THE ORDER of this court that the defendant be now delivered to the sheriff of this County and that the defendant be delivered by the sheriff, or the sheriff's lawful deputy, to the Department of Human Resources, as provided by OCGA § 17-7-130.

IT IS FURTHER ORDERED that at such time as it is determined that the defendant is capable of understanding the nature and object of the proceedings, comprehends his or her own condition in reference to such proceedings, and is capable of rendering to counsel assistance in providing a proper defense, the defendant be delivered by the Department of Human Resources to the sheriff of this county, or the sheriff's lawful deputy, with transportation costs to be borne by the county.

IT IS FURTHER ORDERED that, should it be determined in light of present day medical knowledge that recovery of the defendant's legal mental competency to stand trial is not expected at any time in the foreseeable future, the defendant shall be dealt with by the Department of Human Resources as provided in OCGA § 17-7-130.

SO ORDERED, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
JUDGE, SUPERIOR COURT

\_\_\_\_\_  
JUDICIAL CIRCUIT, GEORGIA

SPECIMEN ORDER ON THE DEFENDANT’S PLEA OF  
MENTAL INCOMPETENCY TO STAND TRIAL

Amended effective October 9, 1997; November 10, 2005.

**Rule 31.5 Notice of Intention of Defense to Raise Issue of Insanity, Mental Illness or Mental Retardation at the Time of the Act**

(A) If, in any criminal proceeding, the defense intends to raise the issue that the defendant or accused was insane, mentally ill or mentally retarded at the time of the act or acts charged against the accused, such intention must be stated, in writing, in a pleading denominated as “Notice of Intent of Defense to Raise Issue of Insanity, Mental Illness or Mental Retardation.” This notice shall be filed and served upon the prosecuting attorney in accordance with section 31.1 of these rules. Upon the filing of such notice, the judge shall determine from the prosecuting attorney and the defense attorney whether such issue requires any further mental examination of the accused *or* any further non-jury hearing relative to this issue.

Upon defense motion, the judge may enter an order requiring a mental evaluation of the defendant for the purposes of evaluating the degree of criminal responsibility or insanity at the time of the act in question. The judge may direct the Department of Human Resources to perform the evaluation at a time and place to be set by the department in cooperation with the county sheriff. A copy of the order shall be forwarded to the department accompanied by a copy of the indictment, accusation or specification of charges, a copy of the police arrest report, where available, a copy of the defendant’s Notice of Intent to Raise Issue of Insanity if filed, and a brief summary of any known or alleged previous mental health treatment or hospitalization involving this particular person. Any other background information available to the court shall also be forwarded to the evaluating department to assist in performing adequately the requested services. Unless otherwise ordered by the court the department shall submit its report to the requesting judge and the defendant’s attorney. Contemporaneous with filing the Notice of Intent of Defense to Raise Issue of Insanity, defendant’s attorney shall provide a copy of the Report to the prosecuting attorney and shall so certify in writing attached to the Notice of Intent of Defense to Raise Issue of Insanity.

(B) Except for good cause shown, the issue of insanity shall not be raised in the trial on the merits unless notice has been filed and served ahead of trial as provided in these rules.

(C) A copy of a suggested order is attached as Specimen Order for Mental Evaluation re: Degree of Criminal Responsibility or Insanity at the Time of the Act.

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

THE STATE OF GEORGIA  
V. \_\_\_\_\_

INDICTMENT NO.  
CHARGE(S):

ORDER FOR MENTAL EVALUATION  
re: DEGREE OF CRIMINAL RESPONSIBILITY OR INSANITY  
AT THE TIME OF THE ACT

WHEREAS, the defendant's sanity at the time of the act has been called into question, and evidence presented in the matter, and this court has found that it is appropriate for an evaluation to be conducted at public expense;

IT IS HEREBY ORDERED that the Department of Human Resources conduct an evaluation of the defendant, provide treatment of the defendant, if appropriate, and provide to this court a report of diagnosis, prognosis and its findings, with respect to:

Degree of Criminal Responsibility or Insanity at the Time of the Act. Whether or not the accused had the mental capacity to distinguish right from wrong in relation to the alleged act; whether or not the presence of a delusional compulsion overmastered the accused's will to resist committing the alleged act.

IT IS FURTHER ORDERED that the department arrange with the county sheriff, or the sheriff's lawful deputies, for the prompt evaluation of said defendant, either at the county jail or at a specified hospital, with transportation costs to be borne by the county. Upon completion of the evaluation, the evaluating facility shall notify the sheriff, who shall promptly reassume custody of the accused. The department shall submit its report to the requesting judge and the defendant's attorney. Contemporaneous with filing the Notice of Intent of Defense to Raise Issue of Insanity, defendant's attorney shall provide a copy of the Report to the prosecuting attorney and shall so certify in writing attached to the Notice of Intent of Defense to Raise Issue of Insanity.

Copies of documents supporting this request are attached hereto, as follows:

- ( ) Indictment/Accusation
- ( ) Summary of previous mental health treatment and prior mental health records
- ( ) Copy of arrest report
- ( ) Other \_\_\_\_\_

So ordered, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
JUDGE, SUPERIOR COURT

\_\_\_\_\_  
JUDICIAL CIRCUIT, GEORGIA

**SPECIMEN ORDER FOR MENTAL EVALUATION RE: DEGREE OF CRIMINAL  
RESPONSIBILITY OR INSANITY AT THE TIME OF THE ACT**

Amended effective October 9, 1997; November 10, 2005.

**Rule 31.6. Notice of Intention of Defense to Present Evidence of Acts of Violence by the Victim**

(A) The defense may upon notice filed in accordance with Rule 31.1, claim justification and present during the trial of the pending case evidence of relevant specific acts of violence by the victim against third persons.

(B) The notice shall be in writing, served upon the state's counsel, and shall state the act of violence, date, county and the name, address and telephone number of the person for each specific act of violence sought to be introduced. The judge shall hold a hearing at such time as may be appropriate and may receive evidence on any issue of fact necessary to determine the request, out of the presence of the jury. The burden of proving that the evidence of specific acts of violence by the victim should be admitted shall be upon the defendant. The defendant may present during the trial evidence of only those specific acts of violence by the victim specifically approved by the judge.

(C) Notice of the state's intention to introduce evidence in rebuttal of the defendant's evidence of the victim's acts of violence and of the nature of such evidence, together with the name, address and telephone number of any witness to be called for such rebuttal, shall be given defendant's counsel and filed within five days before trial unless the time is shortened or lengthened by the judge.

Amended effective December 30, 1993; amended November 4, 1999, effective December 16, 1999.

## **Rule 32. CRIMINAL TRIAL CALENDAR**

### **Rule 32.1. Calendar Preparation**

All indictments and special presentments shall be set for trial within a reasonable time after arraignment. The judge or designee shall prepare a trial calendar, shall deliver a copy thereof to the clerk of court, and shall give notice in person or by mail to each counsel of record, the bondsman (if any) and the defendant at the last address indicated in court records, not less than 7 days before the trial date or dates. The calendar shall list the dates that cases are set for trial, the cases to be tried at that session of court, the case numbers, the names of the defendants and the names of the defense counsel.

Amended effective October 9, 1997.

### **Rule 32.2. Removal from Calendar**

No case shall be postponed or removed from the calendar except by the judge.

## **Rule 33. PLEADING BY DEFENDANT**

### **Rule 33.1. Alternatives**

(A) A defendant may plead guilty not guilty, or in the discretion of the judge, nolo contendere. A plea of guilty or nolo contendere should be received only from the defendant personally in open court, except when the defendant is a corporation, in which case the plea may be entered by counsel or a corporate officer.

(B) A defendant may plead nolo contendere only with the consent of the judge. Such a plea should be accepted by the judge only after due consideration of the views of the parties and the interest of the public in the effective administration of justice. Procedurally, a plea of nolo contendere should be handled under these rules in a manner similar to a plea of guilty. [In state court, see State Court Rule 33.1.]

### **Rule 33.2. Aid of Counsel–Time for Deliberation**

(A) A defendant shall not be called upon to plead before having an opportunity to retain counsel, or if defendant is eligible for appointment of counsel, until counsel has been appointed or right to counsel waived. A defendant with counsel shall not be required to enter a plea if counsel makes a reasonable request for additional time to represent the defendant's interest, or if the defendant has not had a reasonable time to consult with counsel.

(B) A defendant without counsel should not be called upon to plead to any offense without having had a reasonable time to consider his decision. When a defendant without counsel tenders a plea of guilty or nolo contendere to an offense, the court should not accept the plea unless it is reaffirmed by the defendant after a reasonable time for deliberation, following the advice from the court required in section 33.8.

### **Rule 33.3. Propriety of Plea Discussions and Plea Agreements**

(A) In cases in which it appears that the interests of the public in the effective administration of criminal justice (as stated in section 33.6) would thereby be served, the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. The prosecuting attorney should engage in plea discussions or reach a plea agreement with the defendant only through defense counsel, except when the defendant is not eligible for or does not desire appointment of counsel and has not retained counsel.

(B) The prosecuting attorney, in reaching a plea agreement, may agree to one or more of the following, as dictated by the circumstances of the individual case:

(1) to make or not to oppose favorable recommendations as to the sentence which should be imposed if the defendant enters a plea of guilty or nolo contendere;

(2) to seek or not to oppose dismissal of the offense charged if the defendant enters a plea of guilty or nolo contendere to another offense reasonably related to defendant's conduct; or

(3) to seek or not to oppose dismissal of other charges or potential charges against the defendant if the defendant enters a plea of guilty or nolo contendere.

Amended effective October 9, 1997.

### **Rule 33.4. Relationship Between Defense Counsel and Client**

(A) Defense counsel should conclude a plea agreement only with the consent of the defendant, and should ensure that the decision to enter or not enter a plea of guilty or nolo contendere is ultimately made by the defendant.

(B) To aid the defendant in reaching a decision, defense counsel, after appropriate investigation, should advise the defendant of the alternatives available and of considerations deemed important by him in reaching a decision.

### **Rule 33.5. Responsibilities of the Trial Judge**

(A) The trial judge should not participate in plea discussions.



(B) If a tentative plea agreement has been reached, upon request of the parties, the trial judge may permit the parties to disclose the tentative agreement and the reasons therefor in advance of the time for the tendering of the plea. The judge may then indicate to the prosecuting attorney and defense counsel whether the judge will likely concur in the proposed disposition if the information developed in the plea hearing or presented in the presentence report is consistent with the representations made by the parties. If the trial judge concurs but the final disposition differs from that contemplated by the plea agreement, then the judge shall state for the record what information in the presentence report or hearing contributed to the decision not to sentence in accordance with the plea agreement.

(C) When a plea of guilty or nolo contendere is tendered or received as a result of a plea agreement, the trial judge should give the agreement due consideration, but notwithstanding its existence, must reach an independent decision on whether to grant charge or sentence leniency under the principles set forth in section 33.6 of these rules.

Amended effective October 9, 1997.

### **Rule 33.6. Consideration of Plea in Final Disposition**

(A) It is proper for the judge to grant charge and sentence leniency to defendants who enter pleas of guilty or nolo contendere where the interests of the public in the effective administration of criminal justice are thereby served. Among the considerations which are appropriate in determining this question are:

(1) that the defendant by entering a plea has aided in ensuring the prompt and certain application of correctional measures;

(2) that the defendant has acknowledged guilt and shown a willingness to assume responsibility for conduct;

(3) that the leniency will make possible alternative correctional measures which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant from the form of conviction;

(4) that the defendant has made public trial unnecessary when there are good reasons for not having the case dealt with in a public trial;

(5) that the defendant has given or offered cooperation when such cooperation has resulted or may result in the successful prosecution of other offenders engaged in equally serious or more serious criminal conduct;

(6) that the defendant by entering a plea has aided in avoiding delay (including delay due to crowded dockets) in the disposition of other cases and thereby has increased the probability of prompt and certain application of correctional measures to other offenders.

(B) The judge should not impose upon a defendant any sentence in excess of that which would be justified by any of the rehabilitative, protective, deterrent or other purposes of the criminal law merely because the defendant has chosen to require the prosecution to prove the defendant's guilt at trial rather than to enter a plea of guilty or nolo contendere.

Amended effective October 9, 1997.

### **Rule 33.7. Determining Voluntariness of Plea**

The judge shall not accept a plea of guilty or nolo contendere without first determining, on the record, that the plea is voluntary. By inquiry of the prosecuting attorney and defense counsel, the judge should determine whether the tendered plea is the result of prior plea discussions and a plea agreement, and, if it is, what agreement has been reached. If the prosecuting attorney has agreed to seek charge or sentence leniency which must be approved by the judge, the judge must advise the defendant personally that the recommendations of the prosecuting attorney are not binding on the judge. The judge should then address the defendant personally and determine whether any other promises or any force or threats were used to obtain the plea.

Amended effective October 9, 1997.

### **Rule 33.8. Defendant to Be Informed**

The judge should not accept a plea of guilty or nolo contendere from a defendant without first:

- (A) Determining on the record that the defendant understands the nature of the charge(s);
- (B) Informing the defendant on the record that by entering a plea of guilty or nolo contendere one waives:
  - (1) the right to trial by jury;
  - (2) the presumption of innocence;
  - (3) the right to confront witnesses against oneself;
  - (4) the right to subpoena witnesses;
  - (5) the right to testify and to offer other evidence;
  - (6) the right to assistance of counsel during trial;
  - (7) the right not to incriminate oneself; and that by pleading not guilty or remaining silent and not entering a plea, one obtains a jury trial; and
- (C) Informing the defendant on the record:
  - (1) of the terms of any negotiated plea;
  - (2) that a plea of guilty may have an impact on his or her immigration status if the defendant is not a citizen of the United States;
  - (3) of the maximum possible sentence on the charge, including that possible from consecutive sentences and enhanced sentences where provided by law; and/or
  - (4) of the mandatory minimum sentence, if any, on the charge. This information may be developed by questions from the judge, the district attorney or the defense attorney or a

combination of any of these.

Amended effective March 22, 2001.

### **Rule 33.9. Determining Accuracy of Plea**

Notwithstanding the acceptance of a plea of guilty, the judgment should not be entered upon such plea without such inquiry on the record as may satisfy the judge that there is a factual basis for the plea.

Amended effective October 9, 1997.

### **Rule 33.10. Stating Intention to Reject the Plea Agreement**

If the trial court intends to reject the plea agreement, the trial court shall, on the record, inform the defendant personally that (1) the trial court is not bound by any plea agreement; (2) the trial court intends to reject the plea agreement presently before it; (3) the disposition of the present case may be less favorable to the defendant than that contemplated by the plea agreement; and (4) that the defendant may then withdraw his or her guilty plea as a matter of right. If the plea is not then withdrawn, sentence may be pronounced.

### **Rule 33.11. Record of Proceedings**

A verbatim record of the proceedings at which a defendant enters a plea of guilty or nolo contendere shall be made and preserved. The record should include:

- (A) The inquiry into the voluntariness of the plea (as required in section 33.7);
- (B) The advice to the defendant (as required in section 33.8);
- (C) The inquiry into the accuracy of the plea (as required in section 33.9), and, if applicable;
- (D) The notice to the defendant that the trial court intends to reject the plea agreement and the defendant's right to withdraw the guilty plea before sentence is pronounced. [In State Court, see State Court Rule 33.11.]

### **Rule 33.12. Plea Withdrawal**

(A) After sentence is pronounced, the judge should allow the defendant to withdraw a plea of guilty or nolo contendere whenever the defendant, upon a timely motion for withdrawal, proves that withdrawal is necessary to correct a manifest injustice.

(B) In the absence of a showing that withdrawal is necessary to correct a manifest injustice, a defendant may not withdraw a plea of guilty or nolo contendere as a matter of right once sentence has been pronounced by the judge.

Amended effective October 9, 1997.

## **Rule 34. UNIFIED APPEAL**

### **Publisher's Note**

The Unified Appeal is set forth at [http://www.gasupreme.us/rules/rules\\_uap](http://www.gasupreme.us/rules/rules_uap).

## **Rule 35. POST-SENTENCE INFORMATION**

### **Rule 35.1. Notification to Department of Corrections**

As soon as practical after the imposition of the sentence or modification of an earlier disposition, the clerk shall notify the commissioner of the Department of Corrections of the sentence, and shall mail to such department the documentation required by law. Disposition reports shall be forwarded to the Georgia Crime Information Center (GCIC) not more than 30 days after disposition decisions.

Amended effective March 9, 1989.

### **Rule 35.2. Sentencing and Sentence Review**

Sentences shall be imposed and reviewed in accordance with OCGA § 17-10-1 et seq., as amended from time to time.

## **Rule 36. FILING AND PROCESSING**

### **Rule 36.1. Preparation of Documents**

To the extent practical, all materials presented for filing in any superior court shall be typed, legibly written or printed on one side only in blue or black ink suitable for reproduction, on opaque white paper measuring 8 1/2" x 11", of a good quality; grade and weight. Manuscript covers and backings shall be omitted wherever practical. [In State Court, see State Court Rule 36.1]

Amended effective December 22, 2005.

### **Rule 36.2. Time of Docketing**

Actions shall be entered by the clerk in the proper docket immediately or within a reasonable period after being received in the clerk's office.

### **Rule 36.3. Caption**

Every document or pleading presented for filing in a superior court shall bear a caption which sets out the *exact* nature of the pleading or the type of complaint.

### **Rule 36.4. Signatures on Documents Filed of Record**

All judgments, orders, pleadings and other documents shall bear the signature of the responsible attorney or party who prepared the document, with the preparer's name, proper address and telephone number typed or printed underneath.

To the extent practicable, signature pages of documents filed of record including pleadings, agreements and orders shall not be set forth on a page separated from the contents of the document.

On any document filed of record, including but not limited to pleadings, agreements and orders, where a signature is set forth on a separate page from the contents of the document, the signature page must identify the parties, the case number, and the document.

#### **Rule 36.5. Location of Original**

All original documents, petitions and pleadings in both civil and criminal matters shall remain in the custody of the clerk except as provided by the judge, these rules, or as otherwise provided by law; provided, however, that this rule shall not prohibit an attorney of record's checking the file out for transportation to the judge for a hearing.

#### **Rule 36.6. Minutes and Final Record**

There shall be one or more books or microfilm records (combined "Minutes Book", "Writ or Pleading Record" and "Final Record") called *Minutes and Final Record* in which each entire matter shall be recorded after completion. (This does not include adoptions.) After recording, the original may be destroyed according to the state retention schedule or stored off premises as provided by law. [In State Court, see State Court Rule 36.6.]

#### **Rule 36.7. Filing of Transcripts**

Transcripts in all matters shall be filed as provided by law and the clerk shall not be required to record or preserve these in a bound book or on microfilm.

#### **Rule 36.8. File Categories**

The categories of files to be established by the clerk shall be civil, criminal, and adoptions. [In State Court, see State Court Rule 36.8.]

#### **Rule 36.9. Identification**

Each matter, civil, criminal, adoption, or otherwise, shall be identified by year of filing, type of case, consecutive case number and judge assignment where required. The sequence shall be as follows: year of filing–type of case–consecutive case number–judge assignment.

#### **Rule 36.10. Filing Requirements–Civil**

Complaints or petitions presented to the clerk for filing shall be filed only when accompanied by the proper filing fee, fee for sheriff service or a paupers affidavit, a civil case initiation form, and, when applicable, any forms required by law or rule to be completed by the parties. The attorney or party filing the complaint shall furnish the necessary service copies. Judgments, settlements, dismissals and other dispositions presented to the clerk for filing shall be filed only when accompanied by a civil case disposition form. [In State Court, see State Court Rule 36.10.]

Amended effective January 18, 1990.

**Rule 36.11. Return of Service–Civil**

Entry of return of service shall be made by the sheriff or other authorized person on a form provided by the clerk and filed with the clerk.

**Rule 36.12. Advance Costs–Civil**

Advance costs paid upon filing shall be the minimum costs in a case.

**Rule 36.13. Filing Requirements–Criminal**

All indictments, no bills, and accusations presented to the clerk shall be filed and should be accompanied by all applicable documents including arrest warrants, if issued, and the Georgia Crime Information Center OBTS form, if the offense is one for which an OBTS form is applicable.

**Rule 36.14. Filing of No Bills**

The clerk shall prepare a list of all no bills, a copy of which shall be recorded in the Minutes and Final Records. No bills shall be filed chronologically by date of filing.

**Rule 36.15. Assessment of Costs–Criminal**

When costs are assessed the minimum amount assessed as court costs in the disposition of any criminal offense shall be \$100.00. Any surcharge provided for by law shall be in addition. [In State Court, see State Court Rule 36.15.]

**Rule 37. COURT ADMINISTRATORS**

(A) The district court administrator performs such district administrative duties as are prescribed from time to time.

(B) The courts of various counties may, with the consent of local governing authorities, appoint a local court administrator, with such compensation, duties, and term as may be specified in such appointment. The local court administrator may perform general administrative and managerial supervision over the administrative activities and functions of the court and the personnel connected therewith, except the staff of any elected official.

The court administrator may be responsible for the enforcement of the courts’ administrative policies and procedures and may directly supervise and direct the employees who are necessary to the operation of the courts.

**Rule 38. FILING OF REMITTITUR AND JUDGMENT**

After receiving the remittitur and judgment of an appellate court, a copy of the notice of appeal, the remittitur and the index of each appeal shall be filed with the original action and the balance of the copy of the record destroyed, although the original shall be retained. If two or more cases are involved in one appeal, the above referenced material shall be placed in one of the case files and a cross reference to that file shall be noted in the remaining file(s).

## **Rule 39. DOCKETING AND INDEXING**

### **Rule 39.1. Dockets to be Maintained**

Each clerk shall maintain the dockets as provided in this Rule 39 of the following, each of which shall include the information required under these rules. Each docket shall bear the name of the docket, the county, and a unique consecutive number. No other dockets shall be required to be kept except those relating to real estate.

### **Rule 39.2. The Civil Docket**

The Civil Docket shall contain separate case number entries for all civil actions filed in the office of the clerk including: complaints, motions, URESA's, domestic relations, contempt actions, modifications on closed civil actions, and all other actions civil in nature, except adoptions. Each action in the civil docket shall be indexed by the names of all parties to the action number or the civil docket book and page number. This docket shall contain entries of the following information:

(A) Action Number—a unique case number shall be assigned to each action as prescribed in Rule 36.9;

(B) Cause of Action—an entry of the specific type of action filed;

(C) Names of all attorneys of record;

(D) Names of all parties;

(E) Date of filing;

(F) Advance cost paid;

(G) Additional costs paid;

(H) Date of service;

(I) Type of service, including whether a second original is sent and where;

(J) The date and type of specific disposition of the action, including clear entries for:

(1) Dismissals (with or without prejudice);

(2) Settlements;

(3) Judgments and the type of judgment, i.e., summary, default, on the pleadings, consent, on the verdict, notwithstanding the verdict, directed and so forth. In the event the case is a divorce, enter final decree and the type of judgment;

(4) Five year or other administrative termination; and

(5) Transfer to court with proper jurisdiction and venue.

(K) Whether the verdict or judgment is for the plaintiff or the defendant;

- (L) Whether there was a mistrial;
- (M) The date of the trial, if any;
- (N) Whether the case was tried (with or without jury);
- (O) The name of the judge making the final disposition of the case;
- (P) Date a Fi. Fa. was issued;
- (Q) A cross reference to the minutes and final record and page number;
- (R) A cross reference to the records storage area and box number if the case file is stored off site;  
and
- (S) A summary of all pleadings in the case and the dates of their filings, transcripts filed, motions for new trial, notices of appeal, and remittiturs.

#### **Rule 39.2.1. Civil Case Initiation Form**

The clerk shall require the attorney filing a civil action to complete the civil case initiation form. The clerk shall enter the action number for the case on the civil case initiation form and the form shall become part of the file for the case. The clerk shall use the cause(s) of action indicated by the attorney completing the form to enter the cause(s) of action upon the civil docket of the court, unless it appears to the satisfaction of the clerk by an inspection of the pleadings that the cause(s) of action has been recorded in error by the attorney. If the wrong cause(s) of action has been recorded, the clerk shall correct the civil case initiation form and enter the correct cause(s) of action upon the civil docket of the court.

Amended effective January 18, 1990.

#### **Rule 39.2.2. Modification of the Civil Case Initiation Form**

If additional information is deemed necessary by the court at filing, the civil case initiation form may be modified to include new items by using the blank space available at the bottom of the form.

Amended effective January 18, 1990.

#### **Rule 39.2.3. Civil Case Disposition Form**

Any order disposing of a civil action presented for consideration to a judge by any attorney or party shall be accompanied by a completed civil case disposition form. If the order is prepared or reframed by the court, the court shall cause the civil case disposition form to be completed or corrected, if necessary. The civil case disposition form shall be sent to the clerk along with the relevant order to become part of the file for the case. The clerk shall require any attorney or party filing a voluntary dismissal or settlement of a civil action to complete a civil case disposition form. The form shall become part of the file for the case. The clerk shall use the specific type of disposition found on the completed civil case disposition form to enter the specific type of disposition upon the civil docket of the court, unless it appears to the satisfaction of the clerk by an inspection of the order that the type of disposition has been recorded in error. If the wrong



type of disposition has been recorded, the clerk shall correct the civil case disposition form and enter the correct type of disposition upon the civil docket of the court.

Amended effective January 18, 1990.

#### **Rule 39.2.4. Modification of the Civil Case Disposition Form**

If additional information is deemed necessary by the court at disposition, the civil case disposition form may be modified to include new items by using the blank space available at the bottom of the form.

Amended effective January 18, 1990.

#### **Rule 39.3. The Criminal Docket**

The Criminal Docket shall contain a record of all criminal indictments in which true bills are rendered and all accusations filed in the office of the clerk of superior court and a summary of the pleadings in each case. Entries shall be made of the following information:

(A) Number—a unique number shall be assigned to each indictment which receives a true bill or accusation filed pursuant to Rule 36.9;

(B) Date of filing;

(C) Names of defendants and their OBTS numbers (the preprinted Offender Tracking No. found on the GCIC final disposition report);

(D) Names of defense attorneys;

(E) An enumeration of the specific types of offenses (counts);

(F) Whether the case was brought by accusation or indictment;

(G) Whether each count is a felony or misdemeanor, or a traffic ticket, and if a traffic ticket, the citation number;

(H) The name of the judge making the final disposition of the case;

(I) The plea and date of plea for each count in the case, including whether the plea was guilty, not guilty, nolo contendere, mentally incompetent to stand trial, and whether or not the plea was negotiated;

(J) Whether the case was tried with or without a jury;

(K) The disposition for each count in the case and the date of disposition including whether the count was dismissed, a nolle prosequi entered, a verdict of guilty was rendered, a verdict of not guilty was rendered, a verdict of not guilty by reason of insanity, or a verdict of guilty but mentally ill;

(L) A listing of the dates and types of proceedings in the case including motions for new trials;

- (M) The date and type of sentence including term, conditions, and amount of costs, fines or restitution for each defendant;
- (N) The date of issuance of a bench warrant and officer's return;
- (O) The date of issuance of a judgment absolute;
- (P) The date of issuance of scire facias;
- (Q) The date the transcript was filed;
- (R) The date application was made for sentence review;
- (S) The date notice of appeal was filed;
- (T) The date the remittitur was filed;
- (U) A cross reference to the minutes and final record and page number; and
- (V) A cross reference to the records storage area and box number if the case file is stored off site.

**Rule 39.4. Lis Pendens Docket**

The Lis Pendens Docket shall contain all lis pendens filed with the clerk and shall be properly indexed by the names of the parties.

**Rule 39.5. General Execution Docket**

The General Execution Docket shall contain all Fi. Fas. The information to be entered shall be:

- (A) Names of the parties and attorneys of record;
- (B) Names of county and court in which judgment was issued;
- (C) The date of judgment;
- (D) The date of issuance of the Fi. Fa.;
- (E) The date of the recording of the Fi. Fa. on the General Execution Docket;
- (F) The number of the case on which the judgment was rendered; and
- (G) The amount of principal, costs, attorney fees, interest, penalties, and total amount of the Fi. Fa. on the case.

Nulla Bona's and satisfactions are to be noted on the original entry. Re- issued Fi. Fas. shall be recorded as a new Fi.Fa. in the General Execution Docket. A cross reference to that new entry shall be made on the original entry of the Fi. Fa. or the last renewal of the Fi. Fa. which is less than seven years old. [In State Court, see State Court Rule 39.5.]

### **Rule 39.6. Adoption Docket**

The original files shall suffice as the Adoption Docket. Each adoption shall be given a unique consecutive case number pursuant to Rule 36.9. The adoption index shall contain the names of the petitioners. All adoptions shall be recorded in a separate adoption minutes and final record which shall be properly indexed. All adoption records, including the index, shall be kept sealed and locked and shall be confidential unless otherwise ordered by the judge.

### **Rule 39.7. Required Forms**

The forms listed below, except SC–6 and SC–6.1, shall be required for use in all superior courts in this state. SC–6 and SC–6.1 may be used in all superior courts in this state:

- [SC–1](#) Summons
  - [SC–2](#) Sheriff’s Entry of Service
  - [SC–3](#) Service by Publication
  - [SC–4](#) Notice of Publication
  - [SC–5](#) Writ of Fieri Facias
  - [SC–6](#) Final Disposition Form (Criminal) (to include “If you are convicted of a crime involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm including a rifle, pistol, or revolver, or ammunition, pursuant to federal law under 18 U.S.C. § 922 (g)(9) [and/or state law]”)
  - [SC–6.1](#) First Offender Sentence Form
  - [SC–7](#) Exemplification
  - [SC–8](#) Witness Subpoena
  - [SC–9](#) Subpoena for the Production of Evidence
  - [SC–9.1](#) Subpoena for the Production of Evidence at a Deposition
  - [SC–13](#) Civil Case Initiation Form
  - [SC–14](#) Civil Case Disposition Form
- Amended effective January 18, 1990; October 23, 2008.

### **Rule 39.7. Required Forms (effective January 1, 2013)**

The forms listed below shall be required for use in all superior courts in this state:

- [SC–1](#) Summons
- [SC–2](#) Sheriff’s Entry of Service
- [SC–3](#) Service by Publication
- [SC–4](#) Notice of Publication
- [SC–5](#) Writ of Fieri Facias
- [SC–6](#) Final Disposition Felony Confinement Sentence
- [SC–6.1](#) Final Disposition First Offender or Conditional Discharge Sentence
- [SC–6.2](#) Final Disposition Felony Sentence With Probation
- [SC–6.3](#) Final Disposition Misdemeanor Sentence With Probation
- [SC–6.4](#) Special Conditions of Probation
- [SC–6.4\(A\)](#) Index of Special Conditions
- [SC–6.4\(B\)](#) Inventory of Special Conditions
- [SC–6.4\(C\)](#) Sex Offender Special Conditions of Probation
- [SC–6.4\(D\)](#) Special Conditions of Probation For Conviction of an Offense Against a Minor or

	a Dangerous Sexual Offense
<a href="#">SC-6.4(E)</a>	Special Conditions of Probation for Violation of O.C.G.A. §§ 16-5-90 or 16-5-91 (Stalking or Aggravated Stalking)
<a href="#">SC-6.5</a>	Final Disposition Continuation of Sentence
<a href="#">SC-7</a>	Exemplification
<a href="#">SC-8</a>	Witness Subpoena
<a href="#">SC-9</a>	Subpoena for the Production of Evidence
<a href="#">SC-9.1</a>	Subpoena for the Production of Evidence at a Deposition
<a href="#">SC-13</a>	Civil Case Initiation Form
<a href="#">SC-14</a>	Civil Case Disposition Form

Amended effective January 18, 1990; October 23, 2008; January 1, 2013.

### **Rule 39.8. Suggested Forms**

The forms listed below are suggested for use in all superior courts:

<a href="#">SC-10</a>	Civil Docket Form (space saver size 8 1/2" x 11")
<a href="#">SC-11</a>	Civil Docket Form (space saver size 8 1/2" x 11")
<a href="#">SC-12</a>	Criminal Docket Form (space saver size 8 1/2" x 11")

### **Rule 39.9. Court Information**

The chief judge of each circuit may require the superior court clerk of each county of that circuit to furnish to the chief judge within 10 days after the end of each month, a general civil, domestic relations and a criminal caseload management report. The Chief Justice of the Georgia Supreme Court may request copies of the information that is furnished to the Chief Judges of the circuits pursuant to this rule.

The case types, events types and disposition methods used in these reports will conform to Judicial Council guidelines for reporting caseload. Each such report shall include the following:

- (A) the number of cases filed by case type in the prior month and year to date;
- (B) the number of cases disposed by case type and disposition method in the prior month and year to date;
- (C) the number and type of pending cases;
- (D) a list of cases more than 120 days old (criminal) and 180 days old (civil/domestic relations) to include the following data:
  - (i) case number,
  - (ii) style,
  - (iii) case type,
  - (iv) filing date,
  - (v) next event scheduled,
  - (vi) date of that event; and

(E) any other information the Chief Judge requests that is contained within court standardized computer programs.

Rule 39.9 adopted effective March 13, 1997.

## **Rule 40. COMPUTER APPLICATIONS AND STANDARDS**

When the clerk of a superior court elects to store for computer retrieval any or all records, the same data elements used in a manual system shall be used, and the same integrity and security maintained.

## **Rule 41. MOTIONS FOR NEW TRIAL**

### **Rule 41.1. Time for Hearing**

In order to reduce delay between the conclusion of the trial and the filing of the notice of appeal, the trial court may hear motions for new trial immediately after filing and prior to the preparation of the transcript of proceedings. In any event, the motion for new trial shall be heard and decided as promptly as possible.

### **Rule 41.2. Transcript Preparation**

In criminal cases, the transcript shall be prepared as promptly as possible.

### **Rule 41.3. Transcript Costs**

Except where leave to proceed in forma pauperis has been granted, an attorney who files a motion for new trial, or a notice of appeal which specifies that the transcript of evidence or hearing shall be included in the record, shall be personally responsible for compensating the court reporter for the cost of transcription. The filing of such motion or notice shall constitute a certificate by the attorney that the transcript has been ordered from the court reporter. The filing of such motion or notice prior to ordering the transcript from the reporter shall subject the attorney to disciplinary action by the court.

## **Rule 42. SPECIAL COUNSEL**

### **Rule 42.1. Private Special Prosecutors**

Private special prosecutors retained by the family or relatives of one named as a victim in an indictment or accusation may not participate in the prosecution of a criminal case. Special assistant district attorneys appointed by the district attorney including attorneys from personnel of public agencies may prosecute criminal cases.

### **Rule 42.2. Appointment of Counsel to Assist Retained Counsel**

During the pendency of a criminal case, the trial judge may appoint additional counsel to assist retained counsel in the representation of a defendant prior to, during, or after trial.

## **Rule 43. MANDATORY CONTINUING JUDICIAL EDUCATION (MCJE)**

### **Rule 43.1. Program Requirements**

(A) Every superior court judge, including senior superior court judges, shall attend approved creditable judicial education programs or activities, totaling a minimum of twelve hours every year. At least one hour of the mandated twelve hours per year shall be devoted to the topic of legal or judicial ethics or legal or judicial professionalism. If a judge completes more than twelve hours for credit in any calendar year, the excess credit shall be carried over and credited to the education requirements for the next succeeding year only.

(B) Each new judge must attend the pertinent Institute of Continuing Judicial Education (ICJE) in-state program of instruction for new judges or its locally administered individual new judge orientation course. Either activity must be attended as soon as possible after the judge's election or appointment and, preferably, before hearing cases, but in any event, within one year after assuming office. Each new judge is also encouraged to attend a nationally based basic course for general jurisdiction trial judges.

(C) Additionally, every judge is encouraged to attend national or regional specialty, graduate or advanced programs of judicial and legal education.

(D) Qualifying creditable judicial education programs and activities shall include:

(1) Programs sponsored by the Institute of Continuing Judicial Education of Georgia;

(2) Programs of continuing legal education accredited by the State Bar of Georgia's Commission on Continuing Lawyer Competency, such as all Institute of Continuing Legal Education (ICLE) programs;

(3) Additional programs approved on behalf of the Council of Superior Court Judges by its Committee on Mandatory Continuing Judicial Education;

(4) Courses at a Georgia based law school, whether for credit or not, that qualify an individual for a degree or to sit for the Georgia bar examination;

(5) Teaching any of the above;

(6) Service on the Judicial Qualifications Commission (JQC) or the State Bar Disciplinary Board for legal or judicial ethics or legal or judicial professionalism credit.

(E) For teaching, the following credits shall be given:

(1) Three additional hours for each hour of instructional responsibility as a lecturer when no handout paper is prepared, and six hours for each hour of lecture when a handout paper is required.

(2) Two hours for each hour as a panelist or mock trial judge.

(3) When the same lecture or other instructional activity is repeated in a single calendar year, additional credit shall be given equivalent to the actual time spent.

Amended effective October 28, 1993; amended effective September 2, 1999.

### **Rule 43.2. Administration of the Program**

Administrative implementation of this program of mandatory continuing judicial education shall be conducted solely by the Council of Superior Court Judges.

Amended effective October 28, 1993.

### **Rule 43.3. Council of Superior Court Judges Committee on Mandatory Continuing Judicial Education**

The President of the Council of Superior Court Judges shall appoint a Committee on Mandatory Continuing Judicial Education, including at least one member of ICJE, which shall on behalf of the Council approve for credit judicial educational programs not otherwise automatically accredited by the MCJE rule, regardless of whether sponsored by a legal or judicial organization; and the committee shall impose the prescribed private and public sanctions on judges who fail to comply with the mandatory training plan.

Amended effective October 28, 1993.

### **Rule 43.4. Sanctioning Procedures**

(1) In December of each year, the Committee on Mandatory Continuing Judicial Education will receive a report from the Council of Superior Court Judges detailing the creditable participation of judges in MCJE activities for that year. At the same time, every superior court judge will also receive from the Council of Superior Court Judges a report on his or her creditable activity.

Judges failing to attain the required twelve hours in any year will be notified by the committee chair that they have not met the MCJE participation requirement for that year. Following receipt of such notice, a judge shall submit a plan for making up any deficiency in education requirements. Education credit hours earned thereafter shall first be credited to the deficiency for any prior year.

(2) Judges who fail to earn a minimum of twenty four hours over a two year period shall receive a private administrative admonition issued from the Committee on Mandatory Continuing Education of the Council of Superior Court Judges detailing the consequences of failure to fulfill the training requirements

(3) Upon a judge's failure to fulfill the training requirements at the end of three years, the President of the Council of Superior Court Judges shall issue a public reprimand, with a copy spread upon the minutes of each county in the circuit where the judge serves.

Amended effective October 28, 1993; amended effective September 2, 1999.

### **Rule 43.5. Exemptions**

The Committee on Mandatory Continuing Judicial Education of the Council of Superior Court Judges shall receive and act upon requests for exemptions to MCJE requirements of these rules.

Amended effective October 28, 1993.

## **Rule 44. HABEAS CORPUS PROCEEDINGS IN DEATH SENTENCE CASES**

### **Rule 44.1. Application**

This rule shall apply to all petitions seeking, for the first time, a writ of habeas corpus in state court proceedings for those cases in which the petitioner has received a sentence of death. OCGA § 9-14-47.1.

Amended effective January 11, 1996.

### **Rule 44.2. Request for Judicial Assignment**

Within ten days of the filing of such a petition, the superior court clerk of the county where the petition is filed shall serve a copy of the petition upon the Executive Director of the Council of Superior Court Judges of Georgia. This service may be effected by mail and will constitute a request for judicial assistance under OCGA § 15-1-9.1 (b) (3).

Amended effective January 11, 1996.

### **Rule 44.3. Respondent's Answer or Motion to Dismiss**

The respondent shall answer or move to dismiss the petition within 20 days after the filing of the petition or within such further time as the court may set for good cause shown.

Amended effective January 11, 1996.

### **Rule 44.4. Assignment of Judge for Habeas Corpus Proceedings**

(A) The Executive Committee of the Council of Superior Court Judges shall promulgate guidelines for the assignment of such cases to the various superior court judges throughout Georgia, and shall provide that the case will not be assigned to a judge within the circuit in which the sentence was imposed. Within 30 days after the Executive Director receives the petition, the president of the council shall assign the case to a judge in accordance with the guidelines.

(B) Pending assignment of a judge, or during a later vacancy of an assigned judge, a presiding judge of the court in which the petition is filed shall be authorized to act on emergency matters unless otherwise disqualified by Uniform Superior Court Rule 25.

Amended effective January 11, 1996.

### **Rule 44.5. Preliminary Conference and Scheduling**

The assigned judge may wish to consider scheduling a preliminary conference with counsel for the petitioner and respondent as soon as practical. This conference may be conducted by telephone. The court may also wish to enter a scheduling order establishing specific dates in accordance with the guidelines set forth in this rule. The court may on its own or on motion of either party shorten any time period set forth hereinafter, and may extend such time period for good cause.

Amended effective January 11, 1996.



**Rule 44.6. Motions**

Within 60 days after the filing of the petition, the petitioner may file pretrial motions. Within 90 days after the filing of the petition, the respondent may file any motions. Responses to motions shall be governed by Rule 6.2.

Amended effective January 11, 1996.

**Rule 44.7. Amendments to the Petition; Discovery**

No later than 120 days after the filing of the petition, the petitioner may amend the petition, and if discovery is allowed pursuant to OCGA § 9-14-48 it shall be completed.

Amended effective January 11, 1996.

**Rule 44.8. Pretrial Conference**

The court may wish to schedule a pretrial conference with counsel for the petitioner and the respondent and enter an appropriate pretrial order for proceedings in the case. This conference may be conducted with counsel only and by telephone if appropriate.

Amended effective January 11, 1996.

**Rule 44.9. Evidentiary Hearing**

Within 180 days after the filing of the petition, the court shall conduct an evidentiary hearing as provided by OCGA §§ 9-14-47 and 9-14-48.

Amended effective January 11, 1996.

**Rule 44.10. Preparation of Transcript**

The evidentiary hearing shall be transcribed by a court reporter designated by the court hearing the case as set forth in OCGA § 9-14-50. Within 30 days after the evidentiary hearing, the transcript of the evidentiary hearing shall be made available to the parties and the court.

Amended effective January 11, 1996.

**Rule 44.11. Briefing**

Within 60 days after the evidentiary hearing, the petitioner may file any brief and if so directed by the court shall file proposed findings of fact and conclusions of law and a proposed order. Within 90 days after the evidentiary hearing, the respondent may file any responsive brief and if so directed by the court shall file proposed findings of fact and conclusions of law and a proposed order. Within 100 days after the evidentiary hearing, the petitioner may file any additional responsive brief.

Amended effective January 11, 1996.

### **Rule 44.12. Ruling on Petition**

Within 90 days of the filing of the respondent's brief, or the petitioner's reply brief if one is filed, the court shall issue its ruling on the petition and its written findings of fact and conclusions of law as required by OCGA § 9-14-49.

Amended effective January 11, 1996.

### **Rule 44.13. Effect of Rule**

Upon application of any party, the Supreme Court may order such relief as it finds necessary to assure compliance with this Rule. This Rule provides procedural guidelines and no substantive rights are hereby conferred upon any person. No violation of this Rule shall be the basis of any grant of habeas corpus relief.

Amended effective January 11, 1996.

## **Rule 45. COURT EMERGENCY MEASURES**

Courts within a judicial circuit shall prepare for emergencies and disruptions in court business by adopting and periodically reviewing a consolidated plan addressing the safety and security of employees and the public, continuity of operations and their immediate response to crises.

### **a. Court Security and Facilities**

In coordination with local and/or state public safety officials, courts shall develop and annually update court security policies and procedures and a short-term emergency response program that anticipates safeguarding lives and property.

### **b. Court Operations**

At a minimum, each plan for the continuity of court operations shall identify:

- i. Essential activities and functions to be performed;
- ii. Vital records, systems and equipment, and provide for their protection;
- iii. Automatic succession of leadership and delegation of authority;
- iv. One or more relocation sites, and provide for their preparation;
- v. Employees to perform essential activities and functions, and provide for their training;
- vi. Means for warning employees, the public and the media of potential threats and recommended actions;
- vii. Means for identifying the location and status of employees following an emergency;
- viii. Means for communicating with employees and the public subsequent to an emergency;
- ix. Means for restoring normal functions as soon as is feasible and prudent; and
- x. Regular training for employees with specific emergency responsibilities and for all employees that may be affected by disruptions to operations.

### c. Court Emergency Order

Upon his or her own motion or after consideration of a request by another judge or court official, the chief judge of a court experiencing an emergency or disruption in operations may issue an order authorizing relief from time deadlines imposed by statute or court rule until the restoration of normal court operations or as specified. The order shall contain (1) the identity and position of the judge, (2) the time, date and place executed, (3) the jurisdiction affected, (4) the nature of the emergency, (5) the period of duration, and (6) other information relevant to the suspension or restoration of court operations.

The duration of a court emergency order is limited to a maximum of thirty days. The order may be extended no more than twice by the issuing judge for additional thirty-day periods, and any extensions shall contain information required in the original order.

The court emergency order may designate one or more facilities as temporary courthouses which shall be suitable for court business and located as near as possible to the county seat.

Adopted effective December 2, 2004.

## **Rule 46. SPECIAL MASTERS**

### (A) Appointment, Removal and Substitution

(1) Unless a statute provides otherwise, upon the motion of any party or upon the court's own motion, the court of record may appoint a master:

- (a) to perform duties consented to by the parties;
- (b) to address pretrial and post-trial matters that the court cannot efficiently, effectively or promptly address;
- (c) to provide guidance, advice and information to the court on complex or specialized subjects, including, but not limited to technology issues related to the discovery process;
- (d) to monitor implementation of and compliance with orders of the court or, in appropriate cases, monitoring implementation of settlement agreements;
- (e) to investigate and report to the court on matters identified by the court;
- (f) to conduct an accounting as instructed by the court and to report upon the results of the same;
- (g) upon a showing of good cause, to attend and supervise depositions conducted outside of the jurisdiction; and
- (h) to hold trial proceedings and make or recommend findings of fact on issues to be decided by the court without a jury if appointment is warranted by
- (i) some exceptional condition, or

(ii) the need to perform an accounting, to resolve a difficult computation of damages or if the matter involves issues for which a special substantive competence would be beneficial.

(2) A master must not have a relationship to the parties, counsel, action, or court that would require disqualification of a judge under applicable standards, unless the parties consent with the court's approval to appointment of a particular person after disclosure of all potential grounds for disqualification.

(3) In appointing a master, the court should consider the fairness of imposing the likely expenses on the parties and should protect against unreasonable expense and delay, taking into account the burdens and the benefits such an appointment would produce. The appointment of a special master shall not deprive any party access to the courts or the civil justice system.

(4) A special master may be removed or substituted by order of the court, upon motion of a party or sua sponte.

#### (B) Order Appointing Master

(1) Notice. The court must give the parties notice and an opportunity to be heard before appointing a master.

(2) Contents. The order appointing a master must direct the master to proceed with all reasonable diligence and must state:

(a) the master's duties, including any investigative or enforcement duties, and any specific limits on the master's authority;

(b) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(c) the nature of the materials to be preserved and filed as the record of the master's activities;

(d) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(e) the basis, terms, and procedure for fixing the master's compensation pursuant to subparagraph (H) hereof.

(3) Entry of Order of Appointment. The court may enter the order appointing a master only after the master has filed an affidavit: (i) disclosing whether there is any ground for disqualification and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification; and (ii) certifying that the master shall discharge the master's duties as required by law and pursuant to the court's instructions without favor to, or prejudice against any party.

(4) Amendment. The order appointing a master may be amended at any time after notice to the parties, and an opportunity to be heard.

(C) Master's Authority. Unless the appointing order expressly directs otherwise, a master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently all assigned duties. Unless otherwise indicated in the court's order of appointment, the master shall have the power to take evidence, to hear motions and to pass on questions of law and fact within the scope of the referral order. The master may by order impose upon a party any noncontempt sanction provided by OCGA §§ 9-11-37 and 9-11-45, and may recommend to the court a contempt sanction against a party and any sanction against a nonparty.

(D) Evidentiary Hearings. Unless the appointing order expressly directs otherwise, a master conducting an evidentiary hearing may exercise the power of the appointing court to compel, take, and record evidence.

(E) Master's Orders. A master who makes an order must promptly serve a copy on each party.

(F) Master's Reports. Unless otherwise indicated in the appointment order, a master must report to the court:

(1) all motions submitted by the parties;

(2) all rulings made on all issues presented and all conclusions of law and findings of fact; ;

(3) all evidence offered by the parties and all rulings as to the admissibility of such evidence; and

(4) such other matters as the master may deem appropriate.

The master must file the report and promptly serve a copy of the report on each party, unless the court directs otherwise.

(G) Action on Master's Order, Report, or Recommendations

(1) Action. In acting on a master's order, report, or recommendations, the court must afford the parties an opportunity to be heard and to object to any portion thereof. The court may receive evidence, and may adopt or affirm, modify, reject or reverse in whole or in part, or resubmit all or some issues to the master with instructions.

(2) Time To Object or Move. A party may file a motion to reject or to modify the master's order, report, or recommendations within twenty (20) days from the date on which the master's order, report, or recommendations are served, unless the court sets a different time. The master's order, report, or recommendations shall be deemed received three days after mailing by United States mail or on the same day if transmitted electronically or by hand-delivery. In the absence of a motion to reject or modify an order, report or recommendations within the time provided, the order, report or recommendations shall have the force and effect of an order of the court.

(3) Fact Findings. The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties stipulate with the court's consent that:

(a) the master's findings will be reviewed for clear error, or

(b) the findings of a master appointed under subsections (A) (1) (a) or (e) will be final.

(4) Legal Conclusions. The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) Procedural Matters. Unless the order of appointment establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(H) Compensation

(1) Fixing Compensation. The court shall fix the master's compensation on the basis and terms stated in the order of appointment, but the court may set a new basis and terms after notice and an opportunity to be heard.

(2) Payment. The compensation fixed must be paid either:

(a) by a party or parties; or

(b) from a fund or subject matter of the action within the court's control.

(3) Allocation. The court must allocate payment of the master's compensation among the parties after considering the nature and amount of the controversy, the means of the parties, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

Adopted effective June 4, 2009.

**Rule 47. ADOPTION – EXPEDITING UNCONTESTED AGENCY  
ADOPTION HEARINGS**

(A) In order to expedite and bring finality to petitions for adoptions brought under OCGA § 19-8-4, a Superior Court judge should conduct a final hearing as provided in OCGA § 19-8-14 (e) and (f) on a petition for adoption pursuant to OCGA § 19-8-4 within fifteen days of receipt by the judge of certification by the petitioner or petitioner's counsel that all statutory requirements are complete. In the event the judge is unable to conduct the hearing within fifteen days, the hearing should be conducted as soon thereafter as possible.

(B) In order to expedite the hearing of an uncontested adoption, a judge may, with the consent of the petitioner or petitioner's counsel, conduct a final hearing in any county in the judge's circuit regardless of the county in which the petition was filed.

(C) The required certification shall state as follows:

I certify that all statutory requirements for the grant of this adoption have been met and the matter is ready to be heard. The undersigned consents to the judge hearing this matter in any county of the circuit.

Adopted effective May 5, 2011.