

**Judicial Council of Georgia
Board of Court Reporting**

**GEORGIA CERTIFIED COURT REPORTERS
RESOURCE GUIDE**



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**Judicial Council of Georgia
Board of Court Reporting**



RULES AND REGULATIONS

**The Judicial Council of Georgia
Board of Court Reporting
Rules and Regulations**

ARTICLE 1. GENERAL PROVISIONS

A. Location of Offices

The principal office of the Board of Court Reporting of the Judicial Council of Georgia is: 244 Washington Street, S.W., Suite 300, Atlanta, Georgia 30334-5900.

B. Tenses, Gender, and Number

As used in this Chapter, the present tense includes the past and future tenses, and the future tense includes the present; the masculine gender includes the feminine, and the feminine includes the masculine; the singular includes the plural, and the plural includes the singular.

C. Definitions

1. Any future reference to “the Board” in these rules shall mean the Board of Court Reporting of the Judicial Council of Georgia.

2. Any future reference to “the exam” in these rules shall mean the Georgia Certified Court Reporters Exam, including all written and dictation portions, approved by the Board of Court Reporting of the Judicial Council of Georgia.

D. Power of the Board, Generally

Unless otherwise specifically addressed in these Rules and Regulations, by the Judicial Council of Georgia, or in the Georgia Court Reporting Act, the Board shall have discretion to perform any act necessary to define and regulate the practice of court reporting in Georgia, and to establish the Board’s procedures.

E. Power of the Board, Generally

These Rules shall take effect on January 1, 2008, except as provided in Article 3. Also, any grievance filed prior to January 1, 2008 shall proceed under the Rules and Regulations in place at the time the grievance was filed.

ARTICLE 2. PERSONS QUALIFIED TO TAKE EXAM

All persons who did not make application to qualify or did not qualify under Section 11 of Georgia Laws 1974, p. 349 (O.C.G.A. Sec. 15-14-29 (b)), by April 1, 1975, must pass an exam provided for in Article 3 of these Rules to become a Certified Court Reporter, unless qualified to apply for certification under Article 6 (Emergency Judicial Permits) of these Rules.

ARTICLE 3. CERTIFICATION

A. Requirement to Pass Exam

An applicant shall qualify to apply to be a Certified Court Reporter in Georgia by passing an exam, as hereinafter provided, and meeting the requirements of O.C.G.A. Sec. 15-14-29. Application for testing shall be made on a form approved by the Board. The Board reserves the right to refuse to allow testing for good cause.

B. Disqualification for Act of Dishonesty

Any applicant who commits any act of dishonesty with respect to any portion of the exam shall immediately be disqualified, and will not be eligible to take the exam again for a period of two years from the date of the exam on which the applicant was disqualified.

C. Testing

1. The Board shall provide for an exam to be administered to an applicant, pursuant to a written protocol established by the Board from time to time. The exam shall be designed to test the competency of the applicant as a court reporter, as well as the applicant's knowledge of the laws, rules and regulations governing the conduct of court reporting in Georgia.

2. Any person who passes an exam prior to January 1, 2008 in another state that has been previously approved by the Georgia Board of Court Reporting, and thereafter becomes licensed in that state, may apply to become a certified court reporter in Georgia. However, no application for reciprocal license through a state-administered exam shall be accepted after June 30, 2008. A person who has passed an exam administered by a national court reporting association may be eligible to be certified in Georgia.

D. Procedure for Certification After Testing

1. Application for certification shall be made on a form approved by the Board, after an applicant is notified that the applicant has passed the exam. If the Applicant is applying for certification after passing an exam in another state, or passing an exam administered by a national association, the applicant shall provide a copy of the certification document from that state or national association with the application.

2. As to applicants who take the Georgia exam, applications for certification must be received by the Board within 45 days of the mailing date of notification from the Board that the applicant is eligible. Any applicant who fails to meet the 45-day deadline shall be required to take and pass the exam again in order to apply for certification.

3. A certification fee set by the Board must be included with the application for certification.

E. Certificate

After receipt of the prescribed fee and approval of the application for certification and fee the Board will issue a certificate to the applicant. A reporter possessing such a certificate will be a properly certified court reporter in the State of Georgia.

F. Right to Review

The Board reserves the right to refuse to certify any applicant for good cause.

ARTICLE 4. CERTIFICATION PER METHOD

A court reporter shall be certified to use only the method of takedown that was used for testing. A court reporter may be certified in more than one method of takedown by successfully passing the exam using each method of takedown.

ARTICLE 5. RENEWAL OF CERTIFICATES

A. Form and Fees

Certificates may be renewed annually by filing the renewal form and paying the renewal fee set by the Board on or before April 1st. No renewal form or fees will be accepted unless the reporter complies with the rules regarding continuing education hours.

B. Inactive Status

A court reporter who wishes to cease the business of court reporting in Georgia may elect to become “inactive” by notice to the Board on a form provided by the Board, effective on the date of filing of the form with the Board. An inactive reporter shall not be required to pay dues or obtain continuing education hours. A reporter who elects inactive status, and wishes to become an active certified court reporter again in this state, must become certified again through testing. A reporter who elects inactive status shall provide the Board with an address and location for the reporter’s records relating to work the reporter performed prior to becoming inactive. If a court reporter elects “inactive” status, the reporter shall not be authorized to take down any matters, but shall be authorized to certify transcripts of matters taken down prior to becoming inactive.

ARTICLE 6. EMERGENCY JUDICIAL PERMITS

A. Issuance of an Emergency Judicial Permit

1. Any judge of a court of record shall have the authority to request an emergency judicial permit, allowing a person who is not a certified court reporter in the State of Georgia to act as a temporary official court reporter in that judge’s court for a period not to exceed one year, in accordance with O.C.G.A. Sec. 15-14-34.
2. The applicant shall also send an Application for Emergency Judicial Permit, and pay a fee set by the Board. Upon receipt and approval of the request, the Application, and the fee, the Board may issue a permit for that reporter to be the official court reporter for that court only, for a period not to exceed one year.
3. The emergency judicial work permit shall not be renewable, and shall not allow freelance reporting by the judicial permit holder. No person shall be granted more than one emergency judicial permit.
4. The emergency judicial work permit is no longer valid once the holder of the permit takes and passes the exam to become a certified court reporter in Georgia.

ARTICLE 7. COURT REPORTING FIRMS

A. Definition

1. A “court reporting firm” shall include a partnership or other business entity formed by persons who employ one or more court reporters who are engaged in the business of court reporting. The definition shall not include individuals in the business of court reporting who are self-employed, but form a professional corporation and do not employ other court reporters. The definition shall not include government agencies, including courts that employ court reporters for reporting hearings and other matters.

2. A “court reporting firm” shall also include any association of two or more court reporters working together under a fee sharing arrangement, but as independent contractors, who are engaged in the business of court reporting. Court reporters who refer work to one another, but who do not share fees for the referred work, are not included in this definition.

B. Registration

1. All court reporting firms as defined in Section 7A shall register with the Board, and shall supply such information as is required on a form promulgated by the Board. All firms shall pay a registration fee set by the Board. This registration form must be filed with the Board and accompanied by the required fee within 30 days of starting to do business as a firm in Georgia.
2. All court reporting firms shall renew their registration each year and shall pay a renewal fee set by the Board on or before April 1st each year.
3. Any firm failing to register within 30 days of starting business, or any firm that fails to renew their registration on or before April 1st each year, shall be assessed a late fee for registration or renewal in an amount to be set by the Board.

C. Discipline

1. Pursuant to O.C.G.A. Sec. 15-14-37(g), the Board may discipline a firm by imposing a fine.
2. A firm shall adopt reasonable measures to assure that any court reporter providing services on behalf of the firm is currently certified in Georgia.

ARTICLE 8. CONTINUING EDUCATION REQUIREMENTS

A. Georgia Certified Court Reporters Training Council.

The Georgia Certified Court Reporters Training Council is established. The Council shall consist of seven voting members. The members shall be two freelance voicewriter reporters, two freelance shorthand reporters, one official voicewriter reporter, one official shorthand reporter, and one official reporter certified in any method. The members shall be appointed as follows:

1. Four members shall be appointed by the Georgia Certified Court Reporters Association as follows: one freelance voicewriter, one official voicewriter, one official freelance shorthand reporter, and one official shorthand reporter.
2. Three members shall be appointed by the Board of Court Reporting as follows: one official reporter certified in any method, one freelance shorthand reporter, and one freelance voicewriter;
3. The members shall serve a term of three years. Members may not exceed two consecutive three-year terms.
4. The Board may remove a CRTC member for cause. If a member resigns or is removed before the end of their term, the appointing body shall make an appointment for the remainder of the unexpired term.

5. There must be at least three members of the Council present at a meeting to constitute a quorum for the transaction of business. The Council shall maintain minutes of its meetings.
6. The Council shall provide a written report of the previous calendar year's activities to the Board by March 1 of each year.
7. The Council shall elect a Chair, Vice-Chair and Secretary at their first meeting every year, who shall serve for one year. The Chair may be re-elected for one additional year, but may not serve for more than two consecutive years. The Administrative Office of the Court shall provide staff assistance to the Council.

B. Duties of the Georgia Certified Court Reporters Training Council

The Georgia Certified Court Reporters Training Council shall be vested with the following functions, powers and responsibilities:

1. To promulgate rules and regulations to carry out this charge;
2. To proscribe, by rules and regulations, the minimum requirements for curricula and standards comprising the continuing education courses and for creditworthy activity.
3. To identify areas of training needed, and to suggest program refinements to training providers;
4. To review and investigate requests for extensions of time to complete continuing education hours based on disability, hardship, or other extenuating circumstances;
5. To evaluate course exceptions when presented for credit;
6. To cooperate with and secure the cooperation of every department, agency or board of the state government or its political subdivision in furtherance of the purpose of this Article;
7. To do any and all things necessary to enable it to adequately perform its duties and to exercise the power granted to it;

C. Training Requirements

1. Newly certified court reporters

Each newly certified court reporter shall be required to take the first *Learning Essentials About Professionalism Seminar* (LEAP Seminar) authorized by the Board after their certification.

2. Emergency Judicial Permit

A holder of an emergency judicial permit shall not be required to take continuing education hours during time period during which the emergency judicial permit is valid.

3. Yearly Requirement

Each certified court reporter shall be required to attend a minimum of 10 hours of approved training per calendar year. However, any reporter issued an initial certificate is

not required to acquire credit hours for that calendar year, except that every newly certified Georgia court reporter shall complete the LEAP Seminar as required hereinabove.

ARTICLE 9. SUSPENSION AND REVOCATION FOR DUES AND CONTINUING EDUCATION

A. Suspension.

A certificate is *automatically* suspended for:

1. Failure to pay the renewal fee by April 1st each year, or
2. Failure to meet annual CE requirements.

Suspension is effective immediately upon noncompliance.

A suspended certificate may be reinstated by curing the cause of the suspension before December 31st of the year in which the suspension occurs.

B. Revocation

If the suspension is not cured by December 31st of the year in which the suspension occurs, the certificate is *automatically* revoked.

If the certificate is revoked, the reporter may become certified again only by meeting current certification requirements, and no sooner than the first day of April following the date of revocation. The revoked reporter must also pay a penalty fee as established by the Board.

This Article shall govern recertification of a reporter whose certificate was revoked under the prior Article 9 of these Rules after January 1, 2009.

ARTICLE 10. ETHICS

A. General Ethical Requirements

All certified court reporters in the State of Georgia shall be subject to disciplinary action by the Board pursuant to O.C.G.A. Sec. 15-14-33, and for violations of the Board of Court Reporting Rules and Regulation, and for violations of the Code of Professional Court Reporting.

B. Disclosure Form for Depositions

Each court reporter taking a deposition shall provide a copy of a disclosure form to the parties and/or their attorneys, prior to taking a deposition, stating the following:

1. That the court reporter is not disqualified for a relationship of interest under the provisions of O.C.G.A. Sec. 9-11-28 (c), OR
A statement that discloses a permissible relationship of interest under O.C.G.A. Sec. 9-11-28 (c). If the court reporter does disclose a relationship of interest, the court reporter must obtain explicit consent of all parties to the court reporter taking the deposition despite same on the record of the deposition.
2. That the court reporter is a Georgia Certified Court Reporter.
3. That the court reporter is a sole practitioner, or a representative of the XXXX court
4. reporting firm; or an independent contractor of the XXXX court reporting firm.

5. That the court reporter was contacted by the office of (name the attorney/court reporting firm or party who called the court reporter) to provide court reporting services for this deposition.
6. That the court reporter will not be taking this deposition under any contract prohibited by Georgia law.
7. The disclosure form should be dated and signed by the court reporter.

A copy of the disclosure form should be included in the transcript of the deposition, should a transcript be requested.

The sample forms in the Advisory Opinion of the Board of Court Reporting Number 27 are no longer approved by the Board.

ARTICLE 11. BASIS FOR SANCTION

1. The Board shall have the authority to refuse to grant a certificate or emergency judicial permit to an applicant, to revoke the certificate or emergency judicial permit of a court reporter, or to discipline a court reporter, for good cause, including, but not limited to, a finding by a majority of the entire Board that the court reporter or applicant has failed to meet the standards set forth in O.C.G.A. Sec. 15-14-33, and/or O.C.G.A. Sec. 15-14-37.
2. If a certificate or emergency judicial permit is denied, the applicant shall have 10 days from the mailing of the notice of such denial to request reconsideration. A request for reconsideration shall be in writing and shall be accompanied by supporting evidence and argument. An applicant seeking reconsideration may request a hearing before the Board at its next regularly scheduled meeting; otherwise, the request shall be considered by vote of the Board without a hearing.
3. It shall be the obligation of a court reporter or applicant to notify the Board of any act that may be a violation of O.C.G.A. Sec. 15-14-33 or O.C.G.A. Sec. 15-14-37 at the time the act occurs. Failure to notify the Board shall also constitute grounds for discipline or refusal to grant a certificate.

ARTICLE 12. GRIEVANCE PROCEDURES

A. Definitions.

As used within this Article, the following terms shall have the following definitions:

1. *Complaint.* A notarized administrative complaint filed by a party, or by the Board, against a person or entity under the regulatory authority of the Board, alleging that the person is subject to discipline.
2. *Complainant.* A party filing a Complaint or grievance.
3. *Respondent.* A party against whom a Complaint or grievance is filed.
4. *Answer.* A notarized written response to a Complaint that is filed by a respondent at the direction of the Board.

B. Time

1. Computation of Time.

Any period of time referenced within this Article refers to calendar days. The time period begins to run on the first day following the event requiring the computation of time. When the last day of the period so computed falls on a day on which the office of the Board is closed, the period shall run until the end of the following business day. All time-sensitive materials must be received by the Board by 4:30 p.m. local time on the date upon which it is due.

2. Extensions of Time.

The Board may extend any time limit provided for in this Article in its sole discretion. All requests for such extension, including requests for postponements or continuances, shall be made by written motion submitted to the Board before the expiration of the time limit or the date of a hearing, so as to allow the Board sufficient time to consider the Motion. The Board shall notify all parties of its action on said motion.

C. Communication Requirements

1. Address for Receipt of Communications to the Board.

All communications regarding topics governed by this Article must be in writing and submitted by mail or by hand delivery, with the exception of requests for Complaint forms. All communications shall be sent to the Board at the Board's principal address identified in Article 1 of these Rules.

2. Communications Generally

Any communication involving a Complaint and the grievance process shall be submitted to the Board through the Board staff, and shall not be addressed to individual members of the Board or sent directly to members of the Board. The staff shall disseminate all written communications requiring Board action to the members of the Board.

No *ex parte* communications between Board members and parties, or attorneys for the parties, may occur. If any *ex parte* communication does occur, the Board or its staff shall notify all parties of the communication, informing them of its substance, and the circumstances of its receipt.

3. Receipt of Communications

All communications under this Article filed with the Board are deemed filed on the date upon which they are received at the Board's principal address.

4. Confidentiality

The status of a Complaint will be communicated only to interested parties and their attorney, Board members, and Board staff. The Board's decision shall be communicated, however, in accordance with the terms of the decision (a public reprimand, suspension, or revocation of a license may be communicated to the public, for example, but a private reprimand shall not be).

D. Grievance Initiation.

1. Who may file

Any person seeking to file a grievance against a court reporter, court reporting firm, holder of an emergency judicial permit, or any other person or entity under the jurisdiction of the Board, may file a Complaint with the Board. The Board may also, on its own Motion, file a Complaint.

2. Forms

All Complaints shall be submitted on a form approved by the Board for this purpose. Any and all documentation or information in support of the Complaint must be included with the Complaint. The information on the Complaint form and any information accompanying it must be legible. The Complaint form must be fully completed and must be notarized. Complaint forms may be requested from the Board's staff in person or by phone, or online at www.georgiacourts.org.

3. Dismissal of Complaint for Noncompliance with Rule

Upon receipt of a Complaint, the Board staff shall review the Complaint to ensure that the Complaint complies with the Rules contained in this Article. In the event the Complaint does not comply, the Complaint is dismissed without prejudice, and the Board staff shall notify the Complainant of the dismissal.

E. Dismissal of Complaint by Vote of Board

When a Complaint is properly filed with the Board, the Board shall review the Complaint and any supporting documentation. If the Complaint states a possible ground for discipline, the Respondent may be required to file an Answer. The Board may dismiss the Complaint for failure to state a possible ground for discipline. A Complaint dismissed after review by the Board may not be submitted again by Complainant. The dismissal of a Complaint under this Article does not deprive the Complainant of any right against a Respondent otherwise available at law or in equity.

If a Complaint is Board-initiated, an Answer shall automatically be required.

F. Service of Complaint on Respondent

A certified court reporter and court reporting firms under the jurisdiction of the Board shall inform the Board, in writing, of their current name, mailing address, street address, and telephone number. The Board may rely upon the address on file with the Board in all efforts to contact, communicate with, or perfect service upon persons and entities within its jurisdiction. The choice of a person or entity to provide only a post office box address to the Board shall constitute an election to waive personal service if personal service is required. An acknowledgement of service or a written Answer by a Respondent shall constitute conclusive proof of service.

If a majority of the Board has elected to require an Answer, or the Complaint is a Board-initiated Complaint, the Board staff shall then send the Complaint to the Respondent at the address indicated above by certified mail, together with a request that an Answer be filed. The request for an Answer shall notify the Respondent of the rules and/or statutes that the Respondent is alleged to have violated, and that Respondent has 30 days from the date of the mailing of the notice to file a notarized Answer.

In the event the notice of a Complaint is returned by the post office as "undeliverable" at the address provided by Respondent as their address of record with the Board, or is returned "unclaimed" or "refused", and the Respondent cannot be located with due diligence, the Director of the Administrative Office of the Courts shall be deemed to be the agent for service for Respondent for the purposes of this grievance process, and service upon the Director shall be deemed to be service upon the Respondent. *See*, O.C.G.A. Sec. 15-14-33 (i).

G. Answer to Complaint

Respondent shall have 30 days from the date of notice from the Board to file a notarized Answer to the Complaint which shall address each allegation in the Complaint. Respondent shall include all supporting documents with the Answer that Respondent wishes the Board to consider.

H. Specification of Documents

The Board, in its sole discretion, may require any party to be more specific in any document filed with the Board.

I. Voluntary Dismissal

A Complainant desiring to voluntarily dismiss a Complaint may dismiss the Complaint without permission prior to the filing of an Answer. After an Answer is filed, the party shall be required to file a Motion to Dismiss, and in that event, dismissal shall be in the sole discretion of the Board. The Board may dismiss a Board-initiated Complaint without Motion.

J. Procedure Upon Receipt of Answer

Upon receipt of an Answer to a Complaint, the Board staff shall review the Answer to ensure that the Answer complies with the Rules contained in this Article. In the event the Answer does not comply with the Rules, the Board staff shall notify the Respondent within 15 days of receipt of the Answer that the Answer shall not be considered by the Board, unless the defects are corrected within 15 days of notice to Respondent of the defects. If Respondent fails to correct the defects within 15 days of notice, the Answer shall NOT be sent to the Board by the staff, and shall not be considered by the Board in its deliberations on the Complaint.

If the Answer, or Amendment to the Answer, complies with the Rules contained in this Article, the Board staff shall send copies to the members of the Board for consideration. Upon a review of the Answer and all supporting documentation supplied therewith, the Board may dismiss the Complaint, if, giving the Complainant the benefit of all doubts, the undisputed evidence shows that a violation has not occurred. The Board may vote to require further documentation from the parties, or to require a hearing on the Complaint, or to dismiss the Complaint without further action. A Complaint dismissed by the Board after review of the Answer may not be submitted again by Complainant. The dismissal of a Complaint under this Article does not deprive the Complainant of any right against a Respondent otherwise available at law or in equity.

K. Procedure When Answer Required, But Not Filed

When a Respondent fails to file an Answer within 30 days of notice to the Respondent that an Answer is required, the Board may vote to dismiss the Complaint, to require additional information from the Complainant, or to hold a hearing.

L. Substitution or Intervention of Parties

On Motion of a party, or on the Board's own Motion, at any time during the course of any proceeding under this Article the Board may, in its sole discretion, permit the substitution or intervention of parties as justice or convenience may require. Any non-party who wishes to intervene must file a written Motion with the Board specifying the grounds for intervention.

M. Disabilities

The Board reserves the right, in its sole discretion, on its own motion or on that of a party, to modify these procedures to the extent necessary to make accommodations for parties or witnesses involved with a grievance who have disabilities.

N. Right to an Attorney

All parties may be represented by counsel at any stage of the grievance process. Counsel shall promptly enter an appearance if counsel has not previously entered an appearance by signing a Complaint, Answer or other pleading.

If the Board files a board-initiated Complaint or a Motion for Contempt the Board shall request the Attorney General to act as prosecuting attorney in the matter.

O. Notice of Hearing

If the majority of the Board votes to hold a hearing on the Complaint, the Complainant and Respondent shall be notified. The parties shall be given at least 30 days written notice by regular mail of the date, time, and location of the hearing. It shall be the responsibility of the Board staff to arrange the hearing time and place, and to notify the parties and members of the Board of same. The Board staff shall arrange for a court reporter to take down the hearing. The place for the hearing shall be fixed at any site in the State of Georgia, in the Board's discretion.

P. Hearing by the Board

1. Participation of Complainant.

The Complainant shall appear at the hearing in person or by counsel. In its sole discretion, and upon notice in advance to the opposite party, the Board may allow or require the Complainant to appear in person, participate by way of deposition, by video or telephone conference, or any combination thereof. If the Complainant refuses or fails without just cause to appear, the Complaint shall be dismissed.

If the Complaint is a Board-initiated Complaint, the Attorney General's office shall appear and present evidence in support of the Complaint.

2. Participation of Respondent

The Respondent shall be entitled to appear in person at the hearing, and shall be given an opportunity to present his or her response to the Board after presentation of the Complainant's case. In its sole discretion, and upon notice in advance to the opposite party, the Board may allow the Respondent to participate by way of deposition, by video or telephone conference, or any combination thereof.

3. Witnesses and Evidence

Each party shall be entitled to bring witnesses to the hearing. Should a party desire that the Board subpoena a witness, the party shall provide the name and address of the witness to the Board no later than 15 days prior to the hearing. The Board may also *sua sponte* subpoena witnesses for the hearing.

The rules of evidence shall apply, and the order of presentation shall be as at a civil trial. Evidentiary rulings shall be by the Hearing Officer appointed by the Board to preside over the hearing.

4. Costs

The Board shall bear the cost of the take down and transcription of the hearing by a certified court reporter. Each party must pay for their own copy of a transcript, should they want one. The Board shall bear any cost for the arrangement of the space for the hearing. Otherwise, the parties shall each bear their own cost for attending and participating in the hearing.

5. Executive Session

The Board may enter into Executive Session during a hearing to discuss findings or issues, or to vote on issues presented during a hearing. Without limiting the foregoing, the Board shall have the authority to exclude any or all persons during its deliberations on disciplinary proceedings.

6. Evidentiary Standard

At the hearing, the burden of proof is on the Complainant to prove the alleged violation(s) by clear and convincing evidence. The members of the Board shall be permitted to ask questions of the parties and witnesses present at the hearing.

7. Final Order

A Final Order after a hearing by the Board will be issued by the Board within 45 days after the hearing. The Board may extend the time to issue the Final Order for good cause. The Final Order shall be in writing and shall be sent by certified mail, return receipt requested, to each party, or their attorney, by the Board staff.

Q. Appeal

1. Procedure for Appeal

The Final Order may be appealed by a party within 20 days of the Board's decision thereon, by the filing of a Notice of Appeal with the Board staff, directed to the Judicial Council of Georgia. The Board staff shall notify the Board and all interested parties of the filing of the Notice of Appeal, and shall transmit the Appeal to the Judicial Council, within 10 days of receipt of same. The Notice of Appeal shall state the nature of the appellant's interest, the facts in support of the appellant's claim of error, and the grounds upon which the appellant contends the decision should be reversed or modified.

2. Stay

The mere filing of a Notice of Appeal shall not stay enforcement of the Board's decision or Final Order. However, either the Board or the Judicial Council may grant a stay against enforcement of the Final Order pending decision of the Judicial Council of the appeal.

3. Transmittal of the Record

Within 30 days of the filing of a Notice of Appeal the Board staff shall transmit a copy of the entire record regarding the matter on appeal to the Judicial Council. The Judicial Council may extend the time for the transmittal of the record for good cause shown.

4. Procedure Upon Reversal

If the Judicial Council reverses a decision of the Board, the Board shall hold another hearing on the Complaint only if directed to do so by the Judicial Council. If the Judicial Council reverses with direction to modify a Final Order, the Board shall modify the Final Order as directed without further hearing. The Board shall schedule another hearing on

the Complaint, or shall issue a revised Final Order, within 30 days of receipt of the Order from the Judicial Council on the appeal.

R. Immunity

The regulatory proceedings of the Board are judicial in nature. Therefore, the Board, members of the Board, the Administrative Office of the Courts, the staff of the Administrative Office of the Courts, the Judicial Council, members of the Judicial Council, or any subcommittee thereof, shall be entitled to judicial immunity when engaged in regulatory activities.

ARTICLE 13. ADVISORY OPINIONS

Any person may submit in writing to the Board a request for an Advisory Opinion. The Board may issue either Private or Public Advisory Opinions.

A. Private Advisory Opinions

A Private Advisory Opinion may be requested in lieu of filing a Complaint, for a person who seeks guidance as to whether certain actions or conduct are permitted under the Code of Professional Ethics or the Rules and Regulations of the Board. The person requesting the Private Advisory Opinion shall include all information relevant to their request. The Board may request additional information.

The Board shall keep confidential the identity of the person making the request for a Private Advisory Opinion, and the identity of the person about whom the Opinion is requested.

B. Public Advisory Opinions

The Board may, from time to time, recommend publication of a Public Advisory Opinion which illuminates one or more of the provisions of the Code of Professional Ethics, or the statutes, rules and regulations governing court reporting. These opinions may be based on facts derived from requested Private Advisory Opinions, deleting reference to the names and places of the parties, or upon an assumed statement of facts.

1. Review

The Judicial Council may review any Private or Public Advisory Opinion on its own motion and may adopt, modify or reject it in whole or in part.

**BOARD OF COURT REPORTING
CODE OF PROFESSIONAL ETHICS
AND
GUIDELINES FOR PROFESSIONAL PRACTICE**

On April 17, 1994, the Board of Court Reporting adopted The Board of Court Reporting Code of Professional Ethics, based on the National Court Reporters Association Code of Professional Ethics and the Code of Professional Conduct and Standards of Practice proposed by the Georgia Certified Court Reporters Association. The Judicial Council favorably reviewed the amendments to the rules necessary to implement enforcement in June of 1994.

The mandatory Code of Professional Ethics defines the ethical relationship the public, the bench, and the bar have a right to expect from a reporter. They set out the conduct of the reporter when dealing with the user of reporting services and acquaint the user, as well as the reporter, with guidelines established for professional behavior.

The Guidelines for Professional Practice are goals toward which every reporter should strive. Reporters are urged to comply with the Guidelines, which do not exhaust the moral and ethical considerations with which the reporter should conform, but provide the framework for the practice of reporting. Not every situation a reporter may encounter can be foreseen, but fundamental ethical principles are always present.

By complying with the Code of Professional Ethics and Guidelines for Professional Practice, reporters maintain their profession at the highest level.

PART I: CODE OF PROFESSIONAL ETHICS

A Georgia Certified Court Reporter Shall:

- A. Be fair and impartial toward each participant in all aspects of reported proceedings.
- B. Be alert to situations that are conflicts of interest or that may give the appearance of a conflict of interest. If a conflict or a potential conflict arises, the reporter shall disclose that conflict or potential conflict.
- C. Guard against not only the fact but the appearance of impropriety.
- D. Preserve the confidentiality and ensure the security of information, oral or written, entrusted to the reporter by any of the parties in a proceeding.
- E. Be truthful and accurate when making public statements or when advertising the reporter's qualifications or the services provided.
- F. Refrain, as an official reporter, from freelance reporting activities that interfere with official duties and obligations.
- G. Determine fees independently, except when established by statute, court order, or applicable fee schedules, entering into no unlawful agreements on the fees to any user.

- H. Refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$50.00 in the aggregate per recipient each year.
- I. Refrain from reporting in any method other than the method in which the reporter is certified.
- J. Abide by the Rules and Regulations of the Board of Court Reporting.

PART II: GUIDELINES FOR PROFESSIONAL PRACTICE

Common sense and professional courtesy should guide the reporter in applying the following Guidelines. At all times the reporter should maintain the integrity of the reporting profession.

A Georgia Certified Court Reporter Should:

- A. Accept only those assignments when the reporter's level of competence will result in the preparation of an accurate transcript. The reporter should withdraw from an assignment when the reporter believes his/her abilities are inadequate, and should recommend or assign another reporter who has the competence required for such assignment.
- B. Prepare the record in accordance with the transcript format guidelines established by rule, statute, or court order.
- C. Notify, whenever possible, the parties engaging the reporter if a substitute reporter, equally qualified, will be assigned to report the proceedings.
- D. Preserve the notes/recordings in accordance with statute, court order, or retention schedules, or for a period of no less than five (5) years through storage of the original paper notes/recordings or an electronic copy of either the notes/recordings or the transcript on computer disks, cassettes, backup tape systems, optical or laser disk systems, or other retrieval systems.
- E. Meet promised delivery dates whenever possible, make timely delivery of transcripts when no date is specified, and provide immediate notification of delays.
- F. Strive to become and remain proficient in the reporter's professional skills.
- G. Keep abreast of current literature, technological advances and developments, and participate in continuing-education programs.
- H. Assist in improving the reporting profession by participating in national, state, and local association activities that advance the quality and standards of the reporting profession.
- I. Cooperate with the bench and bar for the improvement of the administration of justice.

**Judicial Council of Georgia
Board of Court Reporting**



FEE SCHEDULE

Judicial Council of Georgia
COURT REPORTERS' FEE SCHEDULE
Effective July 1, 2008

This fee schedule shall apply to any court reporter taking down a court proceeding.

1. A. (1) The judge of a court of record shall authorize and approve compensation of \$190.08 per day for a court reporter to attend at the request of the judge all civil, juvenile, and criminal proceedings in the circuit over which the judge presides. This compensation shall be paid out of county funds on the certificate and order of the judge for all days during which such proceedings are attended. The court reporter shall take down testimony in the trials of such criminal, civil, and juvenile cases as are required by law to be recorded. In addition, when ordered to do so by the judge at the request of the district attorney of the circuit, the court reporter shall attend and take down evidence in a committal court where felonies are involved and evidence at a coroner's inquest.

(2) In computing the compensation of the court reporter for attending court, a day shall be deemed to be the initial period of eight hours, or any part thereof. Compensation of the court reporter for attending court beyond the initial eight-hour day shall be at the rate of \$22.77 per hour, subject to a maximum of \$38.00. The total compensation for attending court and taking down the evidence in criminal and juvenile cases shall not exceed \$228.09 in any 24-hour period, except as provided in 3 below.

- B. In addition to per diem, the compensation of the court reporter for taking down testimony and recording the evidence for civil cases, other than juvenile cases, and for criminal matters not required to be reported by law or the presiding judge, shall be at a rate of \$43.31 per hour. The fee shall be paid by the parties upon such terms as they may agree, and if no agreement is entered into as to the payment thereof, in such manner as may be ordered by the presiding judge.

2. A. (1) The rate to be paid court reporters for the transcripts of the proceedings in civil and criminal cases shall be \$3.78 for the original and two copies of each page, to be paid by the party requesting the transcript or as required by law. Requests for the original only, or for the original plus one copy, shall also be charged at \$3.78 per original page.

(2) Where a transcript page does not contain the minimum of twenty-five lines per page, as specified under 4.B.(4) below, transcription of such page shall be compensated at a prorated share of the full rate (see Regulation 5).

(3) Upon written motion of the party or parties in a civil, criminal, or juvenile proceeding, or upon the court's own motion in a criminal proceeding, the judge of any court of record of this state may make written authorization for the preparation of daily copy or expedited copy in any action pending in the court.

"Daily copy" shall be defined as an original transcript delivered within twenty-four hours from close of court.

"Expedited copy" shall be defined as an original transcript delivered within forty-eight hours from close of court.

When authorization is made for daily copy, the official court reporter or reporters may charge the party or parties responsible for payment \$7.58 per page for the original transcript only. When authorization is made for expedited copy, the official court reporter or reporters may charge the party or parties responsible for payment \$5.70 per page for the original transcript only. This rule shall not apply to the cost of additional copies prepared and furnished as a result of this daily copy preparation, which shall be charged as in 2.B. below.

B. The rate to be paid the court reporter for additional copies of the transcript, excluding exhibits, shall be \$1.51 per page.

C. The rate to be paid for each exhibit page shall be \$0.35 per page per transcript original or copy.

D. The rate to be paid to court reporters for copies of diskettes of any size, when ordered in conjunction with the transcript, shall be \$30.00 for each ASCII diskette and \$60.00 for each compact disc (CD). This shall only apply in cases where the court reporter has the capability and is willing to provide such service.

E. (1) In criminal cases, a real-time feed (instantaneous English translation appearing on a computer at counsel's desk) may be provided when it is available from the court reporter; however, because not all reporters are trained to provide real-time services nor have the hardware and software necessary, no reporter shall be ordered to provide real-time who does not have the ability to do so.

(2) In criminal cases, the fee for providing real-time feed to defense counsel, along with all hardware and software necessary: \$140 for the first day, with subsequent days at the rate of \$90 per day. The text shall be appended each day per week so that the full weeks real-time text is computer searchable utilizing the software provided by the reporter. Only when the court signs an order granting real-time services to the defense will the service be billed to the county (in the case of an indigent). This fee is in addition to any salary or per diem currently provided by the court. Counsel will not be permitted to have printed copy or computer data containing the uncertified draft translation in criminal cases.

(3) In civil cases, an option will be provided as follows: (a) Counsel may receive the same services described above at the same rate (real-time display only at \$140/\$90 per day); or alternatively, (b) if counsel needs to take the real-time translation for later review or staff use, in addition to the real-time feed they may receive a diskette at the end of the day containing the rough draft translation for \$1.50 per page. (The \$1.50 charge includes real-time display and provision of the ASCII text on disk.) Counsel will be required to sign a disclaimer concerning the limited use of the rough-draft translation.

(4) In order to ensure the quality of real-time provided to counsel, only reporters who are current holders of the National Court Reporters Certified Real-time Reporter certification (CRR) or holders of a certificate of Merit (CMR) or those who provide real-time for their judges on a daily, ongoing basis will be permitted to charge fees for real-time services.

3.A. The compensation, provided for by 1.A. above, for attending court and taking down the evidence in civil, criminal, and juvenile cases may be supplemented by the various counties within the circuit to which such court reporters are assigned.

B. As long as there is no reduction of the net income of the court reporter from that which would be provided under 1, 2, and 4 herein, the various counties within the circuit to which such court reporters are assigned may provide a salary, equipment, or office supplies in lieu of all or a portion of any of the fees paid by the county.

4. A. Rules 67 to 74 of the Supreme Court of Georgia, and Rules 17 to 21 of the Court of Appeals of Georgia, as amended, are hereby incorporated by this reference.

B. Additional rules regarding form and style of transcripts:

(1) The paper to be used for the original record and transcripts shall be fifteen pound bond or heavier. Copies may be printed on bond or onionskin of ten pounds or more.

(2) Indentation from the left margin for questions and answers shall be five spaces on the first line and none for the next lines.

(3) Indentation from the left margin for colloquy shall be ten spaces for the first line and five spaces on the next lines.

(4) Page numbering shall be printed at the bottom right of each page.

(5) There shall be at least twenty-five lines per page.

(6) Each line shall consist of at least sixty-three available spaces.

(7) Every transcript, or separately bound portion thereof, shall have a separate cover sheet. The cover sheet shall set forth the heading of the case, the judge before whom the case was tried, whether there was a jury, the attorneys for each party, the date of the trial, and whether the transcript is a complete entity or one of several parts.

(8) The index to the transcript should provide at least the following information:

- a. The names of the witnesses and the page number where their testimony begins on direct, cross, redirect, and re-cross examination.
- b. A list of exhibits introduced by each party.
- c. The number of the page on which the charge of the court begins.
- d. Further information should be added as necessary to clearly index the transcript.

(9) All county owned equipment and supplies on hand January 1, 1976 may be used until depleted or exhausted.

5. A. Whenever the employees in the classified service of the State Merit System receive a cost of living increase of a certain percentage, the amounts fixed in 1. A., 1. B., 2.A., and 2.B. shall be increased by the same percentage applicable to such state employees. If the cost of living increase received by state employees is in different percentages as to certain categories of employees, the amounts fixed in 1. A., 1. B., 2.A., and 2.B. shall be increased by a percentage not to exceed the average percentage of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase whenever necessary. The periodic changes in the amounts fixed in 1. A., 1. B., 2.A., and 2.B. of this fee schedule, as authorized by this paragraph,

shall become effective six (6) months following the date that the cost of living increase received by state employees becomes effective.

**Board of Court Reporting
of the Judicial Council of Georgia**

REGULATIONS

Reg. 1

No fees except those specifically allowed in the fee schedule, may be charged by court reporters for performance of their duties as Official Court Reporters. Therefore, overhead expenses or any other fee not specifically provided for by the fee schedule may *not* be added to the fees charged under any section of the fee schedule.

Reg. 2

The following chart provides the scale of compensation to be paid a court reporter under the provisions of 1.A.(2) of the fee schedule.

Units in Hours Within a 24-hour Period		Compensation in dollars
More Than	But No More Than	
0	8	\$190.08
8	9	\$212.85
9 or more		\$228.09

Reg. 3

When a court reporter attends court in more than one county of a judicial circuit within a 24-hour period, the judge shall prorate the per diem due the court reporter between the multiple counties.

Reg. 4

The civil takedown fee may be charged by the court reporter only one time and is not a fee to be added to the cost of each copy of the transcript.

Reg. 5

The scale of compensation to be paid the court reporter under the provisions of 2.A. (2) of the fee schedule for pages which do not contain twenty-five lines is no charge for twelve lines or less, and the full-page rate for thirteen lines or more. This compensation is for the original and two copies of each page as provided under 2.A.(1) of the fee schedule.

Reg. 6

On the first line of each question and each answer, the first letter of the first word of the question or answer should be on the fifth space following the Q and A [see 4.B.(2) of the fee schedule].

COMPENSATION CHART FOR COURT REPORTERS APPEARING IN COURT PROCEEDINGS

PER DIEM

REALTIME

TAKEDOWN

TRANSCRIPT PRODUCTION COMPENSATION

Type of Case/Action	Per Diem Rate ¹ Hours: 0-8 / 8-9 / 9+	Paid By: ⁵	Per Diem Rate 1st/Additional	Additional Compensation for Takedown	Takedown Rate if applicable	Requirement to Transcribe	Per Page Costs for Orig. & up to 2 copies ^{2,7}	Paid By:	Per Page Costs for Extra Copies	Paid By:
Felony Pleas	\$190.08 / \$212.85 / \$228.09	County	\$140/\$90 OR \$1.50 pp	<u>NO</u>	N/A	Yes ⁸	\$3.78	County ³	\$1.51	Requesting party or Co. if Indigent
Felony Motions/Trials	\$190.08 / \$212.85 / \$228.09	County	\$140/\$90 OR \$1.50 pp	<u>NO</u> Except voir dire ⁶ & argument of counsel O.C.G.A. § 15-14-1	\$43.31	Yes, if conviction results	\$3.78	County or Requesting Party	\$1.51	Requesting party or Co. if Indigent
Misdemeanor Pleas	\$190.08 / \$212.85 / \$228.09	County	\$140/\$90 OR \$1.50 pp	<u>NO</u>	N/A	No	\$3.78	Requesting Party	\$1.51	Requesting party or Co. if Indigent
Misdemeanor Motions/Trials	\$190.08 / \$212.85 / \$228.09	County or Parties	\$140/\$90 OR \$1.50 pp	<u>YES</u> unless ordered by judge	\$43.31/hr.	No	\$3.78	Requesting Party	\$1.51	Requesting party or Co. if Indigent
Traffic Pleas	\$190.08 / \$212.85 / \$228.09	County or Parties	\$140/\$90 OR \$1.50 pp incl. ASCII disk	<u>NO</u>	N/A	No	\$3.78	Requesting Party	\$1.51	Requesting Party or Co. if Indigent
Traffic Motions/Trials	\$190.08 / \$212.85 / \$228.09	County or Parties	\$140/\$90 OR \$1.50 pp incl. ASCII disk	<u>YES</u> unless ordered by judge	\$43.31/hr.	No	\$3.78	Requesting Party	\$1.51	Requesting Party or Co. if Indigent
Juvenile Delinquency	\$190.08 / \$212.85 / \$228.09	County	\$140/\$90 OR \$1.50 pp incl. ASCII disk	<u>NO</u> ⁴	N/A	May not transcribe w/o order of the court	\$3.78	Requesting Party by order of judge	\$1.51	Requesting Party by order of judge
Juvenile Deprivation	\$190.08 / \$212.85 / \$228.09	County	\$140/\$90 OR \$1.50 pp incl. ASCII disk	<u>NO</u> ⁴	\$43.31/hr.	May not transcribe w/o order of the court	\$3.78	Requesting Party by order of judge	\$1.51	Requesting Party by order of judge
Probate	\$190.08 / \$212.85 / \$228.09	County or Parties	\$140/\$90 OR \$1.50 pp incl. ASCII disk	<u>YES</u> unless ordered by judge	\$43.31/hr.	No	\$3.78	Requesting party or at discretion of Judge	\$1.51	Requesting Party or Co. if Indigent
Coroner's Inquest	\$190.08 / \$212.85 / \$228.09	County	\$140/\$90 OR \$1.50 pp incl. ASCII disk	<u>NO</u> see Sec. 1.A. of the Official Fee Schedule ¹	N/A	No	\$3.78	County	\$1.51	Requesting Party
State or Superior Court Civil	\$190.08 / \$212.85 / \$228.09	County or Parties	\$140/\$90 OR \$1.50 pp incl. ASCII disk	<u>YES</u>	\$43.31/hr.	No	\$3.78	Requesting Party	\$1.51	Requesting Party
Magistrate	\$190.08 / \$212.85 / \$228.09	County or Parties	\$140/\$90 OR \$1.50 pp incl. ASCII disk	<u>YES</u> unless ordered by judge	\$43.31/hr.	No	\$3.78	Requesting Party	\$1.51	Requesting Party
Bankruptcy	Contract bid									
Worker's Comp	Contract bid									

1. The County can supplement this through salary or other remuneration. See O.C.G.A. § 15-5-21.

2. The original and two copies are required to be filed in capitol felony convictions. See O.C.G.A. § 5-6-41. Original and 1 or original only are paid at the same rate (number of copies are those required by the clerk to be filed).

3. There is confusion as to who pays the \$3.78 original page rate for cases on appeal. Under O.C.G.A. § 17-8-5, all felony cases where a verdict of guilty is entered must be transcribed. When no appeal is filed, this rate is a charge to the County. Where an appeal is filed, the Attorney General is of the opinion that the requesting party should pay the original page rate.

4. There is no authorization for takedown in juvenile cases. See Section 1.B. of the Official Reporter's Fee Schedule.

5. If requested, by the Court or required by law to report, then the county pays. In all other cases, the per diem may be charged to the parties.

6. Voir dire must be reported in cases seeking the death penalty. See 160 Ga Ap 391; 287 SE 2d 338 (1981); 246 Ga 341; 271 SE 2d 627 (1980). No extra takedown allowed in this instance.

7. Daily copy rate is \$7.58 pp. Expedited rate is \$5.70 pp. Daily & Expedited rates are for uncertified "dirty" transcripts and are not filed in. Certified transcripts are filed if requested at a later date and for the certified page rate for O& up to 2.

8. Many trial courts interpret O.C.G.A. § 17-8-5 to provide that felony pleas must also be transcribed.

**Judicial Council of Georgia
Board of Court Reporting**



CODE SECTIONS

GEORGIA CODE SECTIONS

1. Licensing

1. a. COURT REPORTING ACT

15-14-20. Short title.

This article shall be known and may be cited as "The Georgia Court Reporting Act." (Ga. L. 1974, p. 345, ' 1; Ga. L. 1993, p. 1315, ' 7.)

15-14-21. Purpose.

It is declared by the General Assembly that the practice of court reporting carries important responsibilities in connection with the administration of justice, both in and out of the courts; that court reporters are officers of the courts; and that the right to define and regulate the practice of court reporting belongs naturally and logically to the judicial branch of the state government. Therefore, in recognition of these principles, the purpose of this article is to act in aid of the judiciary so as to ensure minimum proficiency in the practice of court reporting by recognizing and conferring jurisdiction upon the Judicial Council of Georgia to define and regulate the practice of court reporting. (Ga. L. 1974, p. 345, ' 2; Ga. L. 1993, p. 1315, ' 7.)

15-14-22. Definitions.

As used in this article, the term:

(1) "Board" means the Board of Court Reporting of the Judicial Council.

(2) "Certified court reporter" means any person certified under this article to practice verbatim reporting.

(3) "Court reporter" means any person who is engaged in the practice of court reporting as a profession as defined in this article. The term "court reporter" shall include not only those who actually report judicial proceedings in courts but also those who make verbatim records as defined in paragraph (4) of this Code section.

(4) "Court reporting" means the making of a verbatim record by means of manual shorthand, machine shorthand, closed microphone voice dictation silencer, or by other means of personal verbatim reporting of any testimony given under oath before, or for submission to, any court, referee, or court examiner or any board, commission, or other body created by statute, or by the Constitution of this state or in any other proceeding where a verbatim record is required. The taking of a deposition is the making of a verbatim record as defined in this article. (Ga. L. 1974, p. 345, ' 4; Ga. L. 1993, p. 1315, ' 7.)

15-14-23. Judicial Council of Georgia as agency of judiciary for purposes of article.

The Judicial Council of Georgia, as created by Article 2 of Chapter 5 of this title, is declared to be an agency of the judicial branch of the state government for the purpose of defining and regulating the practice of court reporting in this state. (Ga. L. 1974, p. 345, ' 3; Ga. L. 1993, p. 1315, ' 7.)

15-14-24. Board of Court Reporting of Judicial Council; creation; composition; term; vacancies; removal.

(a) There is established a board which shall be known and designated as the "Board of Court Reporting of the Judicial Council." It shall be composed of nine members, five members to be certified court reporters, two members to be representatives from the State Bar of Georgia, and two members to be from the judiciary, one to be a superior court judge and one to be a state court judge, each of whom shall have not less than five years' experience in their respective professions. The initial board shall be appointed by the Judicial Council. The term of office shall be two years, and the Judicial Council shall

fill vacancies on the board.

(b) Any member of the board may be removed by the Judicial Council after a hearing at which the Judicial Council determines that there is cause for removal. (Ga. L. 1974, p. 345, ' 5; Ga. L. 1993, p. 1315, ' 7; Ga. L. 1999, p.868, '7.)

15-14-25. Oath of office; filing; certificate of appointment.

Immediately and before entering upon the duties of their office, the members of the board shall take the oath of office and shall file the same in the office of the Judicial Council. Upon receiving the oath of office, the Judicial Council shall issue to each member a certificate of appointment. (Ga. L. 1974, p. 345, ' 6; Ga. L. 1993, p. 1315, ' 7; Ga. L. 1999, p. 868, ' 1.)

15-14-26. Chairperson; election; term; rules and regulations.

The board shall each year elect from its members a chairperson, whose term shall be for one year, and who shall serve during the period for which elected and until a successor shall be elected. The board shall make all necessary rules and regulations to carry out this article, but the rules and regulations shall be subject to review by the Judicial Council. (Ga. L. 1974, p. 345, ' 7; Ga. L. 1993, p. 1315, ' 7.)

15-14-27. Administrative work as duty of Administrative Office of the Courts; director to serve as secretary of board.

The administrative and staff work of the board shall be among the duties of the Administrative Office of the Courts created by Code Section 15-5-22. The director of the Administrative Office of the Courts or a designee shall serve as secretary of the board and shall perform all duties which may be assigned by either the board or the Judicial Council to implement this article. (Ga. L. 1974, p. 345, ' 18; Ga. L. 1993, p. 1315, ' 7.)

15-14-28. Certificate required.

No person shall engage in the practice of verbatim court reporting in this state unless the person is the holder of a certificate as a certified court reporter or is the holder of a temporary permit issued under this article. (Ga. L. 1974, p. 345, ' 12; Ga. L. 1993, p. 1315, ' 7.)

15-14-29. Qualifications for certification; individuals with disabilities.

(a) Upon receipt of appropriate application and fees, the board shall grant a certificate as a certified court reporter to any person who:

- (1) Has attained the age of 18 years;
- (2) Is of good moral character;
- (3) Is a graduate of a high school or has had an equivalent education; and

(4) Has, except as provided in subsection (b) of this Code section, successfully passed an examination in verbatim court reporting as prescribed in Code Section 15-14-30.

(b) Any person who has attained the age of 18 years and is of good moral character, who submits to the board an affidavit under oath that the court reporter was actively and continuously, for one year preceding March 20, 1974, principally engaged as a court reporter, shall be exempt from taking an examination and shall be granted a certificate as a certified court reporter.

(c) (1) Reasonable accommodation shall be provided to any qualified individual with a disability who applies to take the examination who meets the essential eligibility requirements for the examination and provides acceptable documentation of a disability, unless the provision of such accommodation would impose an undue hardship on the board.

(2) Reasonable accommodation shall be provided to any qualified individual with a disability who applies for certification who meets the essential eligibility requirements for certification and provides acceptable documentation of a disability, unless the provision of such accommodation would impose an undue hardship on the board or the certification of the individual would pose a direct threat to the health, welfare, or safety of residents of this state.

(3) The term "disability," as used in paragraphs (1) and (2) of this subsection, means a physical or mental impairment that substantially limits one or more major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment. (Ga. L. 1974, p. 345, ' ' 9, 11; Ga. L. 1992, p. 6, ' 15; Ga. L. 1993, p. 1315, ' 7.)

15-14-30. Application for testing; fee; time of examinations; conduct and grading.

Every person desiring to commence the practice of court reporting in this state shall file an application for testing with the board upon such form as shall be adopted and prescribed by the board. At the time of making an application the applicant shall deposit with the board an examination fee to be determined by the board. Examinations shall be conducted as often as may be necessary, as determined by the board, provided that examinations must be conducted at least once annually. Applicants shall be notified by mail of the holding of such examinations no later than ten days before the date upon which the examinations are to be given. Examinations shall be conducted and graded according to rules and regulations prescribed by the board. (Ga. L. 1974, p. 345, ' 10; Ga. L. 1993, p. 1315, ' 7.)

15-14-31. Renewal of certificate; fee; automatic revocation of suspended certificate.

Every certified court reporter who continues in the active practice of verbatim court reporting shall annually renew the certificate on or before April 1 following the date of issuance of the certificate under which the court reporter is then entitled to practice, upon the payment of a fee established by the board. Every certificate which has not been renewed on April 1 shall expire on that date of that year and shall result in the suspension of the court reporter's right to practice under this article, which suspension shall not be terminated until all delinquent fees have been paid or the court reporter has re-qualified by testing. After a period to be determined by the board, a suspended certificate will be automatically revoked and may not be reinstated without meeting current certification requirements. (Ga. L. 1974, p. 345, ' 17; Ga. L. 1993, p. 1315, ' 7.)

15-14-32. Use of title or abbreviation.

Any person who has received from the board a certificate as provided for in this article shall be known and styled as a certified court reporter and shall be authorized to practice as such in this state and to use such title or the abbreviation "C.C.R." in so doing. No other person, firm, or corporation, all of the members of which have not received such certificate, shall assume the title of certified court reporter, the abbreviation "C.C.R.," or any other words or abbreviations tending to indicate that the person, firm, or corporation so using the same is a certified court reporter. (Ga. L. 1974, p. 345, ' 8; Ga. L. 1993, p. 1315, ' 7.)

15-14-33. Refusal to grant or revocation of certificate or temporary permit or discipline of person; subpoena of records; disciplinary actions; appeal; reinstatement; investigations; immunity; hearing; voluntary surrender or failure to renew; regulation.

(a) The board shall have the authority to refuse to grant a certificate or temporary permit to an applicant therefore or to revoke the certificate or temporary permit of a person or to discipline a person, upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a certificate or temporary permit contained in this article or under the rules or regulations of the board. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that all the requirements for the issuance of a certificate or temporary permit have been met, and, if the board is not satisfied as to the applicant's qualifications, it may deny a certificate or temporary permit without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if desired;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of court reporting or on any document connected therewith; practiced fraud or deceit or intentionally made any false statements in

obtaining a certificate or temporary permit to practice court reporting; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States. As used in this paragraph and paragraph (4) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony or any crime involving moral turpitude, where:

(A) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(B) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge, except with respect to a plea of nolo contendere.

The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had a certificate or temporary permit to practice as a court reporter revoked, suspended, or annulled by any lawful licensing authority other than the board; or had other disciplinary action taken against the licensee or the applicant by any such lawful licensing authority other than the board; or was denied a certificate by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a certificate or temporary permit by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice as a court reporter, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of court reporting but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of court reporting;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose certificate or temporary permit has been suspended or revoked by the board to practice as a court reporter or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which statute, law, or rule or regulation relates to or in part regulates the practice of court reporting, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule, or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or certificate or temporary permit reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state. Any such adjudication shall automatically suspend the certificate or temporary permit of any such person and shall prevent the re-issuance or renewal of any certificate or temporary permit so suspended for as long as the adjudication of incompetence is in effect; or

(10) Displayed an inability to practice as a court reporter with reasonable skill or has become unable to practice as a court reporter with reasonable skill by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material.

(11) Violated the provisions of subsection (c) or (d) of Code Section 9-11-28; or

(12) Violated the provisions of Code Section 15-14-37.

(b) For purposes of this Code section, the board may obtain through subpoena upon reasonable grounds any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(c) When the board finds that any person is unqualified to be granted a certificate or temporary permit or finds that any person should be disciplined pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to court reporting, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a certificate or temporary permit to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any certificate or temporary permit for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any certificate or temporary permit as the board deems necessary for the protection of the public;

(5) Revoke any certificate or temporary permit;

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;

(7) Impose a requirement to pass the state certification test; or

(8) Require monetary adjustment in a fee dispute involving an official court reporter.

(d) In addition to and in conjunction with the actions described in subsection (c) of this Code section, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(e) Any disciplinary action of the board may be appealed by the aggrieved person to the Judicial Council, which shall have the power to review the determination by the board. Initial judicial review of the final decision of the Judicial Council shall be had solely in the superior courts of the county of domicile of the board.

(f) In its discretion, the board may reinstate a certificate or temporary permit which has been revoked or issue a certificate or temporary permit which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this Code section or any other laws relating to court reporting.

(g) (1) The board is vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations the board may deem necessary or proper for the enforcement of the provisions of this Code section and the laws relating to court reporting. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The board or its appointed representative may issue subpoenas to compel access to any writing, document, or other material upon a determination that reasonable grounds exist for the belief that a violation of this Code section or any other law relating to the practice of court reporting may have taken place.

(2) The results of all investigations initiated by the board shall be reported solely to the board and the records of such investigations shall be kept for the board by the Administrative Office of the Courts, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or lawful licensing authority.

(3) If a licensee is the subject of a board inquiry, all records relating to any person who receives services rendered by that licensee in the capacity as licensee shall be admissible at any hearing held to determine whether a violation of this article has taken place, regardless of any statutory privilege; provided, however, that any documentary evidence relating to a person who received those services shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(h) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice as a court reporter or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice as a court reporter shall be immune from civil and criminal liability for so testifying.

(i) If any licensee or applicant after at least 30 days' notice fails to appear at any hearing, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served personally upon the licensee or applicant or served by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is served by certified mail or statutory overnight delivery and is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the director of the Administrative Office of the Courts shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon the director of the Administrative Office of the Courts shall be deemed to be service upon the licensee or applicant.

(j) The voluntary surrender of a certificate or temporary permit or the failure to renew a certificate or temporary permit by the end of an established penalty period shall have the same effect as a revocation of said certificate or temporary permit, subject to reinstatement in the discretion of the board. The board may restore and reissue a certificate or temporary permit to practice under the law relating to that board and, as a condition thereof, may impose any disciplinary sanction provided by this Code section or the law relating to that board.

(k) Regulation by the board shall not exempt court reporting from regulation pursuant to any other applicable law. (Ga. L. 1974, p. 345, ' 13; Ga. L. 1993, p. 1315, ' 7; Ga. L. 1994, p. 1007, ' 2; Ga. L. 2000, p. 1589, ' 3.)

15-14-34. Temporary permits.

Temporary employment of any person may be possible by obtaining a temporary permit from the board or from a judge in compliance with the rules and regulations of the Board of Court Reporting of the Judicial Council. The scope of the activities of the temporary permit holder shall be as provided in the rules of the board. (Ga. L. 1974, p. 345, ' 16; Ga. L. 1980, p. 528, ' 1; Ga. L. 1993, p. 1315, ' 7.)

15-14-35. Injunction against violations; remedy cumulative.

On the verified complaint of any person or by motion of the board that any person, firm, or corporation has violated any provision of this article, the board, with the consent of the Judicial Council, may file a complaint seeking equitable relief in its own name in the superior court of any county in this state having jurisdiction of the parties, alleging the facts and praying for a temporary restraining order and temporary injunction or permanent injunction against such person, firm, or corporation, restraining them from violating this article. Upon proof thereof, the court shall issue the restraining order, temporary injunction, or permanent injunction without requiring allegation or proof that the board has no adequate remedy at law. The right of injunction provided for in this Code section shall be in addition to any other remedy which the board has and shall be in addition to any right of criminal prosecution provided by law. (Ga. L. 1974, p. 345, ' 15; Ga. L. 1993, p. 1315, ' 7.)

15-14-36. Penalties for violations.

Any persons who:

- (1) Represents himself or herself as having received a certificate or temporary permit as provided for in this article or practices as a certified court reporter without having received a certificate or temporary permit;
- (2) Continue to practice as court reporters in this state or use any title or abbreviation indicating they are certified court reporters after his or her certificate has been revoked; or
- (3) Violates any provision of this article or of subsection (c) or (d) of Code Section 9-11-28 shall be guilty of a misdemeanor. Each day of the offense is a separate misdemeanor. (Ga. L. 1974, p. 345, ' 14; Ga. L. 1993, p. 1315, ' 7; Ga. L. 1994, p. 1007, ' 3; Ga. L. 1999, p. 81, '15.)

15-14-37. Prohibition against certain contracts for court reporting services; duty of court reporters to make inquiry as to nature of contract for services; applicability; registration; rules and regulations; fines.

- (a) Contracts for court reporting services not related to a particular case or reporting incident between a certified court reporter or any person with whom a certified court reporter has a principal and agency relationship and any attorney at law, party to an action, party having a financial interest in an action, or agent for an attorney at law, party to an action, or party having a financial interest in an action are prohibited. Attorneys shall not be prohibited from negotiating or bidding reasonable fees for services on a case-by-case basis.
- (b) In order to comply with subsection (a) of this Code section, each certified court reporter shall make inquiry regarding the nature of the contract for his or her services directed to the employer or the person or entity engaging said court reporter's services as an independent contractor.
- (c) This Code section shall not apply to contracts for court reporting services for the courts, agencies, or instrumentalities of the United States or of the State of Georgia.
- (d) A court reporting firm doing business in Georgia shall register with the board by completing an application in the form adopted by the board and paying fees as required by the board.
- (e) Each court reporting firm doing business in Georgia shall renew its registration annually on or before April 1 following the date of initial registration, by payment of a fee set by the board.
- (f) Court reporting firms doing business in Georgia are governed by this article. The board shall have authority to promulgate rules and regulations not inconsistent with this article for the conduct of court reporting firms.
- (g) The Board is authorized to assess a reasonable fine, not to exceed \$5,000.00, against any court reporting firm which violates any provision of this article or rules and regulations promulgated in accordance with this Code section. (Ga. L. 1994, p. 1007, ' 4; Ga. L. 1999, p. 848, ' 2.)

1.b. SANCTIONS AGAINST LICENSED PERSONS FOR OFFENSES INVOLVING CONTROLLED SUBSTANCES OR MARIJUANA.

16-13-110. Definitions.

(a) As used in this article, the term:

- (1) "Controlled substance" means any drug, substance, or immediate precursor included in the definition of the term "controlled substance" in paragraph (4) of Code Section 16-13-21.

(2) "Convicted" or "conviction" refers to a final conviction in a court of competent jurisdiction, or the acceptance of a plea of guilty or nolo contendere or affording of first offender treatment by a court of competent jurisdiction.

(3) "Licensed individual" means any individual to whom any department, agency, board, bureau, or other entity of state government has issued any license, permit, registration, certification, or other authorization to conduct a licensed occupation.

(4) "Licensed occupation" means any occupation, profession, business, trade, or other commercial activity which requires for its lawful conduct the issuance to an individual of any license, permit, registration, certification, or other authorization by any department, agency, board, bureau, or other entity of state government.

(5) "Licensing authority" means any department, agency, board, bureau, or other entity of state government which issues to individuals any license, permit, registration, certification, or other authorization to conduct a licensed occupation.

(6) "Marijuana" means any substance included in the definition of the term "marijuana" in paragraph (16) of Code Section 16-13-21.

(b) Without limiting the generality of the provisions of subsection (a) of this Code section, the practice of law shall constitute a licensed occupation for purposes of this article and the Supreme Court of Georgia shall be the licensing authority for the practice of law. (Code 1981, ' 16-13-110, enacted by Ga. L. 1990, p. 2009, ' 1.)

16-13-111. Notification of conviction of licensed individual to licensing authority; reinstatement of license; imposition of more stringent sanctions.

(a) Any licensed individual who is convicted under the laws of this state, the United States, or any other state of any criminal offense involving the manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana shall notify the appropriate licensing authority of the conviction within ten days following the conviction.

(b) Upon being notified of a conviction of a licensed individual, the appropriate licensing authority shall suspend or revoke the license, permit, registration, certification, or other authorization to conduct a licensed occupation of such individual as follows:

(1) Upon the first conviction, the licensed individual shall have his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation suspended for a period of not less than three months; provided, however, that in the case of a first conviction for a misdemeanor the licensing authority shall be authorized to impose a lesser sanction or no sanction upon the licensed individual; and

(2) Upon the second or subsequent conviction, the licensed individual shall have his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation revoked.

(c) The failure of a licensed individual to notify the appropriate licensing authority of a conviction as required in subsection (a) of this Code section shall be considered grounds for revocation of his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation.

(d) A licensed individual sanctioned under subsection (b) or (c) of this Code section may be entitled to reinstatement of his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation upon successful completion of a drug abuse treatment and education program approved by the licensing authority.

(e) The suspension and revocation sanctions prescribed in this Code section are intended as minimum sanctions, and nothing in this Code section shall be construed to prohibit any licensing authority from establishing and implementing additional or more stringent sanctions for criminal offenses and other conduct involving the unlawful manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana. (Code 1981, ' 16-13-111, enacted by Ga. L. 1990, p. 2009, ' 1.)

16-13-112. Applicability of administrative procedures.

Administrative procedures for the implementation of this article for each licensed occupation shall be governed by the appropriate provisions applicable to each licensing authority. (Code 1981, ' 16-13-112, enacted by Ga. L. 1990, p. 2009, ' 1.)

16-13-113. Article as supplement to power of licensing authority.

The provisions of this article shall be supplemental to and shall not operate to prohibit any licensing authority from acting pursuant to those provisions of law which may now or hereafter authorize other sanctions and actions for that particular licensing authority. (Code 1981, ' 16-13-113, enacted by Ga. L. 1990, p. 2009, ' 1.)

16-13-114. Period of applicability of article.

This article shall apply only with respect to criminal offenses committed on or after July 1, 1990; provided, however, that nothing in this Code section shall prevent any licensing authority from implementing sanctions additional to or other than those provided for in this article with respect to offenses committed prior to July 1, 1990. (Code 1981, ' 16-13-114, enacted by Ga. L. 1990, p. 2009, ' 1.)

1. c. JUDICIAL COUNCIL OF GEORGIA

15-5-20. Creation of council; powers; duties; composition; expenses.

(a) The Supreme Court shall create a Judicial Council of Georgia, which council shall have such powers, duties, and responsibilities as may be provided by law or as may be provided by rule of the Supreme Court.

(b) Members of the council and their terms shall be as provided by the Supreme Court. The members of the council shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties as members of the council. (Ga. L. 1945, p. 155, ' ' 1-3; Ga. L. 1973, p. 288, ' ' 1, 2; Ga. L. 1983, p. 956, ' 6; Ga. L. 1984, p. 22, ' 15.)

15-5-21. Promulgation of rules relating to transcripts and court reporters' fees.

(a) The Judicial Council shall promulgate rules and regulations which shall:

(1) Provide for and set the fees to be charged by all official court reporters in this state for attending court, taking stenographic notes, and recording the evidence;

(2) Provide for and set the fees to be charged by all official court reporters in this state for furnishing transcripts of the evidence and for other proceedings furnished by the official court reporters in all civil and criminal cases in this state;

(3) Provide for a minimum per diem fee for official court reporters, which fee may be supplemented by the various counties within the circuits to which the court reporters are assigned; and

(4) Provide for the form and style of the transcripts, which shall be uniform throughout the state.

(b) The Judicial Council shall amend its rules and regulations providing for and setting the fees to be charged by all official court reporters whenever the council shall deem it necessary and proper.

(c) This Code section shall not apply to those court reporters taking and furnishing transcripts of depositions or taking and furnishing transcripts of non-judicial functions, nor to any independent contracts of any reporters.

(d) A rule or regulation promulgated by the Judicial Council pursuant to this Code section shall not become effective unless that council provides to the chairperson of the Judiciary Committee of the House of Representatives, the chairperson of the Special Judiciary Committee of the House of Representatives, the chairperson of the Judiciary Committee

of the Senate, and the chairperson of the Special Judiciary Committee of the Senate, at least 30 days prior to the date that council intends to adopt such rule or regulation, written notice which includes an exact copy of the proposed rule or regulation and the intended date of its adoption. After July 1, 1986, no rule or regulation adopted by the Judicial Council pursuant to this Code section shall be valid unless adopted in conformity with this subsection. A proceeding to contest any rule or regulation on the grounds of noncompliance with this subsection must be commenced within two years from the effective date of the rule or regulation. (Ga. L. 1975, p. 852, ' ' 1, 2; Ga. L. 1986, p. 956, ' 1; Ga. L. 1988, p. 13, ' 15.)

2. Official Reporters

2. a. SUPERIOR AND CITY COURTS

15-14-1. Power of superior court judges to appoint and remove; oath; duties.

The judges of the superior courts shall have power to appoint and, at their pleasure, to remove a court reporter, as defined in Article 2 of this chapter, for the courts of their respective circuits. The court reporter, before entering on the duties of the court reporter's office, shall be duly sworn in open court to perform faithfully all the duties required of the court reporter by law. It shall be the court reporter's duty to attend all courts in the circuit for which such court reporter is appointed and, when directed by the judge, to record exactly and truly or take stenographic notes of the testimony and proceedings in the case tried, except the arguments of counsel. (Ga. L. 1876, p. 133, ' 1; Code 1882, ' 4696(a); Penal Code 1895, ' 810; Penal Code 1910, ' 810; Code 1933, ' 24-3101; Ga. L. 1993, p. 1315, ' 6.)

15-14-2. Power of city court judges to appoint; compensation.

(a) The judges of the city courts of this state having concurrent jurisdiction with the superior courts of this state to try misdemeanor cases and to try civil cases where the amount involved exceeds \$500.00, where not otherwise specifically provided for by law, may appoint an official court reporter, as defined in Article 2 of this chapter, whose compensation for reporting criminal and civil cases and for attendance upon court shall be the same as provided by the Judicial Council pursuant to Code Section 15-5-21. The court reporter reporting and transcribing civil cases shall be paid by the party or parties requesting the reporting or transcribing.

(b) This Code section shall not apply to the city courts of this state where provision has been made by law prior to February 13, 1950, for the appointment of the official reporters of city courts. (Ga. L. 1950, p. 149, ' ' 1-3; Ga. L. 1993, p. 1315, ' 6.)

15-14-3. Power of division judges to appoint and remove; oath; duties.

Each of the judges of the superior and city courts in all circuits where there may be more than one division, whether the same is civil or criminal, shall appoint and at such judge's pleasure remove a court reporter, as defined in Article 2 of this chapter, for such judge's respective division. The court reporter, before entering on the duties of the court reporter's office, shall be duly sworn in open court to perform faithfully all the duties required. It shall be the court reporter's duty to attend all sessions of the court for which such court reporter is appointed and, when directed by the judge, to record exactly and truly or take stenographic notes of the testimony and proceedings in the case tried, except the argument of counsel. (Ga. L. 1876, p. 133, ' 1; Code 1882, ' 4696a; Ga. L. 1894, p. 53, ' 1; Civil Code 1895, ' 4446; Civil Code 1910, ' 4984; Ga. L. 1914, p. 59, ' 1; Code 1933, ' 24-3102; Ga. L. 1993, p. 1315, ' 6.)

15-14-4. Additional court reporters; typists; equipment.

(a) In all judicial circuits of this state in which nine or more superior court judges are provided by law, the judges of such circuits shall have the power to appoint, in addition to those court reporters already authorized by law, such additional court reporters as each judge deems necessary or proper to report and transcribe the proceedings of the court over which he presides, such court reporters to have the same qualifications and to be paid in the same manner as is provided by law.

(b) In addition thereto, each of the judges of such circuits shall have the power, with the approval of the county commissioners, to employ such typists as he may deem necessary or proper to aid in the recording or transcribing of the proceedings of the court; the compensation of the typists is declared to be an expense of court and payable out of the county treasury as such.

(c) In the aforesaid circuits each of the judges shall have the power to purchase such recording machines and equipment as he may deem necessary or proper to aid in the transaction of the business of the court and to order payment therefore out of the county treasury as an expense of court. (Ga. L. 1957, p. 373, ' 1.)

15-14-5. Duty to transcribe; certificate.

It shall be the duty of each court reporter to transcribe the evidence and other proceedings of which he has taken notes as provided by law whenever requested so to do by counsel for any party to such case and upon being paid the legal fees for such transcripts. The reporter, upon delivering the transcript to such counsel, shall affix thereto a certificate signed by him reciting that the transcript is true, complete, and correct. Subject only to the right of the trial judge to change or require the correction of the transcript, the transcript so certified shall be presumed to be true, complete, and correct. (Ga. L. 1957, p. 224, ' 9.)

15-14-6. Contingent expense and travel allowance; notification of appointments and removals.

(a) The Department of Administrative Services is authorized and directed to pay from the state treasury the sums specified in subsection (b) of this Code section as contingent expense and travel allowance to each duly appointed reporter for the superior courts in all judicial circuits of this state, such sum being in addition to the compensation of the superior court reporters provided by law.

(b) The amounts payable per month under this Code section to superior court reporters as contingent expense and travel allowance shall be as follows:

- (1) For reporters of judicial circuits consisting of only one county\$80.00
- (2) For reporters of judicial circuits consisting of two counties140.00
- (3) For reporters of judicial circuits consisting of three counties200.00
- (4) For reporters of judicial circuits consisting of four counties260.00
- (5) For reporters of judicial circuits consisting of five counties320.00
- (6) For reporters of judicial circuits consisting of six or more counties380.00

Any person who is a duly appointed reporter for the superior courts in more than one judicial circuit shall receive only one contingent expense and travel allowance, in the amount provided for the circuit consisting of the largest number of counties in which he or she is so appointed.

(c) The contingent expense and travel allowance provided by this Code section shall be paid from the appropriations made by the General Assembly for the cost of operating the superior courts. The duly appointed reporters are declared to be officers of the superior courts.

(d) Annually during the month of January the judge or chief judge of each judicial circuit shall certify to the Department of Administrative Services the names and addresses of all persons duly appointed as reporters for the superior courts in the judicial circuit and shall thereafter notify the department of the removal of such persons from office or the appointment of additional persons as superior court reporters, together with the effective date of such removal or appointment.

(e) All laws enacted before April 5, 1961, applicable to any circuit or counties of this state and governing the compensation of court reporters therein shall remain in full force and effect. (Ga. L. 1961, p. 354, ' ' 1-5; Ga. L. 1962, p. 60, ' 1; Ga. L. 1971, p. 417, ' 1; Ga. L. 1981, p. 619, ' 1; Ga. L. 1993, p. 1402, ' 10.)

2.b. STATE COURTS

15-7-47. Providing of court reporters; waiver; compensation.

(a) Court reporting personnel shall be made available for the reporting of civil and criminal trials in state courts, subject to the laws governing same in the superior courts of this state.

(b) Reporting of any trial may be waived by consent of the parties.

(c) Appointment of a court reporter or reporters, as defined in Article 2 of Chapter 14 of this title, for court proceedings in each court shall be made by the judge thereof; the compensation and allowances of reporters for the courts shall be paid by the county governing authority and shall be the same as that for reporters of the superior courts of this state. (Code 1981, ' 15-7-47, enacted by Ga. L. 1983, p. 1419, ' 2; Ga. L. 1993, p. 1315, ' 5.)

2. c. JUVENILE PROCEEDINGS

15-11-41. Conduct of hearings generally; recordation; conduct of delinquency proceedings by district attorney; victim impact statement; findings as to deprivation.

(a) All hearings shall be conducted by the court without a jury. Any hearing may be adjourned from time to time within the discretion of the court as set forth in subsection (b) of Code Section 15-11-56.

(b) The proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means, unless such recording is waived by the child, the child's parent, guardian, or attorney.

(c) In any proceeding before the juvenile court, the judge, upon the court's own motion, may request the assistance of the district attorney's staff to conduct the proceedings on behalf of the petitioner. If for any reason the district attorney is unable to assist, the judge may appoint legal counsel for such purpose.

2. d. REPORT OF TESTIMONY IN FELONY PROSECUTIONS

17-8-5. Recordation of testimony in felony cases; entering testimony on minutes of court where a guilty verdict found; preparation of transcript where death sentence imposed; preparation of a transcript where mistrial results in felony case.

(a) On the trial of all felonies the presiding judge shall have the testimony taken down and, when directed by the judge, the court reporter shall exactly and truly record or take stenographic notes of the testimony and proceedings in the case, except the argument of counsel. In the event of a verdict of guilty, the testimony shall be entered on the minutes of the court or in a book to be kept for that purpose. In the event that a sentence of death is imposed, the transcript of the case shall be prepared within 90 days after the sentence is imposed by the trial court. Upon petition by the court reporter, the Chief Justice of the Supreme Court of Georgia may grant an additional period of time for preparation of the transcript, such period not to exceed 60 days. The requirement that a transcript be prepared within a certain period in cases in which a sentence of death is imposed shall not inure to the benefit of a defendant.

(b) In the event that a mistrial results from any cause in the trial of a defendant charged with the commission of a felony, the presiding judge may, in his discretion, either with or without any application of the defendant or state's counsel, order that a brief or transcript of the testimony in the case be duly filed by the court reporter in the office of the clerk of the superior court in which the mistrial occurred. If the brief or transcript is ordered, it shall be the duty of the judge, in the order, to provide for the compensation of the reporter and for the transcript to be paid for as is provided by law for payment of transcripts in cases in which the law requires the testimony to be transcribed, at a rate not to exceed that provided in felony cases. (Laws 1833, Cobb's 1851 Digest, p. 841; Code 1863, ' 4578; Code 1868, ' 4599; Code 1873, ' 4696; Ga. L. 1876, p. 133, ' 1; Code 1882, ' 4696; Penal Code 1895, ' 981; Penal Code 1910, ' 1007; Ga. L. 1925, p. 101, ' 1; Code 1933, ' 27-2401; Ga. L. 1973, p. 159, ' 6; Ga. L. 1976, p. 991, ' 1.)

2. e. CORONER'S INQUEST

45-16-48. Authorization of coroner's employment of court reporter.

A coroner may be authorized to employ, at his discretion, a court reporter who is certified under Article 2 of Chapter 14 of Title 15, "The Georgia Court Reporting Act," to record the proceedings of any inquest. The cost of acquiring the services of a certified court reporter shall be paid from the funds of the county where the inquest is held. (Code 1981, ' 45-16-48, enacted by Ga. L. 1984, p. 812, ' 8; Ga. L. 1990, p. 1735, ' 3.)

2. f. MEDICAL MALPRACTICE ARBITRATION PROCEEDINGS

9-9-64. Appointment of reporter; duties; compensation.

The judge of the superior court of the county in which was issued the order authorizing arbitration shall appoint a reporter to attend the proceedings of the medical malpractice arbitration panel and to record exactly and truly the testimony and proceedings in the case being arbitrated, except the arguments of counsel. All provisions relating to court reporter fees, compensation, contingent expenses, and travel allowance, as well as those relating to the furnishing of transcripts and the style and form of transcripts, shall be the same for reporters appointed to attend the arbitration panel proceedings as those applicable to reporters of the superior court of the county in which the arbitration was authorized. (Code 1933, ' 7-405, enacted by Ga. L. 1978, p. 2270, ' 2; Code 1981, ' 9-9-114; Code 1981, ' 9-9-64, as re-designated by Ga. L. 1988, p. 903, ' 3.)

2. g. SUPERIOR COURT REPORTERS EMERITUS

47-15-1. Creation of the office of superior court reporter emeritus.

There is created the office of superior court reporter emeritus. (Ga. L. 1952, p. 79, ' 1.)

47-15-2. Eligibility for appointment as superior court reporter emeritus.

(a) As used in this Code section, the term "year" means all or any portion of a calendar year during which a reporter or court stenographer served as official reporter under appointment by the presiding judge of the circuit.

(b) Any reporter or court stenographer in any superior court judicial circuit who has so served for 40 or more consecutive years in the same circuit shall be eligible for appointment as superior court reporter emeritus and shall be appointed to that office by the judge of the superior court of the circuit, upon application by the reporter or court stenographer. (Ga. L. 1952, p. 79, ' 2; Ga. L. 1953, Nov.-Dec. Sess., p. 355.)

47-15-3. Salary payable to superior court reporters emeritus.

Each superior court reporter emeritus shall be paid a salary of \$200.00 per month, which salary shall be paid on the first day of each month. (Ga. L. 1952, p. 79, ' 3.)

47-15-4. Term of office as superior court reporter emeritus; duties; additional compensation for performance of duties.

Each superior court reporter emeritus shall hold such office for life. It shall be his duty to serve as a court reporter whenever the judge of the superior court of his circuit shall call upon him to do so, without additional compensation except for civil cases. For reporting and transcribing civil cases he shall be paid the fee provided by law. (Ga. L. 1952, p. 79, ' 4.)

47-15-5. Duty of counties to pay salaries of superior court reporters emeritus; duty to levy taxes sufficient to pay such salaries.

(a) The salary provided for in Code Section 47-15-3 shall be paid pro rata out of the general treasuries of the various counties comprising the circuit of the court reporter emeritus, upon the basis of population. Each of the counties comprising

such circuit shall pay such part or portion of such salary as its population bears to the total population of all counties of such circuit according to the most recent United States decennial census.

(b) It shall be the duty of the county governing authorities of the various counties comprising the circuit of such court reporter emeritus, when levying taxes for expenses of courts, to levy and make collection of sufficient taxes in their respective counties for the purpose of paying the portion of the salary of the court reporter emeritus chargeable against the respective counties. (Ga. L. 1952, p. 79, ' ' 5, 6.)

2. h. BANKRUPTCY COURT - Federal

FRBP Rule 5007: Record of Proceedings and Transcripts

(a) *Filing of record or transcript.* The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy.

(b) *Transcript fees.* The fees for copies of transcripts shall be charged at rates prescribed by the Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk.

(c) *Admissibility of record in evidence.* A certified sound recording of a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.

FRBP 8007. Completion and Transmission of the Record; Docketing of the Appeal.

(a) *Duty of reporter to prepare and file transcript.* On receipt of a request for a transcript, the reporter shall acknowledge on the request the date it was received and the date on which the reporter expects to have the transcript completed and shall transmit the request, so endorsed, to the clerk or the clerk of the bankruptcy appellate panel. On completion of the transcript the reporter shall file it with the clerk and, if appropriate, notify the clerk of the bankruptcy appellate panel. If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.

28 USCS ' 773 - Records of proceedings; reporters

(a) The bankruptcy court shall require a record to be made, whenever practicable, of all proceedings in cases had in open court. The Judicial Conference shall prescribe that the record be taken by electronic sound recording means, by a court reporter appointed or employed by such bankruptcy court to take a verbatim record by shorthand or mechanical means, or by an employee of such court designated by such court to take such a verbatim record.

(b) On the request of a party to a proceeding that has been recorded who has agreed to pay the fee for a transcript, or a judge of the bankruptcy court, a transcript of the original record of the requested parts of such proceeding shall be made and delivered promptly to such party or judge. Any such transcript that is certified shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcript of the proceedings of the bankruptcy court shall be considered as official except those made from certified records.

(c) Fees for transcripts furnished in proceedings to persons permitted to appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question).

28 USCS '775 -Salaries of employees

The salary of an individual appointed or employed under section 771(a), 771, or 773(a) of this title shall be the same as the salary of an individual appointed or employed under 751 (a), 752, or 753(a) of this title, as the case may be. The salaries of individuals appointed under section 771 (b) of this title shall be comparable to the salaries of individuals appointed under section 751(b) of this title.(Nov. 6, 1978, P.L.95-598, Title II, ' 233(a), 92 Stat. 2665.)

3. Depositions

3. a. TAKING OF DEPOSITION

9-11-27. Depositions before action or pending appeal.

(a) Before action.

(1) Petition. A person who desires to perpetuate such person=s own testimony or that of another person regarding any matter that may be cognizable in any court may file a verified petition in the superior court of the county where the witness resides. The petition shall be entitled in the name of the petitioner and shall show that the petitioner expects to be a party to litigation but is presently unable to bring it or cause it to be brought, the subject matter of the expected action and the petitioner=s interest therein, the facts which the petitioner desires to establish by the proposed testimony and the petitioner=s reasons for desiring to perpetuate it, the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court at a time and place named therein for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or outside the county in the manner provided for service of summons; but, if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise and shall appoint, for persons not served, an attorney who shall represent them and, in case they are not otherwise represented, shall cross-examine the deponent. The court may make such order as is just requiring the petitioner to pay a reasonable fee to an attorney so appointed. If any expected adverse party is a minor or an incompetent person and does not have a general guardian, the court shall appoint a guardian ad litem.

(3) Order and examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken by a certified court reporter, or as otherwise provided by the rules of the Board of Court Reporting, in accordance with this chapter, and the court may make orders of the character provided for by Code Sections 9-11-34 and 9-11-35. For the purpose of applying this chapter to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of deposition. If a deposition to perpetuate testimony is taken under this Code section or if, although not so taken, it would be otherwise admissible under the laws of this state, it may be used in any action involving the same parties and the same subject matter subsequently brought.

(b) Pending appeal. If an appeal has been taken from a judgment of a trial court or before the taking of an appeal if the time therefore has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the trial court. In such case the party who desires to perpetuate the testimony may make a motion in the trial court for leave to take the depositions, upon the same notice and service thereof as if the action were pending in the court. The motion shall show the names and addresses of persons to be examined, the substance of the testimony which the movant expects to elicit from each, and the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Code Sections 9-11-34 and 9-11-35; and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in this chapter for depositions taken in actions pending in court.

(c) Perpetuation by action. This Code section does not limit the power of a court to entertain an action to perpetuate testimony. (Ga. L. 1966, p. 609, ' 27; Ga. L. 1993, p. 1315, ' 2.)

9-11-28. Persons before whom depositions may be taken; disqualification for interest; consent of parties.

(a) *Within the United States and its possessions.* Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or by the laws of the place where the examination is held or before a court reporter appointed by the court in which the action is pending or, if within this state, before a certified court reporter or as otherwise provided by the rules of the Board of Court Reporting. A person so appointed has power to administer oaths and take testimony.

(b) *In foreign countries.* In a foreign state or country depositions shall be taken on notice before a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the United States, or before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or by descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the country)."

(c) *Disqualification for interest.* No deposition shall be taken before a court reporter who is a relative, employee, attorney, or counsel of any of the parties, or who is a relative or employee of such attorney or counsel, or who is financially interested in the action, excepting that a deposition may be taken before a court reporter who is a relative of a party or of an attorney or counsel of a party if all parties represented at the deposition enter their explicit consent to the same upon the record of the deposition. (Ga. L. 1966, p. 609, ' 28; Ga. L. 1993, p. 1315, ' 3; Ga. L. 1994, p. 1007, ' 1.; Ga. L. 1999, p. 848, ' 1.)

9-11-29. Stipulations regarding discovery procedure.

Unless the court orders otherwise, the parties may, by written stipulation:

(1) Provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and, when so taken, may be used like other depositions; and

(2) Modify the procedures provided by this chapter for other methods of discovery. (Ga. L. 1966, p. 609, ' 29; Ga. L. 1972, p. 510, ' 2.)

Editorial note: see Board opinion, BCR 77-3.

9-11-29.1. When depositions and other discovery material must be filed with court; custodian until filing.

(a) Depositions and other discovery material otherwise required to be filed with the court under this chapter shall not be required to be so filed unless:

(1) Required by local rule of court;

(2) Ordered by the court;

(3) Requested by any party to the action;

(4) Relief relating to discovery material is sought under this chapter and said material has not previously been filed under some other provision of this chapter, in which event copies of the material in dispute shall be filed by the movant contemporaneously with the motion for relief; or

(5) Such material is to be used at trial or is necessary to a pretrial or post-trial motion and said material has not previously been filed under some other provision of this chapter, in which event the portions to be used shall be filed with the clerk of the court at the outset of the trial or at the filing of the motion, insofar as their use can be reasonably anticipated by the parties having custody thereof, but a party attempting to file and use such material which was not filed with the clerk at the outset of the trial or at the filing of the motion shall show to the satisfaction of the court, before the court may authorize such filing and use, that sufficient reasons exist to justify that late filing and use and that the late filing and use will not constitute surprise or manifest injustice to any other party in the proceedings.

(b) Until such time as discovery material is filed under paragraphs (1) through (5) of subsection (a) of this Code section, the original of all depositions shall be retained by the party taking the deposition and the original of all other discovery

material shall be retained by the party requesting such material, and the person thus retaining the deposition or other discovery material shall be the custodian thereof. (Code 1981, ' 9-11-29.1, enacted by Ga. L. 1982, p. 2374, ' 1.)

9-11-30. Depositions upon oral examination.

(a) *When depositions may be taken.* After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under subsection (f) of Code Section 9-11-4, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery or if special notice is given as provided in paragraph (2) of subsection (b) of this Code section. The attendance of witnesses may be compelled by subpoena as provided in Code Section 9-11-45. The deposition of a person confined in a penal institution may be taken only by leave of court on such terms as the court prescribes.

(b) *Notice of examination.*

(1) General requirements. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition, the means by which the testimony shall be recorded, and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person to be examined or the particular class or group to which he or she belongs. If a subpoena for the production of documentary and tangible evidence is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to, or included in, the notice.

(2) Special notice. Leave of court is not required for the taking of a deposition by plaintiff if the notice:

(A) States that the person to be examined is about to go out of the county where the action is pending and more than 150 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless the deposition is taken before expiration of the 30 day period; and

(B) Sets forth facts to support the statement.

The plaintiff's attorney shall sign the notice, and said attorney's signature constitutes a certification by him or her that, to the best of his or her knowledge, information, and belief, the statement and supporting facts are true. If a party shows that, when he or she was served with notice under this paragraph, he or she was unable through the exercise of diligence to obtain counsel to represent him or her at the taking of the deposition, the deposition may not be used against such party.

(3) Time requirements. The court may, for cause shown, enlarge or shorten the time for taking the deposition.

(4) Recording of deposition. Unless the court orders otherwise, the testimony at a deposition must be recorded by stenographic means, and may also be recorded by sound or sound and visual means in addition to stenographic means, and the party taking the deposition shall bear the costs of the recording. A deposition shall be conducted before an officer appointed or designated under Code Section 9-11-28. Upon motion of a party or upon its own motion, the court may issue an order designating the manner of recording, preserving, and filing of a deposition taken by non-stenographic means, which order may include other provisions to assure that the recorded testimony will be accurate and trustworthy. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means. With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the methods specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. Notwithstanding the foregoing provisions of this paragraph, a deposition may be taken by telephone or other remote electronic means only upon the stipulation of the parties or by order of the court. For purposes of the requirements of this chapter, a deposition taken by telephone or other remote electronic means is taken in the state and at the place where the deponent is to answer questions.

(5) Production of documents and things. The notice to a party deponent may be accompanied by a request made in compliance with Code Section 9-11-34 for the production of documents and tangible things at the taking of the deposition. The procedure of Code Section 9-11-34 shall apply to the request.

(6) Deposition of organization. A party may, in his or her notice, name as the deponent a public or private corporation or a partnership or association or a governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in this chapter.

(c) *Examination and cross-examination; record of examination; oath; objections.*

(1) Examination and cross-examination of witnesses may proceed as permitted at the trial under the rules of evidence. The authorized officer or court reporter before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the direction and in the presence of the authorized officer or court reporter, record the testimony of the witness.

(2) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and said party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(3) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain the record of each deposition until the later of (A) five years after the date on which the deposition was taken, or (B) two years after the date of final disposition of the action for which the deposition was taken and any appeals of such action. The officer may preserve the record through storage of the original paper, notes, or recordings or an electronic copy of the notes, recordings, or the transcript on computer disks, cassettes, backup tape systems, optical or laser disk systems or other retrieval systems.

(d) *Motion to terminate or limit examination.* At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as provided in subsection (c) of Code Section 9-11-26. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses incurred in relation to the motion.

(e) *Review by witness; changes; signing.* If requested by the deponent *or* a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph (1) of subsection (f) of this Code section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the deposition is not reviewed and signed by the witness within 30 days of its submission to him or her, the officer shall sign it and state on the record that the deposition was not reviewed and signed by the deponent within 30 days. The deposition may then be used as fully as though signed unless, on a motion to suppress under paragraph (4) of subsection (d) of Code Section 9-11-32, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) *Certification and filing by officer; inspection and copying of exhibits; copy of deposition.*

(1)(A) The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. The officer shall then securely seal the deposition in an envelope marked with the title of the action, the court reporter certification number, and "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the

action is pending or deliver it to the party taking the deposition, as the case may be, in accordance with code Section 9-11-29.1.

(B) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification, if he or she affords to all parties fair opportunity to verify the copies by comparison with the originals; and, if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any party or to the deponent.

(g) *Failure to attend or to serve subpoena; expenses.*

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness, because of such failure, does not attend and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(h) *Form of presentation.* Except as otherwise directed by the court, a party offering deposition testimony may offer it in stenographic or non-stenographic form, but if in non-stenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in non-stenographic form, if available, unless the court for good cause orders otherwise. (Ga. L. 1966, p. 609, ' 30; Ga. L. 1967, p. 226, ' 14; Ga. L. 1972, p. 510, ' 3; Ga. L. 1993, p. 1315, ' 4; Ga. L. 1996, p. 266, ' 1; Ga. L. 2000, p. 1225, ' 3.)

9-11-31. Depositions upon written questions.

(a) *Serving questions; notice.*

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Code Section 9-11-45. The deposition of a person confined in a penal institution may be taken only by leave of court on such terms as the court prescribes.

(2) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs and the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with paragraph (6) of subsection (b) of Code Section 9-11-30.

(3) Within 30 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within ten days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve recross-questions upon all other parties. The court may, for cause shown, enlarge or shorten the time.

(b) *Officer to take responses and prepare record.* A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by subsections (c), (e), and (f) of Code Section 9-11-30, to take the testimony of the witness in response to the

questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him. (Ga. L. 1966, p. 609, ' 31; Ga. L. 1967, p. 226, ' 15; Ga. L. 1972, p. 510, ' 4.)

9-11-32. Use of depositions in court proceedings; effect of errors and irregularities in depositions.

(a) Use of depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party (1) for the purpose of contradicting or impeaching the testimony of the deponent as a witness;

(2) The deposition of a party or of anyone who, at the time of taking the deposition, was an officer, director, or managing agent or a person designated under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf of a public or private corporation, a partnership or association, or a governmental agency which is a party may be used by an adverse party for any purpose;

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) That the witness is dead;

(B) That the witness is out of the county, unless it appears that the absence of the witness was procured by a party offering the deposition;

(C) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena;

(E) That because of the nature of the business or occupation of the witness it is not possible to secure his personal attendance without manifest inconvenience to the public or third persons; or

(F) That the witness will be a member of the General Assembly and that the session of the General Assembly will conflict with the session of the court in which the case is to be tried;

(4) The deposition of a witness, whether or not a party, taken upon oral examination, may be used in the discretion of the trial judge, even though the witness is available to testify in person at the trial. The use of the deposition shall not be a ground for excluding the witness from testifying orally in open court; or

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts. Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefore.

(b) Objections to admissibility. Subject to paragraph (3) of subsection (d) of this Code section, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of taking or using depositions. A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition; but this shall not apply to the use by an adverse party of a deposition under paragraph (2) of subsection (a) of this Code section. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) Effect of errors and irregularities in depositions.

(1) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Code Section 9-11-31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(4) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Code Sections 9-11-30 and 9-11-31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. (Ga. L. 1966, p. 609, ' 32; Ga. L. 1972, p. 510, ' 5; Ga. L. 1984, p. 22, ' 9.)

3. b. FOREIGN DEPOSITIONS

24-10-111. How foreign depositions taken.

Whenever any mandate, writ, or commission is issued out of any court of record in any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in this state, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state. (Ga. L. 1959, p. 311, ' 1.)

3. c. DEPOSITIONS TO PRESERVE TESTIMONY IN CRIMINAL PROCEEDINGS

24-10-130. When deposition to preserve testimony in criminal proceedings may be taken; order of court.

(a)(1) At any time after a defendant has been charged with an offense against the laws of this state or an ordinance of any political subdivision or authority thereof, upon motion of the state or the defendant, the court having jurisdiction to try the offense charged may, after notice to the parties, order that the testimony of a prospective material witness of a party be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place.

(2) At any time after a defendant has been charged with an offense of child molestation, aggravated child molestation, or physical or sexual abuse of a child, upon motion of the state or the defendant, the court having jurisdiction to try the offense charged may, after notice to the parties, order that the testimony of any physician whose testimony is relevant to such charge be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place.

(b) The court shall not order the taking of the witness's testimony, except as provided in paragraph (2) of subsection (a) of this Code section, unless it appears to the satisfaction of the court that the testimony of the witness is material to the case and the witness:

(1) Is in imminent danger of death;

(2) Has been threatened with death or great bodily harm because of the witness's status as a potential witness in a criminal trial or proceeding;

(3) Is about to leave the state and there are reasonable grounds to believe that such witness will be unable to attend the trial;

(4) Is so sick or infirm as to afford reasonable grounds to believe that such witness will be unable to attend the trial; or

(5) Is being detained as a material witness and there are reasonable grounds to believe that the witness will flee if released from detention.

(c) A motion to take a deposition of a material witness, or a physician as provided in paragraph (2) of subsection (a) of this Code section, shall be verified and must state:

(1) The nature of the offense charged;

(2) The status of the criminal proceedings;

(3) The name of the witness and an address in Georgia where the witness may be contacted;

(4) That the testimony of the witness is material to the case or that the witness is a physician as provided in paragraph (2) of subsection (a) of this Code section; and

(5) The basis for taking the deposition as provided in subsection (b) of this Code section.

(d) A motion to take a deposition shall be filed in the court having jurisdiction to try the defendant for the offense charged; provided, however, if the defendant is charged with multiple offenses, only the court having jurisdiction to try the most serious charge against the defendant shall have jurisdiction to hear and decide the motion to take a deposition.

(e) The party moving the court for an order pursuant to this Code section shall give not less than one day's notice of the hearing to the opposite party. A copy of the motion shall be sent to the opposing party or his or her counsel by any means which will reasonably ensure timely delivery including transmission by facsimile or by digital or electronic means. A copy of the notice shall be attached to the motion and filed with the clerk of court.

(f) If the court is satisfied that the examination of the witness is authorized by law and necessary, the court shall enter an order setting a time period of not more than 30 days during which the deposition shall be taken.

(g) On motion of either party, the court may designate a judge who will be available to rule on any objections to the interrogation of the witness or before whom the deposition shall be taken. The judge so designated may be a judge of any court of this state who is otherwise qualified to preside over the trial of criminal cases in the court having jurisdiction over the offense charged. (Code 1933, ' 38-1301a; Ga. L. 1980, p. 426, ' 1; Ga. L. 1994, p. 1895, ' 5; Ga. L. 1995, p. 10, ' 24; Ga. L. 1995, p. 1360, ' 1; Ga. L. 1996, p. 795, ' ' 1,2; Ga. L. 1996, p. 1233, ' ' 5,6.)

24-10-131. Notice of deposition; presence of defendant at examination; effect of defendant's failure to appear; child witness.

(a) The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined.

(b) On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition.

(c) The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce the defendant at the examination and keep the defendant in the presence of the witness during the examination unless, after being warned by the judge that disruptive conduct will cause the defendant's removal from the place where the deposition is being taken, the defendant persists in conduct which would justify exclusion from that place.

(d) A defendant not in custody shall have the right to be present at the examination; but failure of the defendant, absent good cause shown, to appear, after notice and tender of expenses, shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(e) Notwithstanding the provisions of subsections (c) and (d) of this Code section, if the witness is a child, the court may order that the deposition be taken in accordance with Code Section 17-8-55. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1; Ga. L. 1994, p. 1895, ' 6.)

24-10-132. Appointment of counsel; payment of costs and expenses.

(a) If a defendant is financially unable to employ counsel, the court shall appoint counsel as provided in the uniform rules of the courts, unless the defendant elects to proceed without counsel.

(b) Whenever a deposition is taken at the instance of the state, the cost of any such deposition shall be paid by the state in the same manner as is provided by law for the payment of costs in the appellate courts.

(c) Depositions taken at the instance of a defendant shall be paid for by the defendant; provided, however, that, whenever a deposition is taken at the instance of a defendant who is eligible for the appointment of counsel as provided in the uniform rules of the courts, the court shall direct that the reasonable expenses for the taking of the deposition and of travel and subsistence of the defendant and the defendant's attorney, not to exceed the limits established pursuant to Article 2 of Chapter 7 of Title 45, for attendance at the examination be paid for out of the fine and forfeiture fund of the county where venue is laid. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1; Ga. L. 1994, p. 1895, ' 7.)

24-10-133. Manner of taking and filing deposition.

Except as provided in Code Section 24-10-137, a deposition shall be taken and filed in the manner provided in civil actions, provided that (1) in no event shall a deposition be taken of a party defendant without his or her consent and (2) the scope of examination and cross-examination shall be such as would be allowed in the trial itself. On request or waiver by the defendant, the court may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. Such request shall constitute a waiver by the defendant of any objection to the taking and use of the deposition based upon its being so taken. If a judge has been designated to rule on objections or to preside over the deposition, objections to interrogation of the witness shall be made to and ruled on by such judge in the same manner as at the trial of a criminal case. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1; Ga. L. 1994, p. 1895, ' 8.)

24-10-134. Availability to defendant of deponent's previous statements.

The state shall make available to the defendant, for his examination and use at the taking of the deposition, any statement of the witness being deposed which is in the possession of the state and which the state would be required to make available to the defendant if the witness were testifying at the trial. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1.)

24-10-135. Admissibility and use of deposition.

At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if the witness is unavailable. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering of all of it which is relevant to the part offered and any party may offer other parts. A witness is not unavailable if the exemption, refusal to testify, claim of lack of memory, inability, or absence of such witness is due to the procurement or wrongdoing of the party offering the deposition at the hearing or trial for the purpose of preventing the witness from attending or testifying. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1; Ga. L. 1994, p. 1895, ' 9.)

24-10-136. Objections to admission of deposition.

Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1.)

24-10-137. Recordation of deposition.

(a) Any party shall have the right to require that the deposition be recorded and preserved by the use of audio-visual equipment in addition to a stenographic record. The audio-visual recording shall be transmitted to the clerk of the court which ordered the deposition and shall be made available for viewing and copying only to the prosecuting attorney and defendant's attorney prior to trial. An audio-visual recording made pursuant to this Code section shall not be available for inspection or copying by the public until such audio-visual recording has been admitted into evidence during a trial or hearing in the case in which such deposition is made.

(b) An audio-visual recording made pursuant to this Code section may be admissible at trial or hearing as an alternative to the stenographic record of the deposition.

(c) A stenographic record of the deposition contemplated in this Code section shall be made pursuant to Code Section 9-11-28. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1; Ga. L. 1994, p. 1895, ' 10.)

24-10-138. Agreement of parties to deposition.

Nothing in this article shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition by agreement of the parties with the consent of the court. (Code 1981, ' 24-10-138, enacted by Ga. L. 1994, p. 1895, ' 11.)

24-10-139. Depositions taken only in exceptional circumstances; misuse of procedures.

It is the intent of the General Assembly that depositions shall be taken in criminal cases only in exceptional circumstances when it is in the interest of justice that the testimony of a prospective witness be taken and preserved for use at trial. If the court finds that any party or counsel for a party is using the procedures set forth in this article for the purpose of harassment or delay, such conduct may be punished as contempt of court. (Code 1981, ' 24-10-139, enacted by Ga. L. 1994, p. 1895, ' 11.)

4. Appellate Records

4. a. PREPARATION OF RECORD FOR APPEAL

5-6-39. **Extensions of time for filing notice of appeal, notice of cross appeal, transcript of evidence, designation of record and other similar motions.**

(a) Any judge of the trial court or any justice or judge of the appellate court to which the appeal is to be taken may, in his discretion, and without motion or notice to the other party, grant extensions of time for the filing of:

(1) Notice of appeal;

(2) Notice of cross appeal;

(3) Transcript of the evidence and proceedings on appeal or in any other instance where filing of the transcript is required or permitted by law;

(4) Designation of record referred to under Code Section 5-6-42; and

(5) Any other similar motion, proceeding, or paper for which a filing time is prescribed.

(b) No extension of time shall be granted for the filing of motions for new trial or for judgment notwithstanding the verdict.

(c) Only one extension of time shall be granted for filing of a notice of appeal and a notice of cross appeal, and the extension shall not exceed the time otherwise allowed for the filing of the notices initially.

(d) Any application to any court, justice, or judge for an extension must be made before expiration of the period for filing as originally prescribed or as extended by a permissible previous order. The order granting an extension of time shall be promptly filed with the clerk of the trial court, and the party securing it shall serve copies thereof on all other parties in the manner prescribed by Code Section 5-6-32. (Ga. L. 1965, p. 18, ' 6.)

5-6-41. **Reporting, preparation, and disposition of transcript; correction of omissions or misstatements; preparation of transcript from recollection; filing of disallowed papers; filing of stipulation in lieu of transcript; reporting of case at party's expense.**

(a) In all felony cases, the transcript of evidence and proceedings shall be reported and prepared by a court reporter as provided in Code Section 17-8-5 or as otherwise provided by law.

(b) In all misdemeanor cases, the trial judge may, in the judge's discretion, require the reporting and transcribing of the evidence and proceedings by a court reporter on terms prescribed by the trial judge.

(c) In all civil cases tried in the superior and city courts and in any other court, the judgments of which are subject to review by the Supreme Court or the Court of Appeals, the trial judge thereof may require the parties to have the proceedings and evidence reported by a court reporter, the costs thereof to be borne equally between them; and, where an appeal is taken which draws in question the transcript of the evidence and proceedings, it shall be the duty of the appellant to have the transcript prepared at the appellant's expense. Where it is determined that the parties, or either of them, are financially unable to pay the costs of reporting or transcribing, the judge may, in the judge's discretion, authorize trial of the case unreported; and, when it becomes necessary for a transcript of the evidence and proceedings to be prepared, it shall be the duty of the moving party to prepare the transcript from recollection or otherwise.

(d) Where a trial in any civil or criminal case is reported by a court reporter, all motions, colloquies, objections, rulings, evidence, whether admitted or stricken on objection or otherwise, copies or summaries of all documentary evidence, the charge of the court, and all other proceedings which may be called in question on appeal or other posttrial procedure shall be reported; and, where the report is transcribed, all such matters shall be included in the written transcript, it being the intention of this article that all these matters appear in the record. Where matters occur which were not reported, such as objections to

oral argument, misconduct of the jury, or other like instances, the court, upon motion of either party, shall require that a transcript of these matters be made and included as a part of the record. The transcript of proceedings shall not be reduced to narrative form unless by agreement of counsel; but, where the trial is not reported or the transcript of the proceedings for any other reason is not available and the evidence is prepared from recollection, it may be prepared in narrative form.

(e) Where a civil or criminal trial is reported by a court reporter and the evidence and proceedings are transcribed, the reporter shall complete the transcript and file the original and one copy thereof with the clerk of the trial court, together with the court reporter's certificate attesting to the correctness thereof. In criminal cases where the accused was convicted of a capital felony, an additional copy shall be filed for the Attorney General, for which the court reporter shall receive compensation from the Department of Law as provided by law. The original transcript shall be transmitted to the appellate court as a part of the record on appeal; and one copy will be retained in the trial court, both as referred to in Code Section 5-6-43. Upon filing by the reporter, the transcript shall become a part of the record in the case and need not be approved by the trial judge.

(f) Where any party contends that the transcript or record does not truly or fully disclose what transpired in the trial court and the parties are unable to agree thereon, the trial court shall set the matter down for a hearing with notice to both parties and resolve the difference so as to make the record conform to the truth. If anything material to either party is omitted from the record on appeal or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected and, if necessary, that a supplemental record shall be certified and transmitted by the clerk of the trial court. The trial court or the appellate court may at any time order the clerk of the trial court to send up any original papers or exhibits in the case, to be returned after final disposition of the appeal.

(g) Where a trial is not reported as referred to in subsections (b) and (c) of this Code section or where for any other reason the transcript of the proceedings is not obtainable and a transcript of evidence and proceedings is prepared from recollection, the agreement of the parties thereto or their counsel, entered thereon, shall entitle such transcript to be filed as a part of the record in the same manner and with the same binding effect as a transcript filed by the court reporter as referred to in subsection (e) of this Code section. In case of the inability of the parties to agree as to the correctness of such transcript, the decision of the trial judge thereon shall be final and not subject to review; and, if the trial judge is unable to recall what transpired, the judge shall enter an order stating that fact.

(h) Where any amendment or other pleading or paper which requires approval or sanction of the court in any proceeding before being filed of record is disallowed or sanction thereof is refused, the amendment, pleading, or paper may nevertheless be filed, with notation of disallowance thereon, and shall become part of the record for purposes of consideration on appeal or other procedure for review.

(i) In lieu of sending up a transcript of record, the parties may by agreement file a stipulation of the case showing how the questions arose and were decided in the trial court, together with a sufficient statement of facts to enable the appellate court to pass upon the questions presented therein. Before being transmitted to the appellate court, the stipulation shall be approved by the trial judge or the presiding judge of the court where the case is pending.

(j) In all cases, civil or criminal, any party may as a matter of right have the case reported at the party's own expense. (Ga. L. 1965, p. 18, ' 10; Ga. L. 1993, p. 1315, ' 1.)

5-6-42. Procedure for preparation and filing of transcript of evidence and proceedings where appellant designates matter to be omitted from record on appeal generally; granting of extensions of time to court reporter for completion of transcript.

If the appellant designates any matter to be omitted from the record on appeal as provided in Code Section 5-6-37, the appellee may, within 15 days of serving of the notice of appeal by appellant, file a designation of record designating that all or part of the omitted matters be included in the record on appeal. A copy of the designation shall be served on all other parties in the manner prescribed by Code Section 5-6-32. Where there is a transcript of evidence and proceedings to be included in the record on appeal, the appellant shall cause the transcript to be prepared and filed as provided by Code Section 5-6-41; but, when the appellant has designated that the transcript not be made a part of the record on appeal and its inclusion is by reason of a designation thereof by appellee, the appellee shall cause the transcript to be prepared and filed as referred to in Code Section 5-6-41 at his expense. The party having the responsibility of filing the transcript shall cause it to be filed within 30 days after filing of the notice of appeal or designation by appellee, as the case may be, unless the time is extended as provided in Code Section 5-6-39. In all cases, it shall be the duty of the trial judge to

grant such extensions of time as may be necessary to enable the court reporter to complete his transcript of evidence and proceedings. (Ga. L. 1965, p. 18, ' 11.)

5-6-43. Preparation and transmittal of record on appeal by court clerk; retention of copy by clerk; furnishing to Attorney General in capital cases; notification where defendant confined to jail.

(a) Within five days after the date of filing of the transcript of evidence and proceedings by the appellant or appellee, as the case may be, it shall be the duty of the clerk of the trial court to prepare a complete copy of the entire record of the case, omitting only those things designated for omission by the appellant and which were not designated for inclusion by the appellee, together with a copy of the notice of appeal and copy of any notice of cross appeal, with date of filing thereon, and transmit the same, together with the transcript of evidence and proceedings, to the appellate court, together with his certificate as to the correctness of the record. Where no transcript of evidence and proceedings is to be sent up, the clerk shall prepare and transmit the record within 20 days after the date of filing of the notice of appeal. If for any reason the clerk is unable to transmit the record and transcript within the time required in this subsection or when an extension of time was obtained under Code Section 5-6-39, he shall state in his certificate the cause of the delay and the appeal shall not be dismissed. The clerk need not recopy the transcript of evidence and proceedings to be sent up on appeal but shall send up the reporter's original and retain the copy, as referred to in Code Section 5-6-41; and it shall not be necessary that the transcript be renumbered as a part of the record on appeal. The clerk shall retain an exact duplicate copy of all records and the transcript sent up, with the same pagination, in his office as a permanent record.

(b) Where the accused in a criminal case was convicted of a capital felony, the clerk shall likewise furnish the Attorney General with an exact copy of the record on appeal, for which the clerk shall receive a fee as required by paragraph (6) of subsection (h) of Code Section 15-6-77, to be paid out of funds appropriated to the Department of Law.

(c) Where a defendant in a criminal case is confined in jail pending appeal, it shall be the duty of the clerk to state that fact in his certificate; and it shall be the duty of the appellate court to expedite disposition of the case.

(d) Where a transcript of evidence and proceedings is already on file at the time the notice of appeal is filed, as where the transcript was previously filed in connection with a motion for new trial or for judgment notwithstanding the verdict, the clerk shall cause the record and transcript (where specified for inclusion) to be transmitted as provided in subsection (a) of this Code section within 20 days after the filing of the notice of appeal. (Ga. L. 1965, p. 18, ' 12; Ga. L. 1966, p. 493, ' 5; Ga. L. 1968, p. 1072, ' 6; Ga. L. 1981, p. 1396, ' 15; Ga. L. 1992, p. 6, ' 5.)

5-6-44. Authorization and procedure generally for filing of joint appeals, motions for new trial, and other motions; division of costs between parties.

(a) Whenever two or more persons are defendants or plaintiffs in an action, and a judgment, verdict, or decree has been rendered against each of them, jointly or severally, or where two or more cases are tried together, the plaintiffs or defendants, as the case may be, shall be entitled, but not required, to file joint appeals, motions for new trial, motions in arrest, motions to set aside, and motions for judgment notwithstanding the verdict, without regard to whether the parties have a joint interest, or whether the cases were merely consolidated for purposes of trial, or whether the cases were simply tried together without an order of consolidation.

(b) Where joint appeals are filed, the appealing parties may nevertheless be entitled, but not required, to file separate enumerations of error in the appellate court.

(c) When separate appeals, motions for new trial, or motions for judgment notwithstanding the verdict are filed, only one transcript of evidence and proceedings (where required) and only one record need be prepared, filed, or transmitted to the appellate court (as the case may be).

(d) In such cases, the court shall by order specify the division of costs between parties.

(e) This Code section shall apply to both civil and criminal cases. (Ga. L. 1965, p. 18, ' 15; Ga. L. 1968, p. 1072, ' 4.)

5-6-48. Grounds for dismissal of appeal; amendments, correcting or supplementing record or transcript; effect of dismissal of appeal upon cross appeal; effect of deficiencies upon consideration of appeal.

(a) Failure of any party to perfect service of any notice or other paper hereunder shall not work dismissal; but the trial and appellate courts shall at any stage of the proceeding require that parties be served in such manner as will permit a just and expeditious determination of the appeal and shall, when necessary, grant such continuance as may be required under the circumstances.

(b) No appeal shall be dismissed or its validity affected for any cause nor shall consideration of any enumerated error be refused, except:

(1) For failure to file notice of appeal within the time required as provided in this article or within any extension of time granted hereunder;

(2) Where the decision or judgment is not then appealable; or

(3) Where the questions presented have become moot.

(c) No appeal shall be dismissed by the appellate court nor consideration of any error therein refused because of failure of any party to cause the transcript of evidence and proceedings to be filed within the time allowed by law or order of court; but the trial court may, after notice and opportunity for hearing, order that the appeal be dismissed where there has been an unreasonable delay in the filing of the transcript and it is shown that the delay was inexcusable and was caused by such party. In like manner, the trial court may order the appeal dismissed where there has been an unreasonable delay in the transmission of the record to the appellate court, and it is seen that the delay was inexcusable and was caused by the failure of a party to pay costs in the trial court or file an affidavit of indigence; provided, however, that no appeal shall be dismissed for failure to pay costs if costs are paid within 20 days (exclusive of Saturdays, Sundays, and legal holidays) of receipt by the appellant of notice, mailed by registered or certified mail or statutory overnight delivery, of the amount of costs.

(d) At any stage of the proceedings, either before or after argument, the court shall by order, either with or without motion, provide for all necessary amendments, require the trial court to make corrections in the record or transcript or certify what transpired below which does not appear from the record on appeal, require that additional portions of the record or transcript of proceedings be sent up, or require that a complete transcript of evidence and proceedings be prepared and sent up, or take any other action to perfect the appeal and record so that the appellate court can and will pass upon the appeal and not dismiss it. If an error appears in the notice of appeal, the court shall allow the notice of appeal to be amended at any time prior to judgment to perfect the appeal so that the appellate court can and will pass upon the appeal and not dismiss it.

(e) Dismissal of the appeal shall not affect the validity of the cross appeal where notice therefore has been filed within the time required for cross appeals and where the appellee would still stand to receive benefit or advantage by a decision of his cross appeal.

(f) Where it is apparent from the notice of appeal, the record, the enumeration of errors, or any combination of the foregoing, what judgment or judgments were appealed from or what errors are sought to be asserted upon appeal, the appeal shall be considered in accordance therewith notwithstanding that the notice of appeal fails to specify definitely the judgment appealed from or that the enumeration of errors fails to enumerate clearly the errors sought to be reviewed. An appeal shall not be dismissed nor consideration thereof refused because of failure of the court reporter to file the transcript of evidence and proceedings within the time allowed by law or order of court unless it affirmatively appears from the record that the failure was caused by the appellant. (Ga. L. 1965, p. 18, ' 13; Ga. L. 1965, p. 240, ' 1; Ga. L. 1966, p. 493, ' 10; Ga. L. 1968, p. 1072, ' ' 2, 3; Ga. L. 1972, p. 624, ' 1; Ga. L. 1978, p. 1986, ' 1; Ga. L. 200, p. 1589, ' 3.)

Editorial note: See also Appellate Court Rules, Section F)

5. Clerks & Notaries

5. a. CLERKS OF SUPERIOR COURTS - FILING AND FEES.

15-5-40. Letter-sized paper to be accepted.

Any pleading or other document filed in any court of record may be prepared on letter-sized paper; and no clerk of any court of record shall refuse to accept for filing any pleading or other document for the reason that it is on letter-sized paper. (Code 1981, ' 15-5-40, enacted by Ga. L. 1983, p. 531, ' 1; Ga. L. 1984, p. 22, ' 15.)

15-6-77. Fees; construction of other fee provisions.

(a) The clerks of the superior courts of this state shall be entitled to charge and collect the sums enumerated in this Code section.

(g) Miscellaneous fees:

(2) Uncertified copies of documents, if no assistance is required from the office of the clerk of superior court, per page..... .25
Uncertified copies, if assistance is required1.00
Uncertified copies, if transmitted telephonically or electronically, first page2.50
Each page, after the first1.00

(9) Issuing certificate of appointment and reappointment to notaries public, as provided by Code Section 45-17-413.00

(12) Preparation of record and transcript to the Supreme Court and Court of Appeals, per page1.50

Where a transcript of the evidence and proceedings is filed with the clerk and does not require recopying, the clerk shall not receive the fee herein prescribed with respect to such transcript but shall receive, for filing and transmission of such transcript, a fee of5.00

Editorial note: only those portions of the Clerk's fee schedule which might apply to court reporting have been reprinted here.

5. b. NOTARIES PUBLIC

45-17-1. Definitions.

As used in this article, the term:

(1) "Attesting" and "attestation" are synonymous and mean the notarial act of witnessing or attesting a signature or execution of a deed or other written instrument, where such notarial act does not involve the taking of an acknowledgment, the administering of an oath or affirmation, the taking of a verification, or the certification of a copy.

(2) "Notarial act" means any act that a notary public is authorized by law to perform and includes, without limitation, attestation, the taking of an acknowledgment, the administration of an oath or affirmation, the taking of a verification upon an oath or affirmation, and the certification of a copy.

(3) "Notarial certificate" means the notary's documentation of a notarial act. (Code 1981, ' 45-17-1, enacted by Ga. L. 1986, p. 1446, ' 1; Ga. L. 1990, p. 8, ' 45.)

45-17-1.1. Power to appoint notaries public.

The power to appoint notaries public is vested in the clerks of the superior courts and may be exercised by them at any time. (Orig. Code 1863, ' 1446; Ga. L. 1868, p. 130, ' 1; Code 1868, ' 1503; Code 1873, ' 1497; Code 1882, ' 1497;

Civil Code 1895, ' 498; Civil Code 1910, ' 616; Code 1933, ' 71-101; Ga. L. 1947, p. 1108, ' 1; Ga. L. 1949, p. 1940, ' 1; Code 1981, ' 45-17-1; Ga. L. 1984, p. 1105, ' 1; Code 1981, ' 45-17-1.1, as redesignated by Ga. L. 1986, p. 1446, ' 1.)

45-17-2. Qualifications of notaries.

(a) Any individual applying for appointment to be a notary public must be:

- (1) At least 18 years old;
- (2) A resident of this state;
- (3) A resident of the county from which such individual is appointed; and
- (4) Able to read and write the English language.

(b) The qualifications of paragraphs (2) and (3) of subsection (a) of this Code section shall not apply to any individual applying for appointment as a notary public under the provisions of Code Section 45-17-7. (Orig. Code 1863, ' 1449; Code 1868, ' 1506; Code 1873, ' 1500; Code 1882, ' 1500; Civil Code 1895, ' 501; Civil Code 1910, ' 619; Code 1933, ' 71-102; Ga. L. 1947, p. 1108, ' 1; Ga. L. 1949, p. 1940, ' 2; Ga. L. 1953, Nov.-Dec. Sess., p. 330, ' 1; Ga. L. 1984, p. 1105, ' 1; Ga. L. 1985, p. 1469, ' 1; Ga. L. 1986, p. 1446, ' 2.)

45-17-2.1. Application to be a notary; endorsements and declarations.

(a) Any individual desiring to be a notary public shall submit application to the clerk of superior court of the county in which the individual resides or, when applying under the provisions of Code Section 45-17-7, to the clerk of superior court of the county in which the individual works or has a business.

(Code 1981, '45-17-2.1, enacted by Ga. L. 1984, p. 1105, '1; Ga. L. 1985, p. 1469, ' '2,3; Ga. L. 1986, p. 1446, '3; Ga. L. 1999, p. 81, '45.)

45-17-3. Oath of office

Before entering on the duties of his office, each notary public shall take and subscribe before the clerk of the superior court the following oath, which shall be entered on his minutes:

Al, _____, do solemnly swear or affirm that I will well and truly perform the duties of a notary public to the best of my ability; and I further swear or affirm that I am not the holder of any public money belonging to the state and unaccounted for, so help me God.@

(Orig. Code 1863, ' 1447; Ga. L. 1868, p. 130, ' 2; Code 1868, ' 1504; Code 1873, ' 1498; Code 1882, ' 1498; Civil Code 1895, ' 499; Civil Code 1910, ' 617; Code 1933, ' 71-103; Ga. L. 1947, p. 1108, '1; Ga. L. 1984, P. 1105, ' 1.)

45-17-6. Seal of office.

(a)(1) For the authentication of his notarial acts each notary public must provide a seal of office, which seal shall have for its impression his name, the words "Notary Public," the name of the state, and the county of his residence; or it shall have for its impression his name and the words "Notary Public, Georgia, State at Large." Notaries commissioned or renewing their commission after July 1, 1985, shall provide a seal of office which shall have for its impression the notary's name, the words "Notary Public," the name of the state, and the county of his appointment. The embossment of notarial certificates by the notary's seal shall be authorized but not necessary, and the use of a rubber or other type stamp shall be sufficient for imprinting the notary's seal. A scrawl shall not be a sufficient notary seal. An official notarial act must be documented by the notary's seal.

45-17-8. Powers and duties generally.

(a) Notaries public shall have authority to:

- (1) Witness or attest signature or execution of deeds and other written instruments;

- (2) Take acknowledgments;
 - (3) Administer oaths and affirmations in all matters incidental to their duties as commercial officers and all other oaths and affirmations which are not by law required to be administered by a particular officer;
 - (4) Witness affidavits upon oath or affirmation;
 - (5) Take verifications upon oath or affirmation;
 - (6) Make certified copies, provided that the document presented for copying is an original document and is neither a public record nor a publicly recorded document certified copies of which are available from an official source other than a notary and provided that the document was photocopied under supervision of the notary; and
 - (7) Perform such other acts as they are authorized to perform by other laws of this state.
- (b) No notary shall be obligated to perform a notarial act if he feels such act is:
- (1) For a transaction which the notary knows or suspects is illegal, false, or deceptive;
 - (2) For a person who is being coerced;
 - (3) For a person whose demeanor causes compelling doubts about whether the person knows the consequences of the transaction requiring the notarial act; or
 - (4) In situations which impugn and compromise the notary's impartiality, as specified in subsection (c) of this Code section.
- (c) A notary shall be disqualified from performing a notarial act in the following situations which impugn and compromise the notary's impartiality:
- (1) When the notary is a signer of the document which is to be notarized; or
 - (2) When the notary is a party to the document or transaction for which the notarial act is required.
- (d) A notary public shall not execute a notarial certificate containing a statement known by the notary to be false nor perform any action with an intent to deceive or defraud.
- (e) In performing any notarial act, a notary public shall confirm the identity of the document signer, oath taker, or affirmant based on personal knowledge or on satisfactory evidence.
- (f) The signature of a notary public documenting a notarial act shall not be evidence to show that such notary public had knowledge of the contents of the document so signed, other than those specific contents which constitute the signature, execution, acknowledgment, oath, affirmation, affidavit, verification, or other act which the signature of that notary public documents, nor is a certification by a notary public that a document is a certified or true copy of an original document evidence to show that such notary public had knowledge of the contents of the document so certified. (Ga. L. 1863-64, p. 58, ' 2; Code 1863, ' 1451; Code 1868, ' 1508; Code 1873, ' 1502; Code 1882, ' 1502; Civil Code 1895, ' 503; Civil Code 1910, ' 621; Code 1933, ' 71-108; Ga. L. 1947, p. 1108, ' 1; Ga. L. 1984, p. 1105, ' 1; Ga. L. 1986, p. 1446, ' ' 5, 6; Ga. L. 1987, p. 1113, ' 1.)

Editorial note: only those portions of the Notaries Public Act which might apply to court reporting have been reprinted here.

45-17-8.1. Signature and date of notarial act.

- (a) Except as otherwise provided in this Code section, in documenting a notarial act, a notary public shall sign on the notarial certification, by hand in ink, only and exactly the name indicated on the notary's commission and shall record on the notarial certification the exact date of the notarial act.

(b) The requirement of subsection (a) of this Code section for recording of the date of the notarial act shall not apply to an attestation of deeds or any other instruments pertaining to real property.

(c) No document executed prior to July 1, 1986, which would otherwise be eligible for recording in the real property records maintained by any clerk of superior court or constitute record notice or actual notice of any matter to any person shall be ineligible for recording or fail to constitute such notice because of noncompliance with the present or any prior requirements of this Code section. (Code 1981, ' 45-17-8.1; Ga. L. 1984, p. 1105, ' 1; Ga. L. 1985, p. 1469, ' 6; Ga. L. 1986, p. 1446, ' 7.)

45-17-8.2. Misrepresentation prohibited.

A notary shall not make claims to have or imply he has powers, qualifications, rights, or privileges that the office of notary does not authorize, including the powers to counsel on immigration matters and to give legal advice. (Code 1981, ' 45-17-8.2; enacted by Ga. L. 1984, p. 1105, ' 1.)

45-17-20. Penalty; prosecution of violations of article.

(a) Any person who violates subsection (d) of Code Section 45-17-8 shall be guilty of a misdemeanor.

(b) Each clerk of superior court is authorized to recommend to the appropriate prosecuting officers that criminal proceedings be instituted for violations of this article. (Code 1981, ' 45-17-20; Ga. L. 1984, p. 1105, ' 1; Ga. L. 1985, p. 149, § 45)

6. Civil Notes, Public Records

6. a. DESTRUCTION OF NOTES - CIVIL

15-14-7. Destruction of notes; how authorized; petition; grounds; notice; order.

(a) Upon petition, the judge of a superior court, city court, or any other court, the judgments of which are subject to review by the Supreme Court or the Court of Appeals, may authorize destruction of a court reporter's notes taken of the evidence and other proceedings in civil actions in that court, subject to this Code section.

(b) The court reporter or other person in whose custody the notes are kept shall file a written petition in the court in which the trial was conducted requesting an order authorizing destruction of notes taken during the trial. The petition shall specify the name of the court reporter, the name of the person in whose custody the notes are kept if other than the court reporter, the place at which the notes are kept, and the names and addresses of the parties to the action or, if the address of a party is unknown, the name and address of counsel to that party if such is known.

(c) The petition shall certify one of the following:

(1) That the action is a civil action in which no notice of appeal has been filed, that the court reporter has not been requested or ordered to transcribe the evidence and other proceedings, and that a period of not less than 37 months has elapsed since the last date upon which a notice of appeal in the action could have been filed; or

(2) That the action is one in which the court reporter has been requested or ordered pursuant to law to transcribe the evidence and other proceedings, that the record has been transcribed, and that a period of not less than 12 months has elapsed from the date upon which the remittitur from the appeal has been docketed in the trial court.

(d) When a petition for the destruction of notes is filed pursuant to this Code section, the court shall cause due notice of the petition and the grounds therefor to be given to each party to the action or, if the address of a party is unknown, to the counsel to the party if such is known.

(e) Not less than 30 days after receipt of a petition pursuant to this Code section, the court shall authorize destruction of the specified notes unless such destruction, in the court's judgment, would impair the cause of justice or fairness in the action. (Ga. L. 1974, p. 410, ' ' 1-4.)

6. b. PUBLIC RECORDS

50-18-70. Inspection of public records; printing of computerized indexes of county real estate deed records; time for determination of whether requested records are subject to access; *electronic access to records*.

(a) As used in this article, the term "public record" shall mean all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency. "Public *record*" shall also mean such items received or maintained by a private person or entity on behalf of a public office or agency which are not otherwise subject to protection from disclosure; provided, however, this Code section shall be construed to disallow an agency's placing or causing such items to be placed in the hands of a private person or entity for the purpose of avoiding disclosure. As used in this article, the term "agency" or "public agency" or "public office" shall have the same meaning and application as provided for in the definition of the term "agency" in paragraph (1) of subsection (a) of Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization which: (1) has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state or their officers or any combination thereof; and (2) derives a substantial portion of its general operating budget from payments from such political subdivisions.

(b) All public records of an agency as defined in subsection (a), of this Code Section except those which by order of a court of this state or by law are prohibited or specifically exempted from being open to inspection by the general public, shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen.

(c) Any computerized index of a county real estate deed records shall be printed for purposes of public inspection no less than every 30 days and any correction made on such index shall be made a part of the printout and shall reflect the time and date that said index was corrected.

(d) No public officer or agency shall be required to prepare reports, summaries, or compilations not in existence at the time of the request.

(e) In a pending proceeding under Chapter 13 of this title, the "Georgia Administrative Procedure Act," or under any other administrative proceeding authorized under Georgia law, a party may not access public records pertaining to the subject of the proceeding pursuant to this article without the prior approval of the presiding administrative law judge, who shall consider such open record request in the same manner as any other request for information put forth by a party in such a proceeding. This subsection shall not apply to any proceeding under Chapter 13 of this title, relating to the revocation, suspension, annulment, withdrawal, or denial of a professional education certificate, as defined in Code Section 20-2-200, or any personnel proceeding authorized under Part 7 and Part 11 of Article 17 and Article 25 of Chapter 2 of Title 20.

(f) The individual in control of such public record or records shall have a reasonable amount of time to determine whether or not the record or records requested are subject to access under this article and to permit inspection and copying. In no event shall this time exceed three business days. **Where responsive records exist but are not available within three business days of the request, a written description of such records, together with a timetable for their inspection and copying, shall be provided within that period; provided, however, that records not subject to inspection under this article need not be made available for inspection and copying or described other than as required by subsection (h) of Code Section 50-18-72, and no records need be made available for inspection or copying if the public officer or agency in control of such records shall have obtained, within that period of three business days, an order based on an exception in this article of a superior court of this state staying or refusing the requested access to such records**

(g) At the request of the person, firm, corporation, or other entity requesting such records, records maintained by computer shall be made available where practicable by electronic means, including Internet access, subject to reasonable security restrictions preventing access to nonrequested or nonavailable records. (Ga. L. 1959, p. 88, ' 1; Code 1981, ' 50-18-70; Ga. L. 1982, p. 1789, ' 1; Ga. L. 1988, p. 243, ' 1; Ga. L. 1992, p. 1061, ' 5; Ga. L. 1992, p. 1545, ' 1; Ga. L. 1992, p. 2829, ' 2; Ga. L. 1993, p. 1394, ' 2; Ga. L. 1993, p. 1436, ' ' 1, 2; Ga. L. 1994, p. 618, ' 1; Ga. L. 1998, p. 128, ' 50; Ga. L. 1999, p.552, ' ' 1,2.)

50-18-90. Georgia Records Act.

50-18-91. Definitions.

As used in this article, the term:

(1) "Agency" means any state office, department, division, board, bureau, commission, authority, or other separate unit of state government created or established by law.

(2) "Court record" means all documents, papers, letters, maps, books (except books formally organized in libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or, in the necessary performance of any judicial function, created or received by an official of the Supreme Court, Court of Appeals, and any superior, state, juvenile, probate, or magistrate court. "Court record" includes records of the offices of the judge, clerk, prosecuting attorney, public defender, court reporter, or any employee of the court.

(5) "Records" means all documents, papers, letters, maps, books (except books in formally organized libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in performance of functions by any agency.

(6) ARecords center@ means an establishment maintained by the department primarily for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency=s office equipment or office space.

(7) A Record series@ means documents or records having similar physical characteristics or relating to a similar function or activity that are filed in a unified arrangement.

(8) "Records management" means the application of management techniques to the creation, utilization, maintenance, retention, preservation, and disposal of records undertaken to reduce costs and improve efficiency of record keeping. "Records management" includes management of filing and microfilming equipment and supplies; filing and information retrieval systems; files, correspondence, reports, and forms management; historical documentation; micrographics; retention programming; and vital records protection.

(9) "Retention schedule" means a set of disposition instructions prescribing how long, where, and in what form a record series shall be kept.

(10) "Vital records" means any record vital to the resumption or continuation of operations, or both; to the re-creation of the legal and financial status of government in the state; or to the protection and fulfillment of obligations to citizens of the state.

50-18-92. Creation of State Records Committee; membership; duties; retention schedules; appeal to committee by agency heads; court records.

(a) There is created the State Records Committee, to be composed of the Governor, the Secretary of State, an appointee of the Governor who is not the Attorney General, the state auditor, and an officer of a governing body, as such terms are defined in subsection (a) of Code Section 50-18-99, to be appointed by the Secretary of State, or their designated representatives. It shall be the duty of the committee to review, approve, disapprove, amend, or modify retention schedules submitted by agency heads, school boards, county governments, and municipal governments through the division for the disposition of records based on administrative, legal, fiscal, or historical values. The retention schedules, once approved, shall be authoritative, shall be directive, and shall have the force and effect of law. A retention schedule may be determined by three members of the committee. Retention schedules may be amended by the committee on change of program mission or legislative changes affecting the records. The Secretary of State shall serve as chairperson of the committee and shall schedule meetings of the committee as required. Three members shall constitute a quorum. Each agency head has the right of appeal to the committee for actions taken under this Code section.

(b) Each court of this state may recommend to the State Records Committee and the Administrative Office of the Courts retention schedules for records of that court. The committee, with the concurrence of the Administrative Office of the Courts, shall adopt retention schedules for court records of each court. The destruction of court records by retention schedule shall not be construed as affecting the status of each court as a court of record. (Ga. L. 1972, p. 1267, ' 3; Ga. L. 1975, p. 675, ' 2; Ga. L. 1978, p. 1372, ' 1; Ga. L. 1981, p. 1422, ' 2; Ga. L. 1988, p. 426, ' 1.)

50-18-97. Effect of certified copies of records; fee.

The division may make certified copies under seal of any records or any preservation duplicates transferred or deposited in the Georgia State Archives or the records center or may make reproductions of such records. The certified copies of reproductions, when signed by the director of the department, shall have the same force and effect as if made by the agency from which the records were received. The department may establish and charge reasonable fees for such services. (Ga. L. 1972, p. 1267, ' 9.)

50-18-99. Records management programs for local governments.

(c) All records created or received in the performance of a public duty or paid for by public funds by a governing body are deemed to be public property and shall constitute a record of public acts.

50-18-102. Records as public property; destruction, alienation, etc., of records other than by approved retention schedule as misdemeanor; person acting under article not liable.

(a) All records created or received in the performance of duty and paid for by public funds are deemed to be public property and shall constitute a record of public acts.

(b) The destruction of records shall occur only through the operation of an approved retention schedule. The records shall not be placed in the custody of private individuals or institutions or semiprivate organizations unless authorized by retention schedules.

(c) The alienation, alteration, theft, or destruction of records by any person or persons in a manner not authorized by an applicable retention schedule is a misdemeanor.

(d) No person acting in compliance with this article shall be held personally liable. (Ga. L. 1972, p. 1267, ' 7; Ga. L. 1975, p. 675, ' 7.)

Editorial note: See also Retention Schedules - Section G

7. Electronic Signatures

7. a. Electronic records and signatures act

10-12-1. Short Title

This chapter shall be known and may be cited as the "Georgia Electronic Records and Signatures Act."

10-12-2. Construction

- (a) The provisions of this chapter shall be construed to promote the development of electronic government and electronic commerce. (Code 1981, ' 10-12-2, enacted by Ga. L. 1997, p.1052, ' 1.)
- (b) The General Assembly finds that this chapter is consistent with the Electronic Signatures in Global and National Commerce Act (15 U.S.C.S. Sections 7001, et seq., and 47 U.S.C.S. Section 231) as contemplated in Section 7002 (a)(2)(A) thereof and therefore continues to have the full force of law. The General Assembly further reaffirms its intent that this chapter continue to have the full force of law.

10-12-3. Definitions

As used in this chapter the term:

- (1) "Electronic" means, without limitation, analog, digital, electronic, magnetic, mechanical, optical, chemical, electromagnetic, electromechanical, electrochemical, or other similar means.
- (2) "Electronic record" means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form.
- (3) "Electronic signature" means a signature created, transmitted, received, or stored by electronic means and includes but is not limited to a secure electronic signature.
- (4) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity, and also includes any department, agency, authority, or instrumentality of the state or its political subdivisions.
- (5) "Record" means information created, transmitted, received, or stored either in human perceivable form in a form that is retrievable in human perceivable form.
- (6) "Secure electronic signature" means an electronic or digital method executed or adopted by a party with the intent to be bound by or to authenticate a record, which is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data are changed the electronic signature is invalidated.
- (7) "Signature" means any symbol or method that a person causes to be attached to or logically associated with a record with the intent to sign such record. (Code 1981, ' 10-2-3, enacted by Ga. L. 1997, p. 1052, ' 1; Ga. L. 1998, p. 232, ' 1; Ga. L. 1999, p. 323, ' 1.)

10-12-4. Legal Effect; Contest based on fraud; authentication or identification; limitations; notary.

- (a) Records and signatures shall not be denied legal effect or validity solely on the grounds that they are electronic.
- (b) In any legal proceeding, an electronic record or electronic signature shall not be inadmissible as evidence solely on the basis that it is electronic.
- (c) When a rule of law requires a writing, an electronic record satisfies that rule of law.

(d) When a rule of law requires a signature, an electronic signature satisfies that rule of law.

(e) When a rule of law requires an original record or signature, an electronic record or electronic signature shall satisfy such rule of law.

(f) Nothing in this Code section shall prevent a party from contesting an electronic record or signature on the basis of fraud.

(g) Nothing in this Code section shall relieve any party to a legal proceeding from complying with applicable rules of evidence requiring authentication or identification of a record or signature as a condition precedent to its admission into evidence.

(h) Where the authenticity or the integrity of an electronic record or signature is challenged in a court of law, the proponent of the electronic record or signature shall have the burden of proving that the electronic record or signature is authentic.

(i) Notwithstanding the preceding subsections of this Code section, the legal validity, effect, and admissibility of electronic records and electronic signatures shall be limited as follows:

(1) Each department, agency, authority, or instrumentality of the state or its political subdivisions shall determine how and the extent to which it will create, send, receive, store, recognize, accept, be bound by, or otherwise use electronic records or electronic signatures. Nothing in this chapter shall be construed to require any department, agency, authority, or instrumentality of the state or its political subdivisions to create, send, receive, store, recognize, accept, be bound by, or otherwise use electronic records or electronic signatures;

(2) A consumer shall not be required to create, send, receive, recognize, accept, be bound by, or otherwise use electronic records or electronic signatures without such consumer's consent. This paragraph shall apply to natural persons when engaged in transactions involving money, property, or services primarily used for household purposes; and

(3) The provisions of this Code section shall not apply to any rule of law governing the creation or execution of a will or testamentary or donative trust, living will, or health care power of attorney, or to any record that serves as a unique and transferable physical token of rights and obligations, including, without limitation, negotiable instruments and instruments of title wherein possession of the instrument is deemed to confer title.

(j) Any rule of law which requires a notary shall be deemed satisfied by the secure electronic signature of such notary. (Code 1981, ' 10-12-4, enacted by Ga. L. 1997, p. 1052, ' 1; Ga. L. 1998, p. 232, ' 2; Ga. L. 1999, p. 323, ' 1.)

10-12-5. Unauthorized use of Electronic signature.

A person whose electronic signature is used in an unauthorized fashion may recover or obtain any or all of the following against the person who engaged in such unauthorized use, provided that the use of such electronic signature in an unauthorized fashion was negligent, reckless, or intentional:

(1) Actual damages;

(2) Equitable relief, including, but not limited to, an injunction or restitution of money or property;

(3) Punitive damages under the circumstances set forth in Code Section 51-12-5.1;

(4) Reasonable attorneys' fees and expenses; and

(5) Any other relief which the court deems proper. Nothing in this Code section shall be deemed to waive the sovereign immunity otherwise provided by law to the state or any of its political subdivisions. (Code 1981, ' 10-12-5, enacted by Ga. L. 1997, p. 1052, ' 1; Ga. L. 1998, p. 232, ' 3.)

9-11-5. Service and filing of pleadings subsequent to the original complaint and other papers.

(a) **Service** -- When required. Except as otherwise provided in this chapter, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every

written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. However, the failure of a party to file pleadings in an action shall be deemed to be a waiver by him of all notices, including notices of time and place of trial, and all service in the action, except service of pleadings asserting new or additional claims for relief, which shall be served as provided by subsection (b) of this Code section.

(b) Same -- How made. Whenever under this chapter service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. As used in this Code section, the term "delivery of a copy" means handing it to the attorney or to the party, or leaving it at his office with his clerk or other person in charge thereof or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Proof of service may be made by certificate of an attorney or of his employee, by written admission, by affidavit, or by other proof satisfactory to the court. Failure to make proof of service shall not affect the validity of service.

(c) Same -- Numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants, and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties, and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court within the time allowed for service.

(e) "Filing with the court" defined. The filing of pleadings and other papers with the court as required by this chapter shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. (Ga. L. 1966, p. 609, '5' Ga. L. 1967, p. 226, '4.)

7. c. Electronic Filing

15-10-53. Filing by Electronic means.

(a) Any magistrate court may provide for the filing of civil, garnishment, distress warrant, dispossessory, foreclosure, abandoned motor vehicle, and all other noncriminal actions, claims, answers, counterclaims, pleadings, postjudgment interrogatories, and other documents by electronic means.

(b) Any pleading or document filed electronically shall be in a format prescribed by the court.

(c) Any pleading or document filed electronically shall include the electronic signature of the person filing the pleading or document as defined in Code Section 10-12-3.

(d) Any pleading or document filed electronically which is required to be verified, verified under oath, or be accompanied by an affidavit may include such verification, oath, or affidavit by one of the following methods:

(1) As provided in subsection (j) of Code Section 10-12-4;

(2) By oath or affirmation of the party filing the pleading at the time of the trial of the case;

(3) By supplemental verified pleading; or

(4) By electronic verification, oath, or affidavit in substantially the following form: "By affixing this electronic verification, oath, or affidavit to the pleading(s) submitted to the court and attaching my electronic signature hereon, I do hereby swear or affirm that the statements set forth in the above pleading(s) are true and correct. Date: _____
Electronic Signature: _____"

(e) Service of any claim or complaint filed electronically shall be made as provided by law. Service of all subsequent pleadings and notices may be made electronically only on a party who has filed pleadings electronically; service on all other parties shall be made by such other means as are provided by law. Each pleading or document which is required to be served on other parties shall include a certificate of service indicating the method by which service on the other party has been made. An electronic certificate of service shall be made in substantially the following form: "By affixing this electronic certificate of service to the pleading(s) or document(s) submitted to the court and attaching my electronic signature hereon, I do hereby swear or affirm that I have this date served the opposing party with a copy of this pleading by e-mail or placing a copy in regular mail with sufficient postage thereon to the following address: (set forth address of opposing party). Date: _____ Electronic Signature: _____"

(f) Nothing in this Code section shall prevent a party from contesting an electronic pleading, document, or signature on the basis of forgery or fraud. Any pleading or document found by the court to have been fraudulently filed shall be stricken from the record.

(g) Where the authenticity or the integrity of an electronic pleading, document, or signature is challenged, the proponent of the electronic pleading, document, or signature shall have the burden of proving that the electronic pleading, document, or signature is authentic.

(h) Upon the receipt of any pleading or other document filed electronically, the clerk of magistrate court shall notify the filer of receipt of the pleading or document. Such notice shall include the date and time the court accepted the pleading or document as filed.

(i) Any pleading or document filed electronically shall be deemed filed as of the time the clerk of court gains electronic control of the document.

(j) When the filing of the pleading or document requires the payment of a fee, the clerk of magistrate court may establish procedures for the payment of such fees connected with such filing. The filing of any such pleading or document shall create an obligation by the party to pay such fee to the clerk of court instant.

(k) The clerk of court may assess an additional transaction fee or fees for each electronic filing and electronic payment. (Code 1981, ' 15-10-53, enacted by Ga. L. 2000, p. 1580, ' 1.)

**Judicial Council of Georgia
Board of Court Reporting**



Case Law in Georgia

Report of Case

- 1. Where the plaintiff agreed with the reporter that he should take notes on the testimony given in a civil case, and the plaintiff was alone responsible for the fees to be paid for the service, the defendant could not compel the reporter to transcribe stenographic notes even though the defendant offered to pay the entire cost of reporting and transcribing the case.**

There is no statutory duty to transcribe notes where the official reporter takes testimony in a civil case pursuant to an agreement with one of the parties, in which the other expressly declines to join. Such a duty arises only under the contract with the party who employed the reporter.

Harrington v. Harrington, 224 Ga. 305, 161 S.E. 2d 862 (1968); *See also: Nixdorf Enterprises, Inc. v. Bell*, 127 Ga. App. 617, 194 S.E. 2d 486 (1972); O.C.G.A. § 15-14-20, § 15-14-23.

However, provided that they pay a reasonable fee, any party or deponent may have a copy of the deposition transcripts under O.C.G.A. sec. 9-11-30(f)(2).

Sams v. Champion, 184 Ga. App. 444, 361 S.E. 2d 852 (1987).

- A. No private agreement of a court reporter and one party can prejudice the rights of the other party to have a transcript of the proceedings prepared.**

If a party wishes to rely on the rule set forth above in *Harrington v. Harrington*, 224 Ga. 305, 161 S.E. 2d 862 (1968), he must invoke a ruling of a trial judge at commencement of proceedings that his opponent has expressly refused to participate in the costs of reporting. By placing this affirmative burden on the party seeking forfeiture of right of his opponent, it is intended that the possibility that a party will lose this important right by inadvertence or mistake will be avoided.

Giddings v. Starks, 240 Ga. 496, 241 S.E. 2d 208 (1978).

Party cannot be compelled to require a court reporter to prepare a transcript for opposing party, where they "clearly and distinctly stated that they did not desire to have the testimony transcribed and that he did not desire to share the cost of the take-down."

Tow v. Reed, 180 Ga. App. 609, 349 S.E.2d 829 (1986), *Ruffin v. Banks*, 249 Ga. App. 297 (2001).

- B. A party's exclusive right to transcripts of a proceeding, in which the other party refused to participate in contracting with the court reporter, does not extend to the transcript once it is filed.**
Georgia American Insurance Company v. Varnum, 182 Ga. App. 907, 357 S.E. 2d 609 (1987).

- 2. In all civil and criminal cases it is the right of any party to have the case recorded at his own expense.**

It is the duty of the judge to appoint the court reporter and the duty of the reporter to attend all sessions in court.

Massey v. State, 127 Ga. App. 638, 194 S.E. 2d 582 (1972); O.C.G.A. § 5-6-41, § 15-14-21; *See also: Dumas v. State*, 131 Ga. App. 79, 205 S.E. 2d 119 (1974).

- A. It is not mandatory for the trial judge to have cases reported.**

The provisions of § 5-6-41 (c) are discretionary. Nor is the judge obligated to inform parties of their right to have the case reported at their own expense.

Gunter v. The National City Bank, 239 Ga. 496, 238 S.E. 2d 48 (1977); O.C.G.A. § 5-6-41 (c, j).

- B. It is not incumbent on the trial judge to arrange for the official reporter to take down the evidence at the interlocutory hearing or the subsequent contempt hearing.**

It has long been the practice in Georgia for counsel to arrange in advance if they want it done. The law does not mandate that every civil case be reported.
Savage v. Savage, 234 Ga. 853, 218 S.E. 2d 568 (1975).

If a plaintiff specifically declines to have a hearing transcribed [*sic*], even though a court reporter is available at the call of the calendar, the trial judge is not obligated to have the hearing taken down.

Hixson v. Hickson (Two Cases), 236 Ga. App. 894, 512 S. E. 2d 648 (1999).

- C. It lies within the discretion of the trial court to grant or deny an indigent the transcription of the trial of a misdemeanor.**

Hughes v. State, 168 Ga. App. 413, 309 S.E. 2d 409 (1983).

- D. When defendant in misdemeanor case asks that the case be recorded at his expense, the court must make sure that the court reporter is available to comply with the request.**

Statutes do not put the duty upon the defendant who is charged with a misdemeanor and faces possible fine or imprisonment to insure prior to trial that the court reporter is complying with the statutory duty to attend court sessions. Further, the duty to make advance arrangements for the reporter cannot be imposed upon the defendant merely because of long established practice.

Thompson v. State, 240 Ga. 296, 240 S.E. 2d 87 (1977).

- E. In the absence of a specific request by counsel, no record is required in a misdemeanor case.**

Hunter v. State, 143 Ga. App. 541, 239 S.E. 2d 212 (1977).

- F. Tape recording juvenile court proceedings is permissible under O.C.G.A § 15-28-11(b), where party did not object to said means of recordation.**

In Re E.D. F., 243 Ga. App. 68, 532 S.E.2d 424 (2000).

3. Arguments of counsel need not be recorded.

O.C.G.A. § 17-8-5 states that the arguments of counsel need not be recorded where appellant made no request at trial that the opening statements of counsel be recorded. Thus there was no specific showing of how opening statements of prosecuting attorney were harmful and prejudicial to him. (The failure of the trial court to record the opening statements was not error.)

Newman v. State, 239 Ga. 329, 263 S.E. 2d 673 (1977); *Brown v. State*, 242 Ga. 602, 250 S.E. 2d 491 (1978); O.C.G.A. § 17-8-5.

- A. Closing argument was not transcribed by court reporter (such is not required) and appellate court was not furnished with stipulation in record of reconstruction of argument and thus had nothing before it on which to rule as to enumeration of error relating to trial judge's failure to take proper corrective measures against prejudicial statement allegedly made by district attorney in closing argument.**

Lyle v. State, 131 Ga. App. 8, 208 S.E. 2d 126 (1974).

- B. Although not required by statute, counsel's closing arguments should be recorded when the state is seeking the death penalty. Failure to transcribe counsel's closing arguments does not automatically require the death penalty to be set aside.**

Stephens v. Hopper, 241 Ga. 596, 247 S.E. 2d 92 (1978).

- C. In absence of request, trial court does not err in failing to order recordation of voir dire, opening statements, and closing arguments.**

Simmons v. State, 160 Ga. App. 391, 287 S.E. 2d 338 (1981).

D. Motion for a new trial is part of the "proceedings" in a felony as contemplated by O.C.G.A. § 17-85.

Hall v. State, 162 Ga. App. 713, 293 S.E. 2d 862 (1982).

4. Failure to record the voir dire in a case in which the sentence of death is imposed, is reversible error.
Owens v. State, 233 Ga. 869, 214 S.E. 2d 173 (1975).

A. The reporting of the voir dire is not mandatory in all felony cases. Any objection or motion in the course of voir dire and the court's ruling thereon must be reported.

However, it is not required that the entire voir dire in a felony case be reported, unless the death penalty is sought.

If the defendant wished a more complete record of the questioning of the juror in issue, he should have made a motion at the time of his objection to have the questions and answers made a part of the record.

The Supreme Court reversed the lower court's decision that voir dire is mandatory in all felony cases.

State v. Graham, 246 Ga. 341, 271 S.E. 2d 627 (1980).

5. Any contentions regarding a jury charging conference are not appealable, absent a transcript.

Where a jury charging conference is not subject to court reporter take-down at the request of both parties, any contentions on the matter are not appealable.

Fields v. State, 223 Ga. App. 569, 479 S.E. 2d 393 (1996).

6. In misdemeanor prosecution, defense counsel's failure to respond affirmatively to court's offer to have evidence and proceeding transcribed did not constitute ineffective counsel as a matter of law.

Hunt v. State, 133 Ga. App. 548, 211 S.E. 2d 601 (1974).

7. In felony prosecution, the law requires that testimony be reported and entered on the minutes of the court, eventually. Where the evidence discloses that the reporter could not have possibly prepared the transcript within 30 days the lower court erred in dismissing the appeal.

This is not a case of unreasonable delay.

Jackson v. State, 130 Ga. App. 581, 203 S.E. 2d 923 (1974)

A. Failure to timely file the transcript is not a basis for dismissal of appeal unless trial court finds delay unreasonable and inexcusable.

Patterson v. Professional Resources, 242 Ga. 459, 249 S.E. 2d 248 (1978).

Under statute O.C.G.A. §§ 5-6-42 and 5-6-48, the transcript of court proceedings must be filed within 30 days after notice of appeal is filed unless filing time is extended. To determine whether timely filing of the transcript did not occur due to inexcusable delay, the court will look to totality of circumstances. It is the appealing party's responsibility to order the transcript from the court reporter.

Jackson v. Beech Aircraft Corp., 217 Ga. App. 498, 458 S.E.2d 377 (1995).

B. Party must request extension of time though initial delay not his fault.

Where the evidence of record showed that after directing his secretary to call the court reporter and receiving her report regarding that conversation, appellant's counsel was duly placed on notice by his secretary's report of the phone conversation that the transcript was not fully transcribed as of the date of that call; this evidence, coupled with appellant's failure to request an extension of time and the lengthy delay that occurred in the preparation of the transcript, amply supported the findings of the trial judge and affirmatively established on the record that the failure to obtain an extension of filing time was caused by the appellant.

Baker v. Southern Ry., 192 Ga. App. 444, 385 S.E. 2d 125 (1989).

Where the transcript was completed by the court reporter, who failed to file it in the clerk's office, a six-day delay did not amount to an unreasonable delay in filing, nor was it inexcusable.

Wagner v. Howell, 257 Ga. 801, 363 S.E. 2d 759 (1988).

Burden is on appellant to request extension for filing transcript, and this burden cannot be shifted to court reporter by implying latter's duty to apply for extension.

Dunbar v. Green, 232 Ga. 188, 205 S.E. 2d 854 (1974).

Court reporter is amenable to trial judge for prompt and efficient performance of his duties. This relationship ordinarily provides judge with sufficient facts upon which to decide whether to grant or deny application for extension of time to file transcript without necessity of notice and hearing.

Rogers v. McDonald, 226 Ga. 329, 175 S.E. 2d 25 (1970).

"The mere passage of time [before the filing of a transcript] is not enough, without more, to constitute a denial of due process.]

Proffitt v. State, 181 Ga. App. 564, 353 S.E. 2d 61 (1987); *Boone v. State*, 1 FCDR 1646 (2001).

C. Transcript of habeas corpus hearing.

There is no clear legal duty to file transcript of a habeas corpus hearing within a particular period of time, but the court should exercise a sound discretion in inquiring into the cause for the delay in transcription and so base its decision for or against dismissal of complaint seeking mandamus.

Everett v. Rewis, 244 Ga. 427, 260 S.E. 2d 336 (1979).

D. Dicta from the case of *Lowry v. State* suggest increased attention by both judges and courts toward the timeliness of the Reporter's preparation of transcripts.

"Nonetheless, we feel compelled to state that every effort should be made by both the bench and the bar to avoid such lengthy delays in preparing transcripts of trials. Trial judges should exercise close supervision of court reporters to ensure prompt delivery of transcripts. Parties and counsel requesting transcripts should be diligent in payment to the court reporter and in checking on the progress of the transcript. Only through such efforts can litigation be brought to an orderly and timely end."

Lowry v. State, 171 Ga. App. 118, 318 S.E. 2d 744 (1984).

E. Under OCGA 5-6-48(f) Appellants are not accountable for delays caused by clerks of court, or caused by court reporters after the transcript has been ordered properly; appellants are only held accountable for delays that they cause.

Baker v. Southern R. Co., 260 Ga. 115, 390 S.E. 2d 576 (1990).

8. Duty to transcribe evidence in felony case, though punishment reduced to misdemeanor, or where misdemeanor found.

Williams v. Cooley, 127 Ga. 21, 55 S.E. 917 (1906).

Rozar v. McAllister, 138 Ga. 72, 74 S.E. 792 (1912).

9. All court reporters must transcribe evidence and other proceedings of which they have taken notes whenever requested to do so by counsel for any party, upon being paid the legal fees for such transcripts.

This was held not applicable where the record did not disclose that the appellant paid or offered to pay court reporter the legal fees for transcript of evidence.

Hair v. Chilton, 223 Ga. 632, 157 S.E. 2d 290 (1967).

10. Defendant is not entitled to daily transcript of proceeding in criminal case.

Chenault v. State, 234 Ga. 216, 215 S.E. 2d 223 (1975).

- 11. If proper foundation is laid for the playing of tape recording of defendant's statement, trial court will not err in allowing the court reporter to transcribe testimony from the recording after the trial instead of during the trial when the recording is heard by the jury.**

Harris v. State, 237 Ga. 718, 230 S.E. 2d 237 (1976).

- 12. It is the duty of the state in all felony cases to have transcript of evidence or proceedings reported and prepared and after a guilty verdict has been returned, to file the transcript.**

Parrott v. State, 134 Ga. App. 160, 214 S.E. 2d 3 (1975).

- A. The state's duty to request court reporter to transcribe reported testimony in a felony conviction has no time limit and thus cannot relieve appellant of his duty to request court reporter to transcribe reported testimony at the same time that he files his notice of appeal.**

State v. Hart, 246 Ga. 212, 271 S.E. 2d 133 (1980).

- B. It is not the function of (the appellate) Court to prepare a transcript of the trial; that is the function of the state, as required by O.C.G.A. § 5-6-41(a).**

“[N]otwithstanding fact that court reporter claimed she could not certify a completely accurate transcript of composite of wiretap tapes which were played during defendants' trial, record and trial transcript were complete and accurate enough to afford a full and fair review by Court of Appeals as to sufficiency of the evidence against defendant.

State v. Knowles, 247 Ga. 218, 274 S.E.2d 468 (1981).

- 13. Guilty Pleas and Reporting.**

One cannot presume from a silent record that a guilty plea was voluntarily and knowingly entered. The record must show, or some evidence or allegation must show affirmatively that a plea of guilty was in fact knowingly and voluntarily entered.

Boykin v. Alabama, 395 U.S. 238, 89 SC 1709, 23 S.E. 2d 274 (1968);

Purvis v. Connell, 227 Ga. 764, 182 S.E. 2d 892 (1971).

- 14. The party having the responsibility of preparing and filing the transcripts refers to either the appellant or the appellee.**

The obligation of the appellant relates to the transcript, and the obligation for the preparation of the record rests with the clerk. After the appellant has filed a notice of appeal, his duty as to the record is limited to the payment of costs (to the Clerk). Where the clerk fails to transmit the record, but there is no indication that this failure is occasioned by the failure of a party to pay costs, the trial court has no discretion to dismiss the appeal.

Long v. City of Midway, 251 Ga. 364, 306 S.E. 2d 639 (1983).

- 15. Where the notice of appeal states that a transcript of evidence and proceedings will be filed for inclusion in the record on appeal, the appellant is the party ultimately responsible for filing the transcript.**

Curtis v. State, 168 Ga. App. 235, 308 S.E. 2d 599 (1983).

Where the proceedings of a bench trial are not recorded by a court reporter, if the appellant fails to submit a statutorily authorized substitute for consideration on appellate review, the appellate court will conclude that the trial court decided the case correctly.

Alexander v. Jones, 216 Ga. App. 360, 454 S.E. 2d 539 (1995)

- 16. Appellee's right where appellant designates portion to be omitted.**

Even if the appellant has designated a relevant portion of the record on appeal for omission, the appellee is entitled, under this section, to file his own designation of record to correct the deficiency and, the appellee also has a remedy for correction of the record under O.C.G.A. § 5-6-41 (f), even after it has been transmitted

to the Court of Appeals; in the absence of any attempt on the appellee's part to exercise these remedies, the Court of Appeals must assume that the record before it is complete in all relevant respects.
Boats for Sail v. Sears, 158 Ga. App. 74, 279 S.E. 2d 314 (1981).

17. An official court reporter's tape of a judge's remarks in open court is a court record.

Superior Court Rule 21 provides: "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." No law limits public access to the judge's taped comments nor can access to them be denied under the procedure set out in Rule 21, which was not invoked [in this case]. Therefore, the tape or its transcript must be made available for public inspection under Rule 21.

Green v. Drinnon, Inc., 262 Ga. 264, 417 S.E. 2d 11 (1992).

18. Role of Court Reporter.

It is not a harmless error when the court reporter, as only an employee of the court and official transcriber of witness testimony, also testifies as a witness in a case for which she is reporting.

Slakman v. State, 272 Ga. 662, 533 S.E.2d 383 (2000).

19. No absolute right to a free transcript.

While there is a basic right to a free transcript to perfect a timely direct appeal, there is no absolute right to a free transcript. Petitioner must give some justification for use in a habeas corpus or related proceeding must be shown to be entitled to such records in a collateral attack.

Mydell v. Clerk, Superior Court of Chatham County, 241 Ga. 24, 243 S.E. 2d 72 (1978); *Wilson v. Downie*, 228 Ga. 656 187, S.E. 2d 193 (1972).

A. No duty to provide free transcripts.

On appeal, an indigent is entitled to a free copy of trial court proceeding to which he has been a party, but there is no duty to provide transcripts "where original criminal trial proceedings have been adequately reviewed in habeas corpus proceedings brought by indigent."

Stalling v. State, 231 Ga. 37, 200 S.E. 2d. 121 (1973).

Trial court properly denies copies of record when petitioner's case is "on appeal with complete record, petitioner was represented by counsel, and petitioner alleged no necessity for the records.

Corn v. State, 240 Ga. 488, 240 S.E. 2d 694 (1978).

Defendant cannot bring a mandamus petition against a court clerk to obtain a copy of his trial transcript to pursue appeal when convictions are being appealed by defendant's attorney who has complete record of documents requested in his possession.

Heard v. Allen, 234 Ga. 409, 216 S.E. 2d 306 (1975).

Evidence

1. Stenographer's report, proved by him to be correct, though he may not remember the testimony, is competent to show what the witness to a former trial swore.

So far as the same be pertinent and otherwise competent.

Burnett v. State, 87 Ga. 622, 13 S.E. 552 (1891).

2. While a complete and accurate transcript may be beneficial to an appellant, it is not a necessity for a potent appeal.

A transcript prepared as to O.C.G.A. § 5-6-41 (j) from recollection shall upon the agreement of the parties and counsel, be entitled to be part of the record in the same manner as transcript filed by the court reporter.

Hunt v. State, 133 Ga. App. 548, 211 S.E. 2d 601 (1974).

A. When submission of transcript prepared by recollection is authorized.

O.C.G.A. § 5-6-41 (c), (d), and (g) authorize submission of transcript prepared from recollection only where trial has not been reported or where, for some other reason, actual transcript is not obtainable. *Harrison v. Piedmont Hospital*, 156 Ga. App. 150, 274 S.E. 2d 72 (1980).

B. Subsection (g) and (i) of O.C.G.A. § 5-6-41 do not deny due process.

Provisions of subsections (g) and (i) relating to preparation of transcript of proceedings from recollection or by stipulation, do not deny due process of law. *Wall v. Citizens & Southern Bank*, 247 Ga. 216, 274 S.E. 2d 486 (1981).

C. One purpose of the requirement of filing transcripts under §§ 5-6-41 (e) and 5-6-43 (a) is to afford local counsel in the county where the case was tried convenient access to the exact duplicate copy of the record so as to enable him to easily ascertain the proper references to be included in his brief and written argument to the appellate court.

Law v. Smith, 226 Ga. 298, 174 S.E. 2d 893 (1970).

D. In a civil action, a trial court is not required to have evidence and proceedings reported by a court reporter.

Either party may request this at their own expense. Parties must keep in mind, however, that there can be no basis to prove grounds for appeal in the absence of a trial transcript. *Finch v. Brown*, 216 Ga. App. 451, 454 S.E.2d 807 (1995).

E. Where a jury charging conference is not subject to court reporter takedown at the request of both parties, any contentions on the matter are not appealable.

Fields v. State, 223 Ga. App. 569, 479 S.E.2d 393 (1996).

F. If the proceedings of a bench trial are not recorded by a court reporter, the appellant must submit a statutorily authorized substitute for consideration on appellate review.

Failure to submit either a transcript or authorized substitute will lead the appellate court to conclude that the trial court decided the case correctly. *Alexander v. Jones*, 216 Ga. App. 360, 454 S.E.2d 539 (1995).

3. The appellant must not by private instruction to the court reporter or clerk have matter omitted from the record on appeal which is not clearly indicated on notice of appeal.

The burden is on the appellant to bring to the reviewing court all of the oral and documentary evidence which is necessary to a consideration of errors enumerated. Where the appellee desires additional record for his own purposes he may designate it and where he wishes to object to that designated or omitted by the appellant he has available procedures in the trial court.

Ayers Enterprises v. Adams, 131 Ga. App. 12, 205 S.E. 2d 16 (1974).

4. Documents never admitted into evidence not part of appellate record.

A document which was never actually admitted into the evidence at trial cannot properly become a part of the record on appeal, but is not reversible error where the document is merely cumulative of competent evidence to the same effect.

Evidence which was never tendered or sought to be admitted in the trial court cannot be a part of the record on appeal. However, any evidence that pertains to the enumeration, which has been proffered or tendered to the trial court and either admitted or excluded by the trial court, must be included in the record on appeal.

O.C.G.A. § 5-6-41.

Ray v. Standard Fire Ins. Co., 168 Ga. App. 116, 308 S.E. 2d 221 (1983).

A. Responsibility for filing documents relevant to disposition of appeal.

It is the primary responsibility of the appropriate parties and not this court to ensure that all documents relevant to the disposition of an appeal be duly filed.
Williams v. Food Lion, Inc., 213 Ga. App. 865 (1994).

5. There is no statutory requirement to transcribe proceedings consisting solely of argument.

Statute on transcription of testimony, O.C.G.A. § 17-8-5, does not require a transcription of proceedings which consist solely of argument.
Williams v. State, 217 Ga. App. 636, 458 S.E.2d 671 (1995).

A. Under O.C.G.A. § 17-8-5, all testimony and proceedings in a criminal case, except the argument of counsel, must be recorded by a court reporter. According to *State v. Graham*, 246 Ga. 341, 271 S.E. 2d 627 (1980), "proceedings" includes objections, rulings, and other matters which occur during the course of evidence as well as any post-trial procedures. This however, does not include charge conferences.
McBride v. State, 213 Ga. App. 857, 446 S.E. 2d 193 (1994); *Ricarte v. State*, 249 Ga. App. 50 (2001).

6. Appeals court cannot review any appeals claim based on closing argument unless the argument is recorded and a transcript is available.

The defendant's failure to include a transcript of the closing argument in the record precludes the Court of Appeals from reviewing a claim that the trial court unduly restricted the defense counsel's closing argument. The fact that counsel said that he did not wish to be responsible for paying the court reporter is no excuse. Appointed counsel is reimbursed by the county for such expense.
Whitt v. State, 215 Ga. App. 704, 452 S.E.2d 125 (1994).

7. Failure to timely object to court reporter's faulty recollection that exhibit was admitted into evidence constituted a waiver of claim that it was only demonstrative evidence, and the matter could not be raised for first time on appeal.

International Indem. Co. v. Regional Employer Service, Inc., 239 Ga. App. 420, 520 S.E.2d 533, (1999).

Payment of Fees

1. See Board of Court Reporting Rules and Regulations pertaining to fees.

2. Payment for transcripts is not included as part of court costs.

A pauper's affidavit in civil cases does not relieve appellant from payment of cost of having a trial transcript prepared by the official reporter.
Jackson v. Young, 134 Ga. App. 368, 214 S.E. 2d 380 (1975).

A. A felony defendant who appeals by pauper affidavit is entitled to have transcript provided if needed for consideration of errors alleged.

Sawyer v. State, 112 Ga. App. 885, 147 S.E. 2d 60 (1966).

B. The general requirement that transcript costs be paid by the appellant does not prevent the trial judge from awarding such expenses to the other party as expenses of litigation.

Adderholt v. Adderholt, 240 Ga. 626, 242 S.E. 2d 11 (1978).

3. It is within the sound discretion of the trial judge to prescribe the terms by which misdemeanor cases are to be reported.

In light of the fact the misdemeanor was not required by law to be recorded, but was recorded pursuant to private contract between the defendant and the court reporter, making the statute controlling the amount of fees of \$30.00 a day.

Godwin v. State, 138 Ga. App. 131, 225 S.E. 2d 723 (1976); O.C.G.A. § 15-14-22.

4. **Where no agreement was made as to payment of stenographer's fees, the trial judge is authorized to fix terms of the payment.**

McDonald v. Dabney, 161 Ga. 711, 132 S.E. 547 (1926).

5. **Where parties agree on the proportionate part of fees of a court reporter for taking down testimony, each party is finally liable for such part of the fee, regardless of the outcome of the case.**

Therefore, an order taxing costs against one party does not include the part of such fees paid by the opposite party.

Ford Motor Co. v. Patterson-Pope Motor Co., 56 Ga. App. 794, 194 S.E. 69 (1937).

6. **"Although a court has power [t]o control, in the furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, . . . O.C.G.A. § 15-1-3, it has no authority, by *in personam* order, to compel the payment of private contractual obligations incurred by an attorney for court reporting services."**

Augustine v. Clifton, 248 Ga. 553, 284 S.E. 2d 432 (1981).

7. **In criminal cases, a defendant can be taxed with costs.**

Costs include charges for services rendered by officers of the court, which includes court reporters. Costs as applied to proceedings include all charges fixed by statute as compensation for services rendered by officers of the court in the progress of the cause.

Giddens v. State, 156 Ga. App. 258, 274 S.E. 2d 595 (1980); *Davis v. State*, 33 Ga. 531, (1863)

8. **A party's delay in supplying a transcript for appeal is inexcusable when it is due to the party's delay in resolving a dispute with the court reporter over the cost of a transcript.**

Although such a delay may be inexcusable, the delay will not be considered unreasonable. The question of whether a delay in filing a transcript is unreasonable is a separate matter from the issue of whether such a delay is inexcusable and refers principally to the length and effect of the delay rather than the cause of the delay. Unreasonable delay may be defined as a delay which "may affect an appeal by: (a) directly prejudicing the position of a party by allowing an intermediate change of conditions or otherwise resulting in inequity; or (b) causing the appeal to be stale."

Cook v. McNamee, 223 Ga. App. 460, 477 S.E.2d 885 (1996).

Correctness

1. **Litigant may not be allowed to take recording of evidence from reporter and have them transcribed by typists in his own employment.**

Such a practice can not be allowed. The court reporter has a duty to give a correct report of the proceeding on trial and must certify to the correctness of such transcript.

Diamond v. Liberty National Bank & Trust, 228 Ga. 533, 186 S.E. 2d 741 (1972).

2. **Failure of a court reporter to certify the correctness of a transcript when filing it with a clerk of the trial court is an amendable defect.**

Either party may move to have the deficiency supplied or have corrected any errors that may appear. Failure to do so amounts to a waiver.

Harper v. Green, 113 Ga. App. 557, 149 S.E. 2d 163 (1966).

3. **The legislature has endowed the trial judges of the state with power to change or correct transcripts prepared by the court's reporter.**

Reed v. State, 130 Ga. App. 659, 204 S.E. 2d 335 (1974).

- A. **When trial court changed language of the charge in the original transcript it was not an abuse of**

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discretion. The trial court is still the final arbiter of any difference in the preparation of the record.
Miller v. State, 150 Ga. App. 597, 258 S.E. 2d 279 (1979); *Ross v. State*, 245 Ga. 173, 263 S.E. 2d 913 (1980).

B. Any issue as to the correctness of record is to be resolved by trial court, for that court retains jurisdiction even after case is docketed in appellate court to add additional record.
Pelletier v. Schultz, 157 Ga. App. 64, 276 S.E. 2d 118 (1981).

4. Where a case has been reported stenographically by an official court reporter either under an agreement of counsel or parties or under order of trial judge, if the judge is unable to remember the testimony he may order the testimony or brief written out in long hand by the reporter and prescribe the manner of payment.
National Bellas-Hess v. Patrick, 49 Ga. App. 280, 175 S.E. 255 (1934).

5. Failure of a transcript in a juvenile case to be prepared by a certified reporter is meritless as grounds for error.

Although O.C.G.A. § 15-11-28 mandates that a hearing before a juvenile court be recorded, the statute contains no requirement with regard to a certified court reporter.
D.C. v. State of Georgia, 145 Ga. App. 868, 245 S.E. 2d 26 (1978).

Editorial Note: This decision dealt only with the merits of a transcript being tainted because it was prepared by an uncertified reporter. It did not address the issue of whether the reporter was violating the law under O.C.G.A. § 15-14-36.

6. Failure to transcribe all hearings on motions and bench conferences after a motion for complete re-recording of all proceedings has been filed is not an error if there is no showing of anything harmful or prejudicial which may have occurred at any of these proceedings.
Davis v. State, 242 Ga. 901, 252 S.E. 2d 443 (1979).

A. Defendant was not entitled to remand for purposes of attempting to create a transcript of what transpired during bench conferences, where trial court recounted matters that occurred in bench conferences in its order, denying defendant's motion for new trial and defendant did not challenge accuracy of trial court's finding.
McDougal v. State, 239 Ga. App. 808, 521 S.E.2d 458 (1999).

7. An incomplete transcript through no fault of defendant denies his right to appeal, and a new trial is required.
McElwee v. State, 147 Ga. App. 84, 248 S.E. 2d 162 (1978).

A. Party not entitled to a new hearing only because only a partial transcript was available, when the pertinent portions of the proceedings were transcribed.
In re Interest of S.K., 248 Ga. App. 122 (2001).

8. New reporter to be appointed on showing that first one incapable of transcribing tapes.

Where defendant shows that court reporter appointed by trial court is incapable of transcribing the tapes of a felony trial, another court reporter should be appointed.
Wilson v. State, 246 Ga. 672, 373 S.E. 2d 9 (1980).

9. Remedy in trial court.

When the transcript on record does not truly or fully disclose what transpired in the trial court and the parties are unable to agree thereon, the defendant's remedy is in the trial court, not the appellate court.
Epps v. State, 168 Ga. App. 79, 308 S.E. 2d 234 (1983).

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- 10. It is the duty of defense counsel to note and except to any trial errors and to pursue a full transcription thereof if desired.**

His lack of diligence cannot be delegated as reversible error on the part of the trial court or court reporter on appeal. *Cagle v. State*, 160 Ga. App. 803, 287 S.E. 2d 660 (1982).

- 11. Court Reporter for Federal District Court held not absolutely immune from damages liability for failing to produce transcript of federal criminal trial.**

Antoine v. Byers & Anderson, Inc., 124 L. Ed. 2d 391, 113 S. Ct. 2167 (1993).

- 12. Under O.C.G.A. § 5-6-41 (f) corrections to transcript are permitted before or after it has been taken to the appellate level.**

O.C.G.A. § 5-6-41 (f) authorizes trial courts to accept amendments to transcripts to make them “conform to the truth.”

Bates v. State, 228 Ga. App. 140, 491 S.E.2d 200 (1997)

O.C.G.A. § 5-6-41 (f) permits such corrections "either before or after the record is transmitted to the appellate court" upon suggestion by the parties or on the trial court's own initiative.

State v. Sneddon, 235 Ga. App. 739, 510 S.E. 2d 566 (1998).

In order for appellant to claim error because bench conferences were not taken down, he must show that he was prejudiced by such nonfeasance. There must be some record of an attempt to amend or supplement the record pursuant to O.C.G.A. § 5-6-41(f) for the court to “presume that appellant was prejudiced.”

Boone v. State, 1 FCDR 1646

Presence

- 1. If counsel wants final arguments recorded, it is his duty to see that it is done, in as much as it is not required by statute. When present in court where court reporter's absence during argument is apparent, and there is no indication that counsel took any steps to have reporter recalled to courtroom, counsel cannot sit by and permit some matter he could correct by timely action and later claim error.**
Harris v. State, 237 Ga. 718, 230 S.E. 2d 1 (1976).

- 2. Presence of the official court reporter is not necessary in the court room at all times during the argument of counsel in a felony case.**

Presence not needed in order for defendant to have a fair trial.

Heard v. State, 210 Ga. 108, 78 S.E. 2d 38 (1953).

- 3. The court reporter may be required to read testimony to which jurors disagree.**
Green v. State, 122 Ga. 169, 50 S.E. 53 (1905).

- 4. It is within the trial court’s discretion to require the court reporter to read former testimony.**

A refusal to order the court reporter to read back testimony just given is not an abuse of discretion.

Davis v. State, 266 Ga. 801, 471 S.E. 2d 191 (1996); *See also: Pass v. State*, 227 Ga. 730, 182 S.E. 2d 779 (1971).

- 5. Stenographers held in contempt for disobedience of an order to return and read evidence.**

Watson v. Dampier, 148 Ga. 588, 97 S.E. 219 (1918).

- 6. When defendant in misdemeanor case asks that the case be recorded at his expense, the court must make sure that the court reporter is available to comply with the request.**

(Rev. 10/01)

Statutes do not put the duty upon the defendant who is charged with a misdemeanor and faces possible fine or imprisonment to insure prior to trial that the court reporter is complying with the statutory duty to attend court sessions. Further, the duty to make advance arrangements for the reporter cannot be imposed upon the defendant merely because of long established practice. *Thompson v. State*, 240 Ga. 296, 240 S.E. 2d 87 (1977).

7. The court reporter should also attend any jury view so that any important statements or events may be thoroughly reviewed on appeal.

Esposito v. State, 273 Ga. 183, 538 S.E.2d 55 (2000).

Depositions

1. Deposition reduced to writing by stenographer but not accompanied by certificate of lack of interest held inadmissible in evidence.

Where depositions are taken without commission and upon notice, under the provisions of the Civil Code (1910), § 5905 et seq., the testimony of the witness should be reduced to writing by the officer taking the depositions, or by the witness in the presence of the officer; but the officer may employ a disinterested stenographer to take down and write out the testimony. In either case the testimony, after it has been reduced to writing, should be subscribed by the deponent. *Woodward v. Fuller*, 145 Ga. 252 (6), 88 S.E. 974 (1916). Every such deposition "shall be retained by the officer taking it until he delivers it with his own hands into the court for which it is taken; or it shall, with a certificate of the reasons for taking it, and of the want of interest of the officer, and of the stenographer if one be employed, and with the notice, if any be given to the adverse party, be sealed up and directed to such court, and remain under his seal until opened in court." Civil Code (1910), § 5909.

Smith v. Loftis Bros. & Co., 43 Ga. App. 354, 158 S.E. 768 (1931).

2. Party to pay costs of taking deposition.

The party desiring the testimony, particularly where discovery is one of the purposes for taking the deposition, should be primarily responsible for payment of costs, in the absence of an order of the court to the contrary. A defendant has the right to examine the witness on redirect examination after the cross examination, and plaintiffs may not limit the deposition to cross examination by plaintiff. Defendant may continue the suspended examination of the witness and require plaintiff to pay the cost thereof. The defendant can protect himself from abuse by examining the witness and then submitting the matter of the cost thereof for decision of the trial judge.

Acres v. King, 109 Ga. App. 571, 136 S.E. 2d 510 (1964).

3. Videotaping depositions of expert witnesses is authorized by Georgia law. However, stenographic transcription must also be used to record such testimony.

Testimony of a witness by videotape is a better substitute for actual live testimony than the reading of a stenographic transcript provided by a court reporter.

Mayor of Savannah v. Palmerio, 135 Ga. App. 147, 217 S.E. 2d 430 (1975).

Editorial Note: See Board Opinion # BCR77-1; and Common Questions and Answer, p. ____.

4. The costs of depositions and reporter's takedown fees may not be included as part of trial costs.

The conclusion that expenses in discovery are not taxed as costs flows from the reasoning of O.C.G.A. § 9-15-8, which implies that the expenses incident to actual trial testimony are what is meant to be included in costs. *City of Atlanta v. Firefighters*, 240 Ga. 24, 239 S.E. 2d 353 (1977).

(Rev. 10/01)

- 5. The Appellant's (court reporter) right to enforce his alleged contract to advance the expenses of depositions with the appellee (attorney) does not depend on the enforceability of the contract of the appellee (attorney) with his clients.**

The appellant, a court reporter firm, sued to recover the cost of depositions in four cases. The appellee, an attorney, admitted that he had ordered a copy in three of the four cases. It was a jury question under all the evidence whether credit was expressly given to the appellee as agent for his clients on the contracts to furnish copies of depositions. The judgment of the trial judge in directing a verdict for the appellee was reversed. *Brown and Huseby v. Chrietzberg*, 242 Ga. 232, 248 S.E. 2d 631 (1978).

- 6. Appellants have the right to have the deposition transcribed and to have a copy of the deposition, provided they pay for it.**

The trial court, being of the mind that the takedown notes belonged to the party who had paid for the deposition, and that the appellants could simply depose the witness on their own or subpoena the witness for the trial, denied the request for release of the takedown notes. This judgment was reversed. Clearly, O.C.G.A. §§9-11-30(c)(1) and 9-11-30(f)(2) give any party or the deponent the right to have the deposition transcribed and to have a copy of the deposition, provided they pay for it. *Sams v. Champion*, 184 Ga. App. 444, 361 S.E. 2d 852 (1987).

Judicial Council of Georgia Board of Court Reporting

The seal of the Judicial Council of Georgia is a large, circular emblem. It features a central archway supported by three columns, with a scale of justice positioned below. The words "JUDICIAL COUNCIL OF GEORGIA" are inscribed in a circular path around the top, and "CONSTITUTION" is written across the arch. At the bottom of the seal, the year "1973" is displayed. The entire seal is rendered in a light gray, watermark-like style.

OPINIONS

Disclaimer: The Opinions presented in this section are based upon specific facts as well as Georgia law and the Rules and Regulations of the Board in effect at the time the respective Opinions were rendered. The Opinions presented are provided for convenience purposes only and may not reflect the unique facts of your question, changes to the law, or changes to the Rules and Regulations. Therefore, for these and other reasons, before relying on any Opinion presented in this section, you are encouraged to seek legal counsel regarding the specific facts of your question and the applicability of those facts to Georgia law and/or the Rules and Regulations.

Opinions of the Board of Court Reporting

1. Videotape Transcripts.

It is the opinion of the Board that a videotape technician should be accompanied by a certified court reporter who will take down and transcribe a verbatim transcript and file same. If such procedure is followed, the video-tape technician need not be certified.

Formal Opinion
BCR 77-1
July 13, 1977

Editorial Note: see Mayor of Savannah v. Palmerio, (Section E, Depositions #3)

2. Certified Court Reporters are Qualified to Administer Oaths.

Section 2 of the Georgia Court Reporting Act (Ga. Laws 1974, p. 346) states that court reporters are officers of the court. It is the opinion of the Board that as officers of the court, certified court reporters are thereby qualified to administer oaths.

Formal Opinion
BCR 77-2
September 24, 1977

Editorial Note: see Opinions BCR #89-2

3. Civil Practice Act, [O.C.G.A. § 9-11-29], and Others in Conflict, Are Repealed by the Court Reporting Act.

It is the opinion of the Board that to stipulate to the use of an uncertified court reporter, as provided in [O.C.G.A. § 9-11-29], for use in taking depositions is repealed by Section 20 of the Court Reporting Act (Ga. Laws 1974, p. 351) in that it is clearly in conflict with the provisions of the Act.

Formal Opinion
BCR 77-3
December 10, 1977

4. Fee for Official Reporters Chargeable to County.

It is the opinion of the Board of Court Reporting that the intent of the Fee Schedule of the Judicial Council of Georgia is that the official court reporter's per diem, the \$50.00* for his attendance in court, is a cost chargeable only to the county, and not to the party or parties involved, regardless of whether the request is made by the judge or the attorneys.

Unofficial Opinion
BCR U78-1
June 30, 1978
Reversed by Judicial Council
December 13, 1985

Editorial Note: see Opinions, Judicial Council #14

* See Fee Schedule for current amount, pp. B1-B3.

5. Taking of Depositions for Use by Out-of-State Courts Excluded From Regulation by Court Reporting Board.

The Board of Court Reporting of the Judicial Council of Georgia is of the opinion that the Georgia Court Reporting Act and the requirements for certification contained therein, do not include the taking of depositions in Georgia by out-of-state reporters for use in courts outside Georgia. It is the further opinion of the Board of Court Reporting of the Judicial Council of Georgia that the Court Reporting Act is designed primarily to improve the profession of court reporting in this state as it applies to the operation of the court system of Georgia. In this regard, the taking of depositions for out-of-state courts is a practice falling outside the intent of the Court Reporting Act and is excluded from the realm of responsibility of the Board of Court Reporting.

Formal Opinion
BCR 78-3
October 20, 1978

6. Official's Fee Includes Misdemeanor Takedown.

The Board of Court Reporting is of the opinion that the \$50* per diem paid official reporters for attendance in court [or salary in lieu of the minimum \$50* per diem] includes criminal takedown in misdemeanor cases in the state court in those instances where takedown is required by law or where specially ordered by the court. In these instances, no additional charge may be made by the reporter other than the \$50* per diem [or salary in lieu of the \$50* per diem]. In all other instances, where takedown is not required by law to be recorded, the reporting of the case and the takedown is a matter of private contract between the official reporter and the parties to the litigation.

Unofficial Opinion
BCR U79-1
Approved by the Judicial Council
July 28, 1979

7. Reproduction of Transcript.

The Board of Court Reporting is of the opinion that only the parties to a lawsuit or the deponent have the reproduction rights to a deposition and that a court reporter may not refuse to prepare a transcript and furnish a copy of it to either one of those persons, so long as the person requesting the copy is willing to pay for it. Nor, we believe, may a court reporter prohibit either party to a lawsuit or the deponent from reproducing the copy of the deposition received from the reporter. See *Sams v. Champion*, 184 Ga. App. 444 (1987).

Formal Opinion
BCR 88-1
April 1988

8. Stenomask Reporters.

The Board of Court Reporting is of the opinion that the Stenomask is a legal and legitimate means for reporting in the state of Georgia. Further, since the Court Reporting Act of 1974 defines court reporting to include those things designated in O.C.G.A. § 9-11-30(c)(1), and since O.C.G.A. § 9-11-30(c)(1) was enacted in 1966, the Court Reporting Act amends by implication that section to include takedown by means of the Stenomask.

Formal Opinion
BCR 88-2
November 1988

9. Arbitration Reporting.

The Board of Court Reporting is of the opinion that if reporting at an arbitration is done under the rules of a court, then the rules of that court apply. Otherwise, the Board's position is that all parties must be given the opportunity to participate at the beginning of the proceeding. If the party does not participate in payment for the takedown at the outset, he cannot thereafter order a transcript without the consent of the party or parties who paid for the takedown.

Formal Opinion
BCR 89-1
July 1989

* See Fee Schedule for current amount, pp. B1-B3.

10. Notarization of Witness's Signature.

It has been questioned whether it is necessary to notarize a witness's signature on a deposition. The Board is unanimous that the law does not require that the signature of the witness be notarized on either the deposition jurat or errata sheet.

Formal Opinion
BCR 89-2
July 1989

11. Daily Copy Requires Written Authorization.

The Board of Court Reporting is of the opinion that since a motion for daily copy is required and since all motions have to be served on all parties by the counsel making the motion, opposing counsel will have to know that daily copy is being requested and may either join with the party asking for daily copy or may request that he or she be provided with a copy of the daily transcript. This should obviate any need for the official court reporter to worry about telling the other side when one party orders daily copy. If a party says "I want daily copy," the reporter should suggest that in accordance with the rules that party make a motion and get written authorization from the judge.

With respect to the charge for daily copy, the Board interprets the [fee schedule] so that the *original* transcript may be charged at a per-page rate double that authorized for normal transcript preparation, and the party or parties ordering it must pay that per-page rate. Thus, if only one party moves for and secures written authorization for the preparation of daily copy, that party may be charged by the reporter for the original transcript a per-page rate double that authorized for normal transcript preparation. However, if all parties move the court for daily transcript preparation, and it is authorized by the court, it is the Board's opinion that the reporter may only charge the per-page double rate for the original transcript with the parties ordering the transcript to split the cost however they may agree upon between or among them.

It is the Board's further opinion that the [fee schedule] dealing with the charge for any additional copies of the daily transcript applies either to copies to opposing counsel (if the opposing counsel was not the one ordering the daily transcript) or to additional copies furnished the party ordering the transcript. These additional copies may be charged at the regular rate of \$.95* per page. Since the rule provides how much may be charged for daily transcript preparation per page, the Board sees no reason for the reporter to advise the person ordering the daily transcript of the double rate per page charge.

Unofficial Opinion
BCR U90-1
August 1990
Approved by the Judicial Council
June 12, 1991

12. Required Signature on Copies.

It is the opinion of the Board that all copies of depositions should have evidence that the original deposition was signed and sealed with the court reporter's seal. Further, this can be effected by either photocopies, carbon copies of the original signature, rubber signature stamps, or conformed signatures.

Formal Opinion
BCR 90-2
November 1990

13. Responsibility for Reporting When Counsel Disagree as to Conclusion of Deposition.

Editorial Note: see Common Questions and Answers #4

14. Notification of Transcript Requests.

It is the opinion of the Board of Court Reporting that:

1. It is permissible but not obligatory for a court reporter to advise counsel for the opposite party and/or counsel for the participating party in the litigation when a transcript request for a civil or criminal court hearing or trial is made.
2. It is permissible but not obligatory for a court reporter to advise counsel for the opposite party and/or counsel for the participating party in the litigation when a transcript request for a deposition or an excerpt of same is made.

* See Fee Schedule for current amount, pp. B1-B3.

3. A nonparty to the litigation may receive a copy of a deposition that has not been filed or opened in court when authorization is given by any named party to the litigation, or the attorney for either party, or the deponent. (see also CCR Handbook, page D2, #7.)
4. If a hearing or trial is transcribed and filed, it is a public record and the court reporter may furnish a copy to any person, assuming the record was not previously sealed by the court. (see CCR Handbook, page D9, #10.)

If both sides of a court proceeding share in the civil takedown, they are both entitled to, or either may release, copies of the transcript. (see CCR Handbook, page D9, #9.)

If the transcript of a civil or criminal court proceeding has not been produced, or is not required to be produced, the Judicial Council has stated that the court reporter may do so with the permission of the court. The Board interprets "court" to mean the judge who presided over the case, if available. Otherwise, the Chief Judge in that circuit may be consulted. (see CCR Handbook, page D9, #10.)

5. A court reporter is under no obligation to demand further exhibits from a deponent at the request of a taking attorney after the deposition is concluded. The court reporter's duty is to produce a transcript and evidence from what is furnished by the attorneys.

Formal Opinion
BCR 93-1
April 1993

15. Court Reporter Emeritus.

It is the opinion of the Board of Court Reporting that a court reporter may type a transcript without a current certificate as long as the court reporter was certified at the time the transcript was taken down. In such instances, the court reporter is to be identified on the certificate page as a Court Reporter Emeritus, rather than a Certified Court Reporter.

Formal Opinion
BCR 93-2
April 1993

16. In-state Reporters and Out-of-state Cases

It is the opinion of the Board of Court Reporting that if a person residing in Georgia performs verbatim transcriptions of depositions conducted in Georgia, then that person is practicing court reporting. The Board considers this to be true even if the deposition is for use in a court outside of Georgia.

Formal Opinion
BCR 93-3
May 1993

17. Reporter Must Maintain Impartiality.

Defendant's counsel, who employed your firm, instructed your reporter to only take down the plaintiff's testimony. Plaintiff's counsel asked to participate in the takedown, to which the reporter agreed. Defendant's counsel instructed you not to provide a copy of the transcript to plaintiff's counsel contending that the transcript was his firm's private property. You forwarded the original and one copy of the complete transcript to defense counsel, but only charged for plaintiff's testimony. You did not notify plaintiff's counsel that the transcript has been prepared nor that defense counsel had a copy of the complete transcript until much later, and then did not furnish plaintiff a copy until the date of the complaint hearing. Your actions demonstrated partiality toward one participant in a case over another. You failed to remain neutral in the reported proceeding and thus failed to the ethical standards of your profession. This behavior reflects adversely on the profession of court reporting. You are reminded that a failure to adhere to the Code of Ethics could result in further disciplinary proceedings and other sanctions including suspension or revocation of your certificate to practice court reporting in this state.

Excerpt of Public Reprimand
BCR 97-1
May 1997

* See Fee Schedule for current amount, pp. B1-B3.

18. Withholding Transcript for Payment of Past Due Billing.

This Board is concerned that you have violated the Code of Professional Ethics in force for your profession by not providing the transcript to Mr. Attorney in a timely manner even after he offered to pay for the transcription thereof. A delay in the trial of the case was a direct consequence of your actions, notwithstanding the fact that trial counsel were not aware the transcript had not been transcribed until several months after the deposition.

The Board of Court Reporting has held that it is a violation of COPE to withhold a transcript for payment of outstanding bills in another case. The proper venue for collecting past debts on court reporting invoices is through the courts.

Mr. Reporter, this Board expects you to exhibit professional behavior at all times as a Certified Court reporter, and we trust no further complaints of this kind will be filed with the Board of Court Reporting.

Excerpt of Private Reprimand
BCR 99-1
May 1999

19. Independent Contractor Coverage of Assignments

Is it a violation of O.C.G.A. § 15-14-37 (a) and (b) for an independent contractor to cover an assignment from a Georgia court reporting agency knowing, albeit belatedly, that the “referral” is from a known national contracting network? Does this scenario violate sections B, C, D, and G of the Code of Professional Ethics and Guidelines for Professional Practice (*hereinafter referred to as COPE*)?

The questions have no direct answer. The Board would need more facts to provide other than a generic answer, but the following may provide guidance. Each reporter must look at the following areas commonly associated with contracting issues: transcript production, exhibits, billing, ASCII disks, etc. If the local reporter maintains control of all of the above, then the Board’s position is that it is a legitimate referral and any contract the referring agency may have is not an issue. If, however, the local reporter is asked to meet the referring agency’s criteria for any or all of the above, then the Georgia reporter should exercise heightened scrutiny to be sure there is not a contract involved which could result in disciplinary proceedings.

Advisory Opinion
BCR 99-2
September 1999

20. Forwarding of Complete Transcript in ASCII Format

Are requirements of national contracting agencies such as the forwarding of completed transcripts in ASCII format with unnumbered, signed and sealed certificate pages and exhibits to the contracting agency for production and dissemination in conflict with O.C.G.A § 9-11-30 (f)(1)(A)? Will the Board seek an opinion from the Attorney General about the custody and control provision of the code? Does this scenario violate the COPE?

The Board’s position is that the reporter who provides signed, sealed certificate pages and exhibits along with completed transcripts in ASCII format violates the code by providing for the certification of a transcript and/or copy not produced under the reporter’s supervision. It is also the Board’s position that these actions violate Part I.D. of the COPE.

The Board recognizes, however, that an ASCII diskette provided in addition to a sealed transcript is acceptable.

Advisory Opinion
BCR 99-3
September 1999

21. Contract Arrangement

A court reporter/firm loses all the work from one law firm/attorney through a contract arrangement requiring the lawyer to use a specified provider. Said provider agrees to “refer” all said attorney’s work back to the Georgia reporter on a “case-by-case” basis provided specific contract arrangements are met, including invoicing the contract agency at the pre-arranged rates. Is this a violation of O.C.G.A. §15-14-37(a)? Does this violate the COPE?

The Board’s position is that O.C.G.A. § 15-14-37 (a) and § 9-11-30 (f)(1)(A) have been violated as have the provisions of the COPE.

Advisory Opinion
BCR 99-4
September 1999

* See Fee Schedule for current amount, pp. B1-B3.

22. Disclosure

The requirement for disclosure in O.C.G.A. § 9-11-28(d) has been widely interpreted since inception. Some reporters are not disclosing at all, others are attaching a disclosure form to the end of the deposition. Attorneys have also been known to waive the requirement. The intent of “financial arrangement” is not clear.

- (1) *Does non-disclosure violate O.C.G.A. § 9-11-28(d)?* The requirement for disclosure in § 9-11-28(d) was abolished by the legislature in 1999. However, not disclosing is in violation of Article 8.B. of the Rules and Regulations of the Board of Court Reporting beginning July 1, 1999.
- (2) *Must disclosure be made on the record prior to commencement of the deposition?* Yes.
- (3) *Is it considered “on the record” if disclosure is made only in the certificate page upon completion of the transcript?* No.
- (4) *Can an attorney waive or stipulate to this disclosure?* No.
- (5) *Will the Board seek clarification from the Attorney General as to the intent of “financial arrangement?”* The Article 8.B. rule no longer specifies ‘financial arrangement’ but does specify that ‘the arrangements made’ must be stated on the record. Refer to the disclosure form shown on page , for the elements deemed necessary in a disclosure.
- (6) *Will the Board seek clarification from the Attorney General regarding the disclosure process?* Disclosure is not a matter of statute, it is a matter of Board of Court Reporting rules and regulations. Under the circumstances, it is not appropriate to request clarification from the attorney general.

Advisory Opinion
BCR 99-5
September 1999

23. Exclusive Agreements by Reporting Network

Large corporations and many insurance companies have entered into exclusive agreements with national court reporting networks to provide reporting services for all depositions in which said insurance companies are parties. The attorneys representing the insurance companies are mandated to use the reporting network or their invoices will not be paid. Although the local attorney does not negotiate the prices for these depositions, they are still being considered as being arranged on a case-by-case basis. Will the Board request a definition of case-by-case basis and whether local law firms following the dictates of insurance companies are in violation of O.C.G.A. § 9-11-28(c), the disqualification for interest clause? Is this practice a violation of the Code of Professional Ethics?

The Board’s position is that this scenario indeed violates the provisions of O.C.G.A. § 15-14-37(a) and § 9-11-28(c). The Board, however, has no control over the actions of insurance companies or attorneys. The COPE is also being violated as this scenario is not fair and impartial and may give the appearance of a conflict of interest.

Advisory Opinion
BCR 99-6
September 1999

24. Request for Transcript Modification

An attorney disagreed with the wording in a transcript and requested that the court reporter change the original. There was no evidence that the opposing attorney knew about the request. The reporter refused to change the original after verifying the transcript accurately reflected the notes taken at the deposition. Is there any section of the Georgia Code that allows a reporter to make changes to the transcript at the request of an attorney *ex parte*? Would changing the transcript at the behest of an attorney *ex parte* violate the Code of Professional Ethics?

The Board’s position is that there is no code section provision for the reporter to change a transcript on an *ex parte* basis. Under the circumstances described, changing the transcript would be a COPE violation. (See also #27 below)

Advisory Opinion
BCR 99-7
September 1999

25. Reporters Providing Affidavits

A reporter is asked, as a neutral party, to sign an affidavit recounting an attorney’s recollection of events at which the reporter was present. The reporter presents her own notarized affidavit reflecting her own recollection of events, which is

* See Fee Schedule for current amount, pp. B1-B3.

disseminated to all parties in the case. As a neutral party to the deposition, how should the CCR respond when the response could possibly benefit one side and not the other? Was the action taken appropriate?

The Board's position is that it is improper to provide an affidavit because it may create an appearance of impropriety or it may compromise the reporter's role as a disinterested party thus violating the COPE.

Advisory Opinion
BCR 99-8
September 1999

26. Form Q & A

A) Does the disclosure apply to sworn statements taken before an attorney or insurance adjuster or both?

Not if done prior to litigation.

B) What option do reporters use for pro bono work?

Use Option A if the arrangement is made through the State Bar or other government agency. Use Option B if done by private arrangement with a party or a party's lawyer.

C) If reporters offer equal discount to both sides, is that OK?

The existence of an arrangement other than your normal and customary fee should be disclosed. An equal discount to both sides would not be a *prohibited* contract, but would be different than the normal or customary.

D) Do reporters attach the disclosure form to the copies as well?

Attach the original to the original and a copy to the copy.

E) A discount for prompt payment is offered. Does that have to be disclosed?

If it is a standard and customary billing procedure for your office, then no. If you apply the discount to a few specific clients, then yes.

F) Does this mean that disclosure on the record is no longer acceptable?

Yes. Oral disclosure *by itself* is no longer acceptable. The written form must be included in the transcript.

G) If the reporter submits the written form, chooses Option A without attorney signatures, and gives an oral disclosure on the record, is the written form still submitted to the attorneys before the deposition or can it just be completed later and attached to the original transcript?

The disclosure form should be shown to the attorneys at the deposition. This may be done in lieu of an oral disclosure or in addition to same. The disclosure form is also included in the transcripts. Providing attorneys a copy of the disclosure for their records at the deposition is optional.

H) Is it OK to add the new disclosure to the certificate page?

The form is not mandatory, the content is. As long as the essential elements of the form are included as shown below it may be incorporated in the certificate page. The physical location of the disclosure within the deposition is not specified.

Advisory Opinion
BCR 99-9
September 1999

* See Fee Schedule for current amount, pp. B1-B3.

27. THE FOLLOWING IS APPROVED BY THE BOARD OF COURT REPORTING. CHOOSE OPTION A OR OPTION B AS THE SITUATION REQUIRES.

(OPTION A - NO CONTRACT)

D I S C L O S U R E

STATE OF GEORGIA,
COUNTY OF _____:

Deposition of : (name of deponent)

Pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as (a representative of XXX reporting agency; an independent contractor for XXX reporting agency; a sole practitioner, etc.).

(I/the firm) was contacted by the offices of (name of attorney/firm/reporting agency who called court reporter) to provide court reporting services for this deposition. (I /thefirm) will not be taking this deposition under any contract that is prohibited by O.C.G.A. § 15-14-37 (a) and (b).

(I have/the firm has) no contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. (I/the firm) will charge (my/its) usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

Dated: _____ ; _____, CCR-B-XXX

Certified Court Reporter

(Signatures or initials of participating attorneys is optional with the reporter)

Return this form to the court reporter after review and/or signature for inclusion in the record.

(OPTION B - CONTRACT)

D I S C L O S U R E

STATE OF GEORGIA,
COUNTY OF _____:

Deposition of (name of deponent)

Pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as (a representative of XXX Reporting Agency; an independent contractor for XXX Reporting Agency; a sole practitioner, etc.).

(I/the firm) was contacted by the offices of (name of attorney/firm/reporting agency who called court reporter) to provide court reporting services for this deposition. (I/the firm) will not be taking this deposition under any contract that is prohibited by O.C.G.A. § 15-14-37 (a) and (b).

(I have/the firm has) a contract/agreement to provide reporting services with (name of firm/agency/ attorney/insurance company), the terms of which are as follows:

Dated: _____ ; _____, CCR-B-XXX

Certified Court Reporter

Attorney for Plaintiff _____ Attorney for Defendant _____

Return this form to the court reporter after review and/or signature for inclusion in the record.

* See Fee Schedule for current amount, pp. B1-B3.

28. Correction of Transcripts

The Board of Court Reporting was asked what a court reporter should do when requested to make a change in a transcript. Suggestions on handling such a situation:

A) When the attorney asks you to make a correction to a deposition.

If you check your notes/tapes and find that they reflect what you have transcribed and you have no reason to believe you made an error, you should do nothing. If you discover that you have made an error in transcribing, you should prepare an AFFIDAVIT OF TRANSCRIPTION ERROR to accompany the original deposition, a copy of which would be sent to all attorneys who received a copy of the deposition. If the original deposition is still in your possession, i.e., awaiting witness's signature, you could prepare a corrected page to be inserted in the original, provided that you have an agreement by all attorneys to do so, while sending a copy of the corrected page to all attorneys who received a copy of the deposition. If you discover that your notes reflect an accurate transcription but you are absolutely positive that an error was made by you in transcribing, you should prepare an affidavit that reflects an accurate transcription but a probable takedown error. (Example of AFFIDAVIT follows on page 10.)

B) When a judge asks you to make a correction to an official transcript.

The Official Code of Georgia Annotated §15-14-5 addressed a judge requesting a transcript be changed/corrected; however, there is no specific language as to how the correction should be made and filed. Suggestions for handling this situation are as follows:

Should the change be based on a misspelling(s) in the transcript, you should correct the misspelling(s) and file original and one copy of the page(s) under a separate cover with a title page reflecting the style of the case and the fact this is an amended or corrected transcript. The corrected portion(s) of the transcript should also reflect the page and volume number, and there should be a certificate attached attesting to the correctness of the page(s). Copies of the correction(s) should also be sent to the attorneys who obtained copies of the transcript.

C) When an attorney asks you to make a correction to an official transcript.

You should ask the attorney to put in writing the proposed correction(s) that needs to be made. Upon verification from your notes and /or tapes that the transcript is correct, you should notify the attorney that the transcript is in fact correct. If you discover there is an error(s) in transcribing or misspelling(s), follow the procedures set forth above in Paragraph B. Included suggested affidavit.

Advisory Opinion
BCR 99-10
September 1999

29. Certification of Transcript

The following practices acceptable:

The reporter must be the one to make the final draft and certify the transcript.

If a transcript is electronically transmitted for production elsewhere, a change cannot be made without the court reporter's knowledge and expressed approval of the specific changes to be made by production personnel. Signatures have to be original or as provided by law.

An original certificate page with an original signature and CCR seal must be provided with each original, sealed deposition, and the copies must show evidence that the original was signed and sealed. (See BCR Opinion #90-2, page D4 of CCR Handbook concerning signatures on copies.) The certificate page should also indicate the total number of pages of the deposition as produced by the reporter. If the transcript is electronically transmitted, the original certificate page with original signature should be mailed to the office for inclusion in the original.

The following practices unacceptable:

Office personnel may not make any changes to a transcript that the court reporter has not been contacted and specifically approved.

Any changes to formatting of a transcript made of a reporter's final draft must be for the purpose of matching text as downloaded to the screen version the reporter produced.

* See Fee Schedule for current amount, pp. B1-B3.

A rubber stamp of the taking reporter's signature may only be used on copies. It may not be used on the original certificate page.

Advisory Opinion
BCR 99-11
September 1999

30. Example Affidavit of Transcription Error

IN THE SUPER COURT OF FULTON COUNTY
STATE OF GEORGIA

JOHN DOE, Plaintiff,)
)
) Civil Action File
vs.)
) No. 5432
)
JANE DOE, Defendant,)

REPORTER'S AFFIDAVIT OF TRANSCRIPTION ERROR
DEPOSITION OF JOHN DOE

I, Sally Jones, Certified Court Reporter and Notary Public within and for the State of Georgia, do hereby state that I reported the deposition of John Doe on January 1, 2000; that I transcribed said deposition; that at the request of Dick Smith, counsel for the Defendant, I reviewed my stenographic notes pertaining to this deposition; and that I hereby state that the following error was made in my transcription and that this affidavit should accompany the original deposition to reflect the necessary change:

Page 50, line 15:	"I did kill my wife."
should be changed to	"I did not kill my wife."

I further state that I am filing the original of this affidavit with Dick Smith, counsel for the Defendant, who took possession of the original deposition upon its completion.

This the 31st day of January 2000.

SALLY JONES, CCR-B-9000
Certified Court Reporter

Notary Public
My Commission Expires:

* See Fee Schedule for current amount, pp. B1-B3.

31. Grand-fathered Reporters Who Wish to Change Methods Must Retest

The Board of Court Reporting realizes that there are some reporters who were granted a license in 1974 by virtue of at least one year's experience prior to the passage of the Act. Those reporters who were given such a license, and who wish to take advantage of new technology and change methods of takedown, are expected to pass the dictation and written portion of the certification exam to become licensed in the new method of takedown.

Advisory Opinion
BCR 99-11
November 1999

32. Guidelines for Certification of Transcript

This Board will find the following practices acceptable:

- A) Taking reporter must be the one to review the final draft and certify the transcript.
- B) If a transcript is electronically transmitted for production elsewhere, a change cannot be made without the taking reporter's knowledge and expressed approval of the specific changes made by production personnel.
- A) Signatures have to be original or as provided by law.
- B) An original certificate page with a lawful signature and CCR seal must be provided with each original, sealed deposition, and the copies must show evidence that the original was signed and sealed. (See BCR Opinion #90-2, page D4 of CCR Handbook concerning signatures on copies.) The certificate page should also indicate the total number of pages of the deposition as produced by the taking reporter. If the transcript is electronically transmitted, the original transcript must include an original certificate with a lawful signature.
- C) Office personnel may not make any changes to a transcript, including but not limited to spelling, punctuation, grammar, formatting, length, density or any other changes in form or substance, unless the taking reporter has approved all such changes.
- D) The failure to abide by these guidelines may subject the taking reporter, the court reporting firm, and any support personnel to legal and/or disciplinary proceedings.

Advisory Opinion
BCR 01-01
May 2001

33. Guidelines for What Constitutes Contracting

The Board of Court Reporting has been asked to expand its previous advisory opinion regarding contracting for court reporting services. Specifically, reporters want to know what a Georgia reporter's responsibility is when accepting referrals from another reporter or from another firm. There is also a question of what constitutes reporting in this state.

As previously stated in the January 2000 issue of "On the Record", the Board is of the opinion that if the "accepting" reporter maintains control over all aspects of the job, then it is a proper referral. If, on the other hand, the "referring" reporter wants to do the billing; wants an ASCII of the transcript to do the printing and binding; wants a signed, blank certificate page with the ASCII or transcript; wants to dictate the fees to be charged for the deposition, etc., then the job has been referred. Under these circumstances, the referring reporter may be engaged in illegal contracting with a third party. (*e.g.*, the charges disclosed may not be charges the parties incur; or the parties may be billed inequitably, etc.) Where the accepting reporter does not maintain control over billing, printing, certification, etc., the accepting reporter is not able to truthfully make the required disclosure under Article 8.B. of the Board Rules and cannot take the job. The accepting reporter also has certified something that can be modified without his or her knowledge. It is more appropriate to offer the referring firm a referral fee.

How does the Board define "reporting in this state?" Booking a job with a Georgia firm (or individual) and maintaining control of the job constitutes reporting. The Board has previously declared in "You Might Be A Firm If..." That part of the definition of a "firm" is "You are a freelance reporter who refers out a job to another reporter or group of reporters, but you do the billing for the whole job. This is true whether or not you pay a percentage to the taking reporter." If you meet this definition, you must register as a firm in Georgia. If a firm in Tennessee, New York, California, etc., calls to book a job and still maintains control over the deposition, then it is operating in the state of Georgia and must be registered as a firm in order to do so.

The registration of firms was a direct response to the contracting issues that have already affected reporting in so many other states. In addition, it provides a means for the Board to hold non-CCR-owned firms accountable. If they

* See Fee Schedule for current amount, pp. B1-B3.

encourage illegal activity such as the use of uncertified reporters, or unethical activities such as the giving of gifts in excess of \$50.

It is your duty as a certified reporter in this state to make sure these rules are followed. Failure to do so may result in disciplinary action to you individually. Compliance with these rules, coupled with everyone cooperating in reporting and punishing violations, will protect all court reporters in this state individually and will strengthen the profession as a whole.

Advisory Opinion
BCR-01-02
June 200

* See Fee Schedule for current amount, pp. B1-B3.

Opinions of the Board of Court Reporting cont'd

34. Furnishing Transcripts To Indigent Criminal Defendants Without Payment Of Fees

Under decisions of the Georgia appellate courts:

- An indigent criminal defendant is entitled to a transcript at no cost for purposes of a direct appeal of the conviction.
- An indigent criminal defendant is *not* entitled to a transcript at no cost for purposes of collateral post-conviction relief (*i.e.*, a proceeding in a case other than the original case, such as a habeas corpus proceeding), in the absence of a court order requiring that the transcript be furnished.

Shelby v. McDaniel, 266 Ga. 215 (1996); Rodriquez v. State, 256 Ga. 280 (1986); Mydell v. Clerk, Superior Court of Chatham County, 241 Ga. 24 (1978); Orr v. Couch, 244 Ga. 374 (1977); Holmes v. Kenyon, 238 Ga. 583 (1977).

Accordingly, in the absence of a court order requiring that a transcript be furnished, a court reporter who declines to furnish a transcript at no cost to an indigent criminal defendant for use in collateral post-conviction proceedings does not violate any provision of The Georgia Court Reporting Act. Where the reporter is not required to furnish a transcript at no cost, the reporter should, however, promptly respond to any inquiry concerning the availability of a transcript with an explanation of the cost of the transcript.

Advisory Opinion
BCR07-1
December 2007

35. Application of the Code of Professional Ethics To Court Reporting Firms

On April 17, 1994, the Board of Court Reporting of the Judicial Council of Georgia adopted the Board of Court Reporting Code of Professional Ethics. Upon review by the Judicial Council, the Code of Professional Ethics came into enforcement in June 1994 by the Board.

It is the opinion of the Board of Court Reporting that the Code of Professional Ethics applies equally to both Georgia certified court reporters and court reporting firms that are registered with the Board pursuant to O.C.G.A. § 15-14-37(d).

As with individual court reporters, court reporting firms perform court reporting services and have relationships with the public, the bench, and the bar. Therefore, by obvious necessity and

practical implication, court reporting firms are subject to the same ethical standards as individual court reporters in the maintenance of the profession at the highest level in Georgia.

REFERENCES: O.C.G.A. § 15-14-37(d)-(g) (2008); Board of Court Reporting Code of Professional Ethics, *Georgia Certified Court Reporter's Handbook*; Advisory Opinion of the Board of Court Reporting, BCR 01-02, *Guidelines for What Constitutes Contracting*, June 2001.

COMMENTS:

- [1] The definition of “year” referenced in the Code of Professional Ethics is that of a calendar year.
- [2] Paragraph H of the Code of Professional Ethics applies to court reporting firms that are registered with the Board pursuant to O.C.G.A. § 15-14-37(d). Therefore, a court reporting firm shall refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$50.00 in the aggregate per recipient each year.

Moreover, if a court reporting firm cannot provide a gift, incentive, reward or anything of value to an attorney, client, or their representatives or agents, without exceeding the said \$50.00 limit, an individual court reporter employed by the court reporting firm for services on behalf of the court reporting firm should not provide a gift, incentive, reward or anything of value to the attorney, client, or their representatives or agents, in connection with the court reporter’s services on behalf of the court reporting firm. In other words, limitations applicable to the court reporting firm should not be evaded by allowing an individual court reporter employed by the court reporting firm to be the grantor of a gift that the court reporting firm would be prohibited in making, where likewise limitations applicable to the court reporter should not be evaded by allowing a court reporting firm that employs the court reporter to be the grantor of a gift that the court reporter would be prohibited in making.

Formal Opinion BCR 2008-1
September 5, 2008

36. Methods for certifying transcripts taken down and transcribed by a reporter with a suspended or revoked certificate.

A court reporter with a suspended or revoked certificate may not certify a transcript. The Georgia Code explicitly states that “[n]o person shall engage in the practice of court reporting in this state unless the person is the holder of a certificate as a certified court reporter or is the holder of a temporary permit issued under this article.” O.C.G.A. § 15-14-28 (2009). Moreover, the Georgia Code specifically describes the function of a court reporter to certify a transcript by stating that “[i]t shall be the duty of each court reporter to transcribe the evidence and other proceedings of which he has taken notes as provided by law....The reporter...shall affix thereto a certificate signed by him reciting that the transcript is true, complete, and correct.” O.C.G.A. § 15-14-5 (2009). Thus, the Georgia Code requires a court reporter to certify a transcript and such an act can only be performed if one holds a certificate as a certified reporter or a temporary permit.¹

Nevertheless, “the failure of [a] reporter to certify as to the correctness of the transcript when it [is] filed with the clerk of the trial court” is an “amendable” defect. Harper v. Green, 113 Ga. App. 557 (1966). Therefore, in the event that a court reporter who certifies a transcript is later found to have been operating under a suspended or revoked license at the time of certifying such transcript, such transcript may still be certified through any one of the following under Georgia law:

1. The trial judge may certify the transcript as the full, complete and correct transcript of the proceedings in the trial.

See O.C.G.A. § 15-14-5 (2009); Williams v. Atlanta Gas Light Company, 143 Ga. App. 400 (1977) (Affirmation of a conviction in a case in which a transcript challenged for its accuracy was “certified by the trial judge as the full, complete and correct transcript of the proceedings in the trial.”); Estep v. State, 129 Ga. App. 909 (1973) (“We all know that the trial judge has the final say so as to the correctness of a transcript of evidence.”); Stamey v. State, 194 Ga. App. 305 (1990) (“Trial court’s power and duty to...ensure the accuracy of the record generally.”); See also Pelletier v. Schultz, 157 Ga. App. 64 (1981) and Ross v. State, 245 Ga. 173 (1980).

2. Trial court may utilize another, certified court reporter to carry out the certification process.

See Ga. Att’y Gen. U73-107. (Opined that in the case of a court reporter that died before certifying a transcript that “another reporter may take the transcript and

¹ It should also be noted that “[a]ny person who...continues to practice as a court reporter in this state or uses any title or abbreviation indicating he or she is a certified court reporter, after his or her certificate has been revoked...shall be guilty of a misdemeanor. Each offense is a separate misdemeanor.” O.C.G.A. § 15-14-36.

certify it....Such a transcript would be subject to the judge's power of correction....If a transcript is so made, certified and approved, there would be no need for a new trial.”)

3. The agreement of the parties as to their recollection of what transpired at trial, or if the parties cannot agree, based upon the recollection of the trial judge.

See O.C.G.A. § 5-6-41(g) (2009) (“[W]here for any other reason the transcript of the proceedings is not obtainable and a transcript of evidence and proceedings is prepared from recollection, the agreement of the parties thereto or their counsel, entered thereon, shall entitle such transcript to be filed as a part of the record in the same manner and with the same binding effect as a transcript filed by the court reporter....In case of the inability of the parties to agree as to the correctness of such transcript, the decision of the trial judge thereon shall be final and not subject to review; and, if the trial judge is unable to recall what transpired, the judge shall enter an order stating that fact.”)²

Advisory Opinion
BCR 2009-1
June 10, 2009

² Although the statute references a transcript prepared from recollection, there is seemingly no prohibition against the parties adopting the transcript prepared by the suspended or revoked court reporter as being true based on their recollections. As long as the parties agree to its accuracy, or the judge verifies its accuracy, from their recollections the transcript would be in conformity with the statutory requirements of O.C.G.A. § 5-6-41(g) and therefore have the same binding effect as a transcript prepared by a certified court reporter.

37. Applicability of the Georgia Uniform Electronic Transactions Act to the Electronic Certification of Transcripts.

The *Georgia Uniform Electronic Transactions Act* applies to transactions which are defined as “. . . an action or set of actions occurring between two or more persons relating to conduct of business, commercial, or governmental affairs.” O.C.G.A. § 10-12-2(16). Code section 10-12-3(a) provides:

Except as otherwise provided in subsection (b) of this Code section, this chapter shall apply to electronic records and signatures relating to a transaction.

(Subsection (b) defines certain transactions to which the Act does not apply, and is not applicable to this issue).

Nowhere in the *Act* does it in any way indicate that it applies to court matters, e.g., trial transcripts, depositions, etc., none of which fit the definition of **transactions**. Although various judicial or quasi-judicial bodies within the state permit the use of electronic records, transactions, and signatures in certain proceedings, these bodies have authorized the use of such electronic media pursuant to specific enabling statutes, rules, and regulations. *See, e.g.*, O.C.G.A. § 15-10-53 (providing for the filing of electronic documents in magistrate courts); *Uniform Juvenile Court Rule 29.4* (providing for electronic filing generally in juvenile courts); *2009 Rules and Regulations of the State Board of Worker’s Compensation*, Rule 60 (providing for the use of electronic filings and signatures with the State Board of Worker’s Compensation); *see also Federal Rules of Civil Procedure*, Rules 5 and 83 (establishing practices and procedures for electronic filings); *Federal Rules of Criminal Procedure*, Rule 57 (establishing practices and procedures for electronic filings); and *United State Bankruptcy Rules*, LBR 5005-4 (establishing practices and procedures for electronic filings).

Therefore, absent specific statutes, rules, or regulations, that enable court reporters to electronically certify court related transcripts, court reporters cannot rely on the *Georgia Uniform Electronic Transactions Act* to electronically certify court related transcripts.

Advisory Opinion
BCR 2010-1
July 23, 2010

38. Custodian of Records Evidence Log

The language of O.C.G.A. § 17-5-55(a) requires the court to designate “either the clerk of court, the court reporter, or any other officer of the court to be the custodian of any property that is introduced into evidence during the pendency of the case,” and requires that the custodian create an evidence log.

Specifically, O.C.G.A § 17-5-55 requires the log to contain: “case number, style of case, description of the item, exhibit number, name of person creating the evidence log, and location where the physical evidence is stored,” as well as – when evidence gets transferred to “any other party,” an annotation showing “the identity of the person or entity receiving the evidence, the date of transfer, and location of evidence.”

Therefore, below is a sample form for use by court reporters in fulfilling the requirements of O.C.G.A. § 17-5-55. The form below is not an official model form and has not been sanctioned by statutory law nor by any court; but it does provide guidance and conceptual framework for complying with the evidence log requirements of O.C.G.A. § 17-5-55.

Advisory Opinion
BCR 2010-02
August 3, 2010

EVIDENCE LOG SHEET

STYLE:

COUNTY: _____

JUDGE: _____

vs.

CASE NO.: _____

CT. RPTR: _____

Initial

Log-in date: _____

By: _____

Evidence Location: _____

_____ Exhibit Description Attached

-or-

_____ Exhibit Description Below:

Subsequent Transfer of Evidence:

Date: _____

By: _____

Exhibits: _____

Location: _____

Date: _____

By: _____

Exhibits: _____

Location: _____



IN THE SUPERIOR COURT OF _____ COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

VS.

Defendant.

)
)
)
)
)
)
)

CASE NO.: _____

RECEIPT OF EVIDENCE

Receipt is hereby acknowledged of the following exhibit(s):

in the above-styled case.

This _____ day of _____, _____.

39. Payment of Transcription Fees To Court Reporters Employed As Full-Time County Employees

O.C.G.A. § 15-5-21 states,

(a) The Judicial Council shall promulgate rules and regulations which shall:

(1) Provide for and set the fees to be charged by all official court reporters in this state for attending court, taking stenographic notes, and recording the evidence;

(2) Provide for and set the fees to be charged by all official court reporters in this state for furnishing transcripts of the evidence and for other proceedings furnished by the official court reporters in all civil and criminal cases in this state;

(3) Provide for a minimum per diem fee for official court reporters, which fee may be supplemented by the various counties within the circuits to which the court reporters are assigned; [...]

Hence, at a minimum, O.C.G.A. § 15-5-21 specifically provides for three distinct fees to be paid to official court reporters: (1) fees charged for attending court, taking stenographic notes, and recording the evidence, (2) fees charged for furnishing transcripts, and (3) a minimum per diem fee or salary paid for by counties.

Therefore, a county's payment of its obligated minimum per diem fee, or a supplementation of the minimum per diem fee (i.e., salary and benefits), to an official court reporter does not relieve the county of its obligation to pay a court reporter transcription fees (Transcript Production Compensation) in accordance with the Fee Schedule.

Advisory Opinion
BCR 2010-03
September 23, 2010

Opinions of the Judicial Council

1. Reporter is not Eligible for Per Diem on Days he is "available" for Court, Even if Required to be in the Courthouse Every Day.

A court reporter attends court by being physically present in the courtroom and taking down the evidence presented in the matters before the court. Merely being present in the courthouse is not attending court, even though the court reporter's presence in the courthouse may be required by the court.

Approved March 18, 1976

2. Responsibility for Payment of Transcript Costs in Non-indigent Felony Cases.

In non-indigent felony cases the defendant must pay \$ 1.65* for each page of transcript requested, and the court reporter must file the original and one copy with the clerk and deliver the other copy to the moving party. The court reporter cannot charge the appellee \$.55* for the additional copy. It is the feeling of the Judicial Council that the appellee should be able to use the copy of the transcript which is in the clerk's office.

Approved March 16, 1982

3. Application of the Official Court Reporters' Fee Schedule to Contracted Reporters; Definition of "Official" Court Reporter.

"Official" reporters are those reporters who have been appointed by the courts to which they serve and who are required to be in attendance at all proceedings. We hold that the swearing in of the reporter by the judge is only one element of his official capacity; the other must be his commitment for service to the court on a when-needed basis.

"Free-lance" reporters are those who are being hired on a purely independent basis by the attorneys or litigants on a case-by-case commitment to produce transcripts of depositions; testimony at trials or hearings, or any other judicial or non-judicial matter. This is the nature of matters contemplated by the exclusionary phrase "nor to any independent contracts of any reporters." [O.C.G.A. § 15-5-21(c)]

We must construe the last phrase ("nor to any independent contracts of any reporters") to mean those contracts of reporters with others rather than the court for which they serve on a regular basis. Otherwise, the Act would have no application to the many reporters who have contracted their time on a regular basis to the courts they serve.

To that extent, we are of the opinion that the "Reporter" obligated by contract to the Atlanta Municipal Court is bound by the fee structures established by the Judicial Council of Georgia.

Approved June 8, 1983

4. Jurisdiction of Board of Court Reporting in Fee Schedule Disputes.

The Board of Court Reporting has the authority, on a verified complaint, to hear matters involving fee disputes arising out of certified court reporters' actions when the complaint alleges the actions to fall within one or more of the four reasons specified in O.C.G.A. § 15-14-33(b).

Approved March 24, 1984

Editorial note: see Opinions, Judicial Council #13

5. Application of Fee Schedule to Stranger to Litigation; Definition of 'party'.

The official reporter is bound by the fee schedule in all work done in his or her capacity as an official court reporter and in all work growing out of reporting done as a result of holding that position. The fee schedule was adopted to provide consistency to parties, to governmental agencies, and to the general public for the costs of accessing records of court proceedings. Party as defined in 2.A.(1) does not necessarily mean a party to the litigation, but can refer to any interested person ordering the transcript or a part thereof in accordance with the fee schedule.

Approved March 24, 1984

* See Fee Schedule for current amount, pp. B1-B3.

6. Application of Fee Schedule to Substitute Official Court Reporter.

A certified court reporter is bound by the fee schedule in all work done in his or her capacity as an official court reporter and in all work growing out of reporting done as a result of holding that position, even temporarily.

It is the responsibility of the county or the judge to see that the court reporter is provided with travel expense reimbursement.

Approved March, 24, 1984

7. Who Owns Trial Transcript in an Indigent Criminal Case?

The original transcript in indigent criminal convictions becomes the property of the court when filed. Assuming there is an obligation to produce the indigent transcript (a criminal conviction that is required by law to be reported) the official reporter, when directed by the court, is required to produce an original and up to two copies of the transcript of the proceedings, and to file the original and one copy with the Clerk of the Court. The reporter is paid by the appropriate county governing authority at a rate of \$1.75* per page for this original and up to two copies. (See section 2.A. of court reporter's fee schedule.)

Additional copies of the transcript can be secured from the reporter, in accordance with the fee schedule, at a rate of \$.55* per page. However, once the transcript is filed with the Clerk of the Court, it becomes a matter of public record. (See O.C.G.A. § 50-18-70 through § 50-18-74.)

In an indigent criminal case resulting in an acquittal, the transcript becomes the property of any individual ordering the document from the official court reporter. Since the official reporter is not routinely required by law to prepare and file the transcript in acquittal cases, the time for production of the document is a matter between the requesting party, the reporter, and the trial court. Once the transcript has been prepared, the reporter retains the right to provide additional copies to parties or to interested individuals at the fee schedule rate for copies of \$.55* per page.

The county governing authority is under no statutory obligation to pay transcription costs in indigent criminal cases resulting in an acquittal.

Approved March 24, 1984

8. Who Owns Trial Transcript in Non-indigent Criminal Case?

The original transcript in criminal convictions becomes the property of the court when filed. The defendant's participation in transcript costs entitles him to have the record produced with a copy for his use. The transcript becomes a matter of public record when filed with the Clerk of Court regardless of who may have participated in the transcription costs. The reporter retains the right, subject to the fee schedule, to provide additional copies of the transcript to anyone ordering it at the approved copy rate. (See Unofficial Opinion of the Attorney General, U78-1.)

When a non-indigent case results in an acquittal, the same general rules would apply as stated in the opinion above. There is no statutory requirement that the transcript copy of a criminal acquittal be filed.

Approved March 24, 1984

9. Who Owns Trial Transcript in a Civil Case?

The party or parties participating in the cost of transcription of the original record and/or those who do not specifically waive access rights to the transcript, upon payment of the appropriate fees, may cause a transcript to be produced. (See *Harrington v. Harrington*, 224 Ga. 305, and *Giddings v. Starks*, 240 Ga. 496.)

When filed with the Clerk of Court, the transcript becomes a public document and a matter of public record.

Approved March 24, 1984

10. Circumstances Under Which Civil and Criminal Transcripts Can Be Divulged to the Public.

A civil or criminal transcript that has been filed with the Clerk of Court is considered a public record pursuant to O.C.G.A. § 50-18-70, unless the record is of a court activity protected by law from public access or sealed by order of the court. (Examples of these may be custody hearings, juvenile proceedings, first offender pleas where the defendant has successfully completed his/her conditions of probation.) When no transcript is required to be produced or filed, the court reporter may do so with the approval of the court. *Approved March 24, 1984*

* See Fee Schedule for current amount, pp. B1-B3.

11. If a Transcript is Filed in the Clerk of Superior Court's Office, Does it Become a Public Record So That it Can Be Photocopied by a Party in Lieu of Payment to the Court Reporter Under the Fee Schedule?

Yes, except in those situations where access to the record is restricted by the court or by law as in the examples previously cited. However, in charging a fee for photocopying transcripts on file with the clerk of the appropriate court, the clerk should be made aware that personnel time can also be included in the photocopying charge. (See O.C.G.A. § 50-18-70.)

Approved March 24, 1984

12. Rates to Be Charged for Transcripts.

The fee schedule provides that the rate to be paid court reporters for the transcripts of the proceedings and evidence in both civil and criminal cases shall be \$1.75* for the original and two copies of each page, to be paid by the party requesting that transcript or as required by law. The schedule further states that requests for the original only or for the original plus one copy shall also be charged at the rate of \$1.75* per original page. The number of copies to be produced is a matter between the requesting party and the reporter, as provided by law.

Approved March 24, 1984

13. Supreme Court Order; Authority to Hear Fee Disputes.

On the recommendation and request of the Judicial Council of Georgia, the Supreme Court issued the following order:

The Supreme Court of Georgia hereby confers upon the Board of Court Reporting of the Judicial Council the authority to hear verified complaints regarding and to resolve fee disputes involving official court reporters, with discretionary appeal to the Judicial Council of Georgia.

The authority to hear and resolve fee disputes will be in addition to the authority and powers heretofore conferred upon the Board. In addition to its authority to revoke or suspend certificates issued by the Board for unprofessional conduct or other sufficient cause, the Board may, after notice and hearing, in the instance of a fee dispute only, require monetary adjustment of the disputed fee, subject to suspension in the event the adjustment is not made.

The grievance procedures promulgated by the Board of Court Reporting and approved by the Judicial Council will apply to fee dispute matters as well as other matters. These may be amended from time to time as the Board and Council see fit.

Ordered May 15, 1984

Editorial note: see Opinions, Judicial Council #4.

14. Responsibility for Payment of Per Diem.

Whereas,

- (a) Only a trial judge can designate a court reporter to serve as an official court reporter for his/her court.
- (b) Only official court reporters are governed by the fee schedule of the Board of Court Reporting [sic].
- (c) The fee schedule provides that official court reporters or court reporters serving in that capacity at the direction of a judge be paid an appearance fee of \$75.00* by the county governing authority.
- (d) Any court reporter appearing to report an action without the express authorization of the trial judge is not entitled to the \$75.00* appearance fee.
- (e) In civil cases and certain non-indigent criminal cases, the parties are responsible for takedown and transcription costs pursuant to the fee schedule.

Therefore, if an attorney brings in a court reporter who happens to be the official court reporter when the judge has not requested that one be present, no per diem should be chargeable to the county, since, in that situation, the official court reporter would not be acting "officially" but "freelance" and should seek a fee from the requesting attorney.

This reverses an opinion of the Board of Court Reporting issued in 1978.

Approved December 13, 1985

* See Fee Schedule for current amount, pp. B1-B3.

15. Certain Takedown Not Included in Per Diem.

The compensation of \$75.00* per day paid to a court reporter includes all of the takedown in a criminal case, not only the trial testimony, but also the voir dire, opening statements, and closing arguments as well as any additional motions prior to trial and the court reporter is not entitled to any amount in addition to that per diem, provided, however, the court orders that the voir dire, opening statements, closing arguments and additional motions be taken down.

If counsel requests that the court require the takedown of these proceedings and the court declines to order that this be done, then it would be up to counsel to make financial arrangements to pay for the takedown and this would not be covered under the regular per diem.

Approved July 1987

* See Fee Schedule for current amount, pp. B1-B3.

Opinions of the Attorney General of Georgia

1. Death Before Certification of Record.

Normally court reporters affix certification to transcripts to the effect they are true, complete, and correct. If a reporter dies before completing a transcript, another reporter may make the transcript and certify it. Such a transcript would be subject to the Judge's power of correction.

Unofficial Opinion
U 73-107
November 1, 1973

2. The Judge of a Superior Court has the Authority to Appoint a Reporter for His Court and to Employ a Secretary for His Office. There is Nothing in the Law of Georgia Which Would Prohibit Him From Appointing the Same Person to Fill These Two Positions, Provided That the Person so Appointed Had the Qualifications Necessary for Each Position.

It is the *unofficial opinion* that there is nothing to prohibit appointing the same person as reporter and secretary.

Unofficial Opinion
U 74-1
January 2, 1974

3. The Judge of a State Court of a County May Appoint More Than One Court Reporter.

The law states that court reporting personnel shall be made available, and that appointment of a reporter or reporters for court proceedings shall be made by the judge. The express use of the plural in reference to reporters is sufficient to authorize the appointment of another court reporter for the state court.

Unofficial Opinion
U 74-33
April 19, 1974

4. Local Laws and Georgia Laws of Local Application Providing Compensation to Court Reporters.

The remedy provided by Ga. Laws 1975, p. 875 (O.C.G.A. § 15-5-21) was to require that the Judicial Council provide a uniform rate to be charged parties and their attorneys throughout the state by court reporters. However, it does not appear that the legislature intended to cut off supplements being paid court reporters by various governmental units. The General Assembly contemplated that some counties would supplement the minimum per diem fees provided by the Judicial Council.

It is the unofficial opinion of the Attorney General that the Judicial Council has the authority to promulgate rules and regulations which would allow local governing authorities to pay a supplement in addition to the minimum per diem otherwise provided.

Unofficial Opinion
U 76-11, March 22, 1976

5. Certain Income Generated by the Judicial Branch of Government May be Retained by the Judicial Branch.

Certain income generated by the judicial branch of government, including fees paid by court reporters to the Board of Court Reporting of the Judicial Council, may be retained by the judicial branch.

Official Opinion
77-77
November 4, 1977

* See Fee Schedule for current amount, pp. B1-B3.

6. Fees Collected by the State Board of Court Reporting Need Not be Deposited in the State Treasury.

The legislative characterization of court reporters as officers of the court dictates the unofficial opinion that the fees collected by the State Board of Court Reporting are not required to be deposited in the State Treasury.

Unofficial Opinion
U 77-55
November 7, 1977

7. Fees Collected by the Board of Court Reporting Are Not Subject to Appropriation Lapse.

Fees collected by the Board of Court Reporting of the Judicial Council during the fiscal year 1978, which were unexpended at the end of the fiscal year, are not subject to appropriation lapse.

Official Opinion
78-68
October 24, 1978

8. Notes and Recordings Taken by a Court Reporter in Felony Cases Remain in His Custody but Are Subject to Control by the Court.

In preparing transcripts in non-felony matters, the court would have no reason for getting involved. It is simply a matter of contract-business transactions between one or more of the parties and the court reporter. {Of course, if the court directs pursuant to [O.C.G.A. § 15-14-5] that the testimony in a non-felony case be taken down, the court certainly has the power to compel the court reporter to prepare a transcript where the conditions of [O.C.G.A. § 15-14-5] have otherwise been met, i.e., where a request for the transcript and an offer of payment have been made by counsel.}

In felony cases, the court has an absolute duty to preserve the testimony in a case where a guilty verdict results. Thus the court's interest in retaining control over the court reporter's notes and recordings unquestionably outweighs any interest the court reporter may have in them. The matter of an official transcript is no longer a matter of contract but a requirement of law.

Furthermore, being an officer of the court, the court has control over the court reporter and can use its contempt powers to insure that the court reporter performs official duties. Although unable to find any law or cases which clearly subjects a court reporter to the rule and order of the court, as [O.C.G.A. § 15-13-8] provides for sheriffs, deputy sheriffs, coroners, clerks of the superior courts, Magistrate, and constables, there certainly appears to be no reason why the court, in a felony case where it and the court reporter have a legal duty to have a record of the testimony in that case preserved in the records of the court, cannot in the exercise of its inherent powers exert sufficient control over the court reporter's notes and recordings to have a transcript of these notes and recordings prepared, either by the court reporter or a personal representative.

Unofficial Opinion
U 78-1
January 9, 1978

9. Judicial Branch Agencies Are Not Subject to the Sunshine Law.

The Sunshine Law does not apply to the Board of Court Reporting or any other agency of the Judicial branch of government.

Official Opinion
79-25
April 23, 1979

* See Fee Schedule for current amount, pp. B1-B3.

10. Ordering Transcript of All Proceedings is Discretionary With Superior Court Judge in Criminal Cases.

A judge of a Superior Court may, in his discretion and on such terms as may be prescribed by him, direct that all proceedings in a criminal case before him be recorded and transcribed.

Unofficial Opinion
U 79-1
January 10, 1979

11. Recording of Certain Transcripts by Superior Court Clerks Not Required.

Transcripts of testimony and other evidence in administrative law cases on appeal to superior court are not required to be recorded by the clerks of the superior courts.

Unofficial Opinion
U 79-3
January 1, 1979

12. When a Non-indigent Criminal Case is Appealed, the Appellant is Responsible for Paying the Court Reporting Fees for the Preparation of the Transcript of the Evidence.

It is the unofficial opinion that in the case of an appeal of a non-indigent felony case, the party requesting the transcript is required to pay the court reporter's fees. In the case of an appeal, the appellant becomes the party requesting the transcript, as he requests that the transcript be sent to the appropriate appellate court.

Under the Provisions of the Fee Schedule, the Court Reporter is Only Entitled to \$1.65* for the Original and Two Copies of Each Page of the Transcript.

Under the provisions of the fee schedule adopted by the Board of Court Reporting of the Judicial Council, the court reporter is only entitled to \$1.65* for the original and two copies of each page of the transcript. It is the unofficial opinion that the schedule entitles an appellant to a copy of the transcript without having to pay 55* cents a page for an extra copy. Once again, the appellant becomes the requesting party and may request two copies, one to be filed with the clerk along with the original, and the other for the appellant's own use.

Unofficial Opinion
U 79-15
July 27, 1979

13. Where the Appellant Requests that the Transcript be Filed as Part of the Record on Appeal in a Non-indigent Criminal Case, He is Responsible for the Payment of the Court Reporter Fees for the Preparation of the Transcript.

The Supreme Court's decision in *Hart v. State*, is consistent with this office's opinion number U79-15. As we have previously concluded, it should be the responsibility of the person requesting the transcript to pay for the transcript. The provisions of [O.C.G.A. § 17-8-5] just make it the duty of the Court, or county officials, to require that the testimony be taken down and that a written record be filed with the clerk. It does not require that all transcripts be paid for by the county. If no appeal were filed by the defendant, then the county would be the requesting party responsible for the preparation of the transcript and also responsible for the payment of the court reporter fees under [O.C.G.A. § 17-8-5].

Unofficial Opinion
U81-22
May 18, 1981

14. Under Current Law State Court Reporters are Entitled to Receive \$80.00 Per Month as a Contingent Expense and Travel Allowance, Which is to be Paid from County Funds.

The basic statute in this area is [O.C.G.A. § 15-7-13], which provides in pertinent part as follows:

... the compensation and allowances of reporters for said courts shall be the same as for

* See Fee Schedule for current amount, pp. B1-B3.

the superior courts of this State.

It is my unofficial opinion that under current law state court reporters are entitled to receive \$80.00 per month as a contingent expense and travel allowance, the amount prescribed by Ga. Code Ann. § 24-3107 (O.C.G.A. § 15-14-6), for reporters of judicial circuits consisting of one county only. This allowance is to be paid from county funds.

Unofficial Opinion
U81-24
June 4, 1981

15. It is Inappropriate to Decide on the Basis of Contract Whether a Party Who did not Participate in the Takedown of Preliminary Hearing May have a Copy of the Transcript. The Court Reporter Should Look to the Court Before Which the Inquiry is Conducted for Direction on Whether or Under What Circumstances the Nonparticipating Party May Have a Copy of the Transcript.

Even in the context of a civil trial, considerations of the administration of justice are given more weight than private contractual rights. Thus, since the preliminary hearing is a "critical stage" of a criminal trial, at which certain due process rights of the defendant attach, a contractual analysis is inappropriate to the question at hand.

Official Opinion
82-14
March 12, 1982

16. Questions Concerning the Status of Court Reporters Employed by the State Board of Workers' Compensation.

It is the official opinion that the State Board court reporters are full-time State employees, and that the State Board may permit its court reporters to work hours other than typical office hours. Although a court reporter may not hold simultaneous employment with the State Board and a Superior court or state court, he may provide court reporting services to those courts provided his role is that of an independent contractor. A State Board court reporter may provide court reporting services to the public provided the Agency determines there is no conflict between his outside employment and his State employment. Finally, O.C.G.A. § 45-10-42 authorizes State Board court reporters to sell to State agencies workers' compensation transcripts prepared pursuant to O.C.G.A. § 34-9-102(g).

Official Opinion
83-56
August 25, 1983

17. Conditions Under Which Court Reporters Employed by the State Board of Workers' Compensation May Sell Transcripts.

Transcripts which are produced by court reporters employed by the State Board of Workers' Compensation are the property of the State Board of Workers' Compensation. Court reporters for the Board may sell workers' compensation transcripts to state agencies at any time when providing such transcripts to a party to the case. Court reporters for the State Board of Workers' Compensation may not sell transcripts of workers' compensation hearings to third parties which are not state agencies.

Official Opinion
86-47
November 19, 1986

* See Fee Schedule for current amount, pp. B1-B3.

18. Authority of Board of Court Reporting to Regulate Verbatim Court Reporting.

With the exception of official federal court reporters, the Board of Court Reporting of the Judicial Council of Georgia has authority to regulate the practice of verbatim court reporting for use in the federal courts within the State of Georgia pursuant to O.C.G.A. §§ 15-14-22 and 15-14-28.

Official Opinion
86-27
June 20, 1986

19. O.C.G.A. § 9-11-30(e) Places no Limitations on the Type of Changes That May Be Made By a Witness Before Signing a Deposition.

The court reporter's role throughout the deposition process remains that of a neutral scrivener. The court reporter should record the witness' changes and, of course, must transcribe any further examination which the party taking the deposition deems necessary. The deposition is then certified, sealed, and filed pursuant to subsection (f) of Rule 30. In the event the witness returns the deposition with the changes to the court reporter after the deposition has been certified, sealed, and filed, the court reporter should file the changes as a separate document and notify the party taking the deposition. The party taking the deposition then decides whether to seek further examination based upon the changed answers or to seek to have the changed answers suppressed as untimely.

Official Opinion
87-17
June 11, 1987

20. There is No Georgia Law or Statute Which Governs Retention of Notes, Tapes, Transcripts, or Computer Copies of Depositions.

In determining the appropriate length of time a court reporter should be required to maintain notes, tapes, transcripts, or computer copies of depositions, the reporter needs to ensure that the records are maintained for a sufficient length of time so that the matter has been concluded and there is little or no possibility that the records would need to be retrieved.

There is also no law which governs the retention of the [official] court reporter's notes and tapes prior to the reporter leaving the state or upon retirement, or if the reporter is deceased.

Advisory Letter
March 1, 1991

Editorial note: This advisory letter predates the 1996 changes to O.C.G.A. § 9-11-30.

21. Citizenship Not Required for Certification as a Court Reporter.

O.C.G.A. § 15-14-29 cannot be constitutionally applied so as to prohibit an individual who is not a U.S. citizen from being certified as a court reporter.

Official Opinion
U92-23
September 16, 1992

22. A Court Reporter May Enter into Contracts for Reporting Depositions So Long as the Contract Does Not Render the Reporter an "Employee" or "Financially Interested in the Action." Court Reporters May Not Provide Kickbacks to a Party.

An exclusive contract for reporting depositions between a court reporter and a party may not be impermissible on its face provided it does not infringe on the court reporter's legal duties. However, if the terms of the contract and surrounding circumstances render the court reporter an employee of the party or attorney or create a financial interest in the action on the part of the court reporter, the court reporter cannot report the deposition unless all parties waive the disqualification in writing. If the contract provides a discount to the contract party, then charging the other party a higher fee for the transcript could be deemed an "unreasonable" fee, and therefore subject the court reporter to discipline by the Board. Finally, if a court reporter provides

* See Fee Schedule for current amount, pp. B1-B3.

kickbacks to parties or their attorneys in return for hiring that court reporter to report a deposition, such actions constitute unprofessional conduct.

Official Opinion
93-18
July 23, 1993

Editorial note: This opinion predates the changes to Georgia Law which prohibit contracting.

23. Immunity of the Board and Whether such Immunity Extends to the Georgia Certified Court Reporters Association.

The Georgia Certified Court Reporters Association would not constitute an arm of the State for purposes of immunity, and its officers would not be public officials entitled to qualified immunity. Since the Association is a nonprofit entity, however, it may want to determine whether it is entitled to any other type of immunity from civil liability under Georgia law. *See, e.g., O.C.G.A. § 51-1-20.*

Advisory Letter
October 19, 1994

24. Disclosure Requirements.

A court reporter is required to make the disclosure required by O.C.G.A. § 9-11-28(d) at the beginning of the deposition. Requirement of disclosing the complete arrangements includes disclosing the costs to be charged to the person making the arrangements for the court reporter's services.

Unofficial Opinion
U95-10
March 2, 1995

Editorial note: O.C.G.A. § 9-11-28 (d) was abolished in the 1999 legislative session. Disclosure is still required however, under Article 8.b. of the rules of the Board of Court Reporting.

* See Fee Schedule for current amount, pp. B1-B3.

**Judicial Council of Georgia
Board of Court Reporting**



APPELLATE COURT RULES

Appellate Court Rules Pertaining to Court Reporting Rules of the Supreme Court (July 1, 1998)

XIII. RECORDS AND TRANSCRIPTS

- Rule 67. RECORDS AND TRANSCRIPTS.** The Clerk of the trial court shall certify and transmit to the Clerk of this Court the original transcript and copies of all records as required within the time prescribed by statute. In habeas corpus appeals after criminal convictions the original record in its entirety shall be certified and transmitted. Transmittal shall be by the Clerk or deputy personally or by mail or express mail, charges prepaid. Transmittal by a party or attorney is prohibited.
- Rule 68. FORMAT.** Records and transcripts shall be written or printed on one side of white paper not less than letter size of good quality with ample spacing and margins so that they may be read easily (at least double spaced). The margin at the top shall be ample for binding. Metal fasteners which cover the top center are prohibited.
- Rule 69. SEQUENCE.** The record with pages numbered at the bottom and a manuscript cover shall be arranged as follows:
- (1) Index (including page references and dates of filing);
 - (2) Notice of appeal;
 - (3) Other items in chronological order; and
 - (4) Clerk's certificate.
- Voluminous records may be bound in separate parts but each part shall be certified separately.
- Rule 70. COURT REPORTER'S TRANSCRIPT.** The transcript (original) shall be a separate document and not attached to the record. It should show the style of the case and an index, including page references of witnesses and exhibits. Voluminous transcripts may be bound in separate parts. The court reporter and clerk shall certify each part.
- Rule 71. EVIDENCE.** Where there is reliance upon physical evidence, the party so relying shall include within the transcript a description or a photograph, together with an explanation if deemed necessary, in lieu of sending the original evidence.
- (1) If the relying party deems the original evidence to be of such importance that a photograph or a description cannot suffice to demonstrate the party's contention, application may be made to the trial court for an order directing the transmission of the original evidence to this Court, or application may be made to this Court for such an order if it is not obtainable from the trial court after a bona fide effort.
 - (2) Where the admissibility of photographs is attacked the originals or exact duplicates, to be furnished by appellant, shall be included in the transcript.
 - (3) The court reporter and clerk shall certify the exhibits.
- Rule 72. PROHIBITED EVIDENCE.** In no event, unless directed by this Court, shall physical evidence or exhibits be sent to this Court which do not fit within the transcript or are bulky, cumbersome or expensive to transport, or which, by reason of their nature, are dangerous to handle.
- Rule 73. RETURN OF EVIDENCE.** Original evidence or exhibits received by this Court pursuant to Rules 71 or 72 shall be offered back to the trial court clerk and to the parties within 90 days after the remittatur is returned to the lower Court. Evidence or exhibits not reclaimed will be destroyed.
- Rule 74. WAIVER.** Appellee shall be deemed to have waived any failure of the appellant to comply with the provisions of the Appellate Practice Act relating to the filing of the transcript of the evidence and proceedings or transmittal of the record to this Court unless objection thereto was made and ruled upon in the trial court prior to transmittal, and such order is appealed as provided by law.

Unified Appeal

Outline of Proceedings

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NOTE: *All* proceedings in the Superior Court shall be recorded and transcribed. The defendant shall be present during *all* proceedings in the Superior Court.

**These are not included in the CCR Handbook, but are available in the Georgia Court and Bar Rules.*

Effective Date: September 1, 1989

Unified Appeal Outline of Proceedings

NOTE: All proceedings in the Superior Court shall be recorded and transcribed. Defendant shall be present during all proceedings in the Superior Court.

The proceedings outlined here shall be applicable only in cases in which the death penalty is sought.

I. STATEMENT OF PURPOSES

A. Purposes of the Outline of Proceedings

The *Outline of Proceedings* is a procedure to be followed before, during, and after trial, having as its purposes:

1. Insuring that all legal issues which ought to be raised on behalf of the defendant have been considered by the defendant and his attorney and asserted in a timely and correct manner.
2. Minimizing the occurrence of error and correcting as promptly as possible any error that nonetheless may occur.
3. Making certain that the record and transcripts of the proceedings are complete for unified review by the sentencing court and by the Supreme Court.

B. Purposes of the Checklist

1. Appended to the *Outline of Proceedings* is a *Checklist* of legal issues which may arise in a death-penalty case. Its purpose is to remind the court, defense counsel and the prosecuting attorney of these issues and to provide a quick reference to case authority on these issues. The parties may raise any issue, whether or not it is listed on the checklist. The checklist shall be revised and updated periodically.
2. Proper use of the *Checklist* as a means of avoiding or promptly correcting error will require the court to schedule conferences (see Sections II and III) during which defense counsel and the prosecuting attorney will be given an opportunity to present, or to schedule for presentation, issues which would be waived if not asserted in the proper and timely fashion. These conferences shall be transcribed by the official court reporter.

II. PRE-TRIAL PROCEEDINGS

- A. Qualifications of Appointed Counsel**
- B. Fees for Appointed Counsel**
- C. First Proceeding**

At the earliest possible opportunity after indictment and before arraignment, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the first proceeding:

1. The prosecuting attorney shall state whether or not he intends to seek the death penalty. (If the prosecuting attorney does not seek the death penalty, these procedures and the checklist are not applicable. If the prosecuting attorney later abandons seeking the death penalty or the sentencing jury returns a verdict of life imprisonment these procedures and the checklist are not applicable.)
2. Defense counsel shall be identified and it shall be made a matter of record whether he is retained or appointed.

3. The Unified Appeal Procedure, as amended, shall be published in The Georgia Court and Bar Rules. Copies of this procedure shall be given to the defendant, defense counsel, and the prosecuting attorney, all of whom shall be instructed to read and adhere to these provisions. A copy also shall be given to the reporter for inclusion in the record. The reporter shall be reminded that the trial shall be completely transcribed as set forth in Rule IV (A). Counsel for the defense shall be instructed that the outline and checklist are intended to assist him or her in protecting the defendant's rights, but it remains the responsibility of defense counsel to protect those rights: the outline and checklist do not take the place of diligent counsel actively representing the defendant.
4. Defense counsel shall be reminded of defendant's right under O.C.G.A. ' 17-7-110 to demand prior to arraignment a copy of the indictment and a list of the state's witnesses. The prosecuting attorney shall be reminded that the list of witnesses, if demanded, shall be accurate and complete.
5. The court shall determine whether or not the defendant intends to challenge the arrays of the grand or traverse juries. Challenges to the composition of the boxes from which the grand or traverse jury was drawn, and challenges to the manner in which the grand or traverse jury was drawn, shall be presented and heard at the earliest possible time consistent with the court's calendar and with the right of the defendant to seek a continuance. If a challenge is presented, the court shall hear the asserted factual and legal basis of challenge although under law the right to challenge may have been waived.
6. Whether or not a challenge is presented, the court shall nonetheless review the grand and traverse jury lists to determine whether all of the cognizable groups in that county are fairly represented.
 - a. To establish a "cognizable group" under the Sixth Amendment, the defendant must show: (1) that the group is defined and limited by some factor; (2) that a common thread or basic similarity in attitude, ideas, or experience runs through the group; and (3) that there is a community of interest among members of the group such that the group's interests cannot adequately be represented if the group is excluded from the jury selection process. Whether a "cognizable group" exists is a question of fact, which is dependent upon the time and location of the trial. Potts v. State, 259 Ga. 812, 813 (1990), quoting Willis v. Zant, 720 F.2d1212, 1216 (11th Cir. 1983), cert. denied, 467 U.S. 1256 (1984).
 - b. The court shall compare the percentages of each cognizable group in the county, according to the most recent official decennial census figures, with the percentages represented on the grand and traverse jury lists. Significant under-representation of any such group on either jury list shall be corrected prior to trial. This rule shall not be construed to deprive this defendant of any rights under the constitutions of the United States and the State of Georgia of OCGA § 15-12-40.

The court's findings shall be included in the trial judge's report, in the form specified by Rule II (C).

7. The court shall give the defendant an opportunity to state any objections he may have to defense counsel, or to the manner in which defense counsel has conducted or is conducting the defense.
8. The court shall review Section I of the checklist with defense counsel and the prosecuting attorney to determine which pre-trial issues the defendant intends to raise. Hearings shall be scheduled for any issues the defense wishes to present. The defendant shall be reminded that issues not raised may be waived if not timely presented.
9. The court shall instruct defense counsel to locate and interview all persons whose testimony might be helpful in discovering or supporting available theories (1) of defense or (2) in mitigation of punishment.
10. The court shall schedule for an appropriate time an arraignment and plea on the merits of the indictment.

D. Motion Hearing

At an appropriate time consistent with the court's calendar and with the right of the defendant to seek a continuance, the court shall conduct a motion hearing. The defendant shall be present, accompanied by his attorney. The hearing shall be recorded and transcribed. The hearing shall precede the trial of the case.

The following matters shall be concluded during the motion hearing:

1. All motions previously filed shall be heard.
2. The court shall review Section I of the checklist with defense counsel and the prosecuting attorney to determine if there are possible pre-trial issues that have not been raised. The court shall determine during this conference whether defense counsel intends to allow the deadline for raising any such issue to pass without presenting the issue for decision. If so, the court shall question defense counsel in the presence of the defendant to determine whether or not defense counsel have explained the defendant's rights regarding that issue and whether defense counsel and the defendant have agreed not to assert the issue.
3. The court shall remind defense counsel to be prepared to present evidence during the sentencing phase as well as the guilt-innocence phase of the trial.
4. The court shall give the defendant an opportunity to state any objections he may have to defense counsel, or to the manner in which defense counsel have conducted or is conducting the defense.
5. The court reporter shall be advised that all pre-trial proceedings and hearings should be transcribed prior to trial.

III. TRIAL PROCEEDINGS

A. Guilt-Innocence Phase

1. *Before commencement of trial*

Immediately before trial, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference:

- a. All pending motions shall be heard.
- b. The court shall determine whether there are any last-minute motions the defense wishes to present and give the prosecuting attorney and defense counsel an opportunity to present any stipulations to which they have agreed.
- c. The court shall ascertain whether counsel for both sides have reviewed Part II (A) through (H) of the checklist and are prepared to raise any possible trial issues in a timely manner.
- d. The court shall give the defendant an opportunity to state any objections he may have to defense counsel, or to the manner in which defense counsel has conducted or is conducting the defense.

2. *After close of the evidence*

After close of the evidence, but before closing arguments, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference after close of the evidence:

- a. Written requests to charge shall be presented to the court for rulings.
- b. The court shall make a final ruling on any issues as to which a tentative ruling or no ruling was made during presentation of the evidence.
- c. The court shall hear any timely and otherwise proper motions or objections the defense wishes to present. Defense counsel shall be given an opportunity to perfect the record by making a tender of proof as to any evidence that was excluded by the court.
- d. The court shall ascertain whether the parties have reviewed Part II (I) through (Q) of the checklist and are prepared to raise these issues in a timely manner. Defense counsel shall be advised that objections to the state's closing argument will be waived if not raised as soon as grounds for such objection arise, unless explicit permission is granted to reserve objection until the conclusion of argument.
- e. The court shall give the defendant an opportunity to state any objections he may have to defense counsel, or to the manner in which defense counsel has conducted or is conducting the defense.

3. *After charge of the court*

After charge of the court, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference after charge of the court:

- a. Any issue as to arguments of counsel or as to the charge of the court shall be presented and decided.
- b. The court shall hear any timely and otherwise proper motions or objections the defense wishes to present.
- c. The court shall give the defendant an opportunity to state any objections he may have to defense counsel, or to the manner in which defense counsel has conducted or is conducting the defense.

B. Sentencing Phase

1. Before commencement of sentencing phase

Immediately before the commencement of the sentencing phase of the trial, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be taken up during the conference:

- a. All pending motions shall be heard.
- b. The court shall review Part III of the checklist with defense counsel and the prosecuting attorney. Defense counsel shall be given the opportunity to raise in limine any objections to the state's anticipated evidence in aggravation. However, failure to object in limine shall not amount to a waiver of otherwise timely objections to the introduction of evidence. The court shall give the prosecuting attorney and defense counsel an opportunity to present any stipulations to which they have agreed.
- c. In the event of a retrial as to sentence, the court shall also review Part VI of the checklist with defense counsel and the prosecuting attorney.

2. After the close of the evidence

After the close of the evidence, but before closing arguments, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference:

- a. Written requests to charge shall be presented to the court for rulings.
- b. The court shall make a final ruling on any issues raised during the sentencing phase of the trial as to which a tentative ruling or no ruling was made during the presentation of the evidence.
- c. The court shall again review Part III of the checklist with defense counsel and the prosecuting attorney and shall hear any timely and otherwise proper motions or objections the defense wishes to present. Defense counsel shall be given an opportunity to perfect the record by making a tender of proof as to any evidence that was excluded by the court. If the court determines that a mistake was made in the exclusion of potentially mitigating evidence, the court shall reopen the evidence and allow its presentation to the jury.
- d. Defense counsel shall be advised that objections to the state's sentencing phase closing argument will be waived if not raised as soon as grounds for such objection arise, unless explicit permission is granted to reserve objection until the conclusion of argument.
- e. The court shall give the defendant an opportunity to state any objections he may have to defense counsel, or to the manner in which defense counsel has conducted or is conducting the defense.

3. After charge of the court

After charge of the court at the sentencing phase of the trial, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and

transcribed.

The following matters shall be concluded during the conference after the charge of the court:

- a. The court shall review Part III (C) and (D) with the prosecuting attorney and defense counsel. Any issue as to arguments of counsel or as to the charge of the court shall be presented and decided. Defense counsel shall be advised that any such issue not timely raised shall be waived. Reservations of objection to the sentencing-phase charge will not be permitted.
- b. The court shall also review Part III (E) of the checklist with the prosecuting attorney and defense counsel. Defense counsel shall be advised that objections to the form of the verdict must be raised when the verdict is returned. The court shall note that a poll of the jurors is required.
- c. The court shall give the defendant an opportunity to state any objections he may have to defense counsel or to the manner in which defense counsel has conducted or is conducting the defense.

IV. REVIEW PROCEEDINGS

A. In the Superior Court

Review proceedings in the Superior Court shall be conducted in accordance with the following rules:

1.
 - a. The filing of a motion for new trial is not a procedural prerequisite for review by the Superior Court and Supreme Court. A defendant may but is not required to file a motion for new trial. A defendant may elect to proceed either by motion for new trial, or direct appeal, or may allow the case to be presented directly to the Supreme Court for review. The case nevertheless shall be considered by the Supreme Court.
 - b. The sole function of a motion for new trial shall be to bring to the attention of the Superior Court after imposition of sentence such grounds as defense counsel may wish the trial court to decide.
 - c. It shall be the duty of the Superior Court to transmit the entire record of the case to the Supreme Court for review regardless of whether or not a motion for new trial or direct appeal has been filed unless the Superior Court sets aside the conviction or sentence. The Superior Court shall transmit the case to the Supreme Court for review within ten (10) days of the filing by the official reporter of the transcript of trial if no review proceedings have been commenced in the Superior Court in accordance with these rules.
2.
 - a. These rules shall not be construed so as to limit or restrict the grounds of review available through motion for new trial, motion to withdraw a guilty plea, direct appeal, writ of habeas corpus, or any other writ, motion or proceeding cognizable in the courts of this state. It is, however, the purpose of these rules to insure that as many issues as possible which heretofore could be raised by writ of habeas corpus or other posttrial procedure were timely raised before or during trial.
 - b. The procedures governing the writ of habeas corpus may be employed by any defendant to assert his rights and seek remedies if the procedures established by these rules are inadequate or ineffective in any constitutional sense.
3. It is not the intention of these rules to permit any issues to be raised or presented in the Superior Court

or the Supreme Court that previously have been waived, procedurally defaulted, or abandoned pursuant to the laws of this state or of the United States.

4. Within forty-five (45) days from the jury's verdict in the sentencing phase of the proceedings, the court reporter shall file with the Superior Court a complete transcript of all phases of the case unless the reporter has obtained an extension of time in writing from the judge who imposed the death sentence. No extension of time for filing the transcript shall exceed fifteen (15) days. When the court reporter files the complete transcript, he or she shall notify the trial judge and defense counsel. For purposes of this rule, the term "complete transcript" shall include a complete transcription of: all pre-trial hearings; the selection of the jurors, including challenges for cause; the voir dire examination and the striking; the opening statements and closing arguments of counsel; the examination of the witnesses; all documentary evidence, including photographs; all oral motions (whether pre-trial, during trial or after trial) and all hearings on oral and written motions; all oral objections and all hearings on oral and written objections; all conferences and hearings of every description and for every purpose conducted between court and counsel, including all bench and chamber conferences; all oral stipulations of counsel; the charges of the court to the jury during the guilt-innocence and sentencing phases of the proceedings; the publication of the verdict and the polling of the jury; the pronouncement of sentence; and all oral comments, instructions, directions, admonitions, rulings and orders of the court in the case from the first proceeding through conclusion of the trial.
5.
 - a. The hearing on the motion for new trial shall be taken down and transcribed by the reporter. Within twenty (20) days of the hearing by the trial court on the motion for new trial, the court reporter shall file with the trial court a complete transcript of the proceedings on motion for new trial unless the reporter has obtained an extension of time in writing from the Chief Justice of the Supreme Court. No extension of time for filing the transcript shall exceed fifteen (15) days.
 - b. Additional evidence may be heard under the rules applicable to extraordinary motions for new trial or otherwise as necessary to perfect the record and to rule upon the motion for new trial.
 - c. The defendant shall be present during the entire hearing on the motion for new trial unless he knowingly, voluntarily, and intelligently has waived this right in writing made a part of the record or upon the transcript of proceedings.
6. The hearing on the motion for new trial shall not be limited to the grounds of motion asserted by the defendant.
7. Every defendant shall have the right to be represented by appointed or retained counsel in all matters and at all times during the pendency of a motion for new trial.
8. Within thirty (30) days from entry of an order denying a motion for new trial, the Superior Court shall transmit to the Supreme Court the entire record, the trial judge's report required by O.C.G.A. ' 17-10-35 (a), and the entire transcript of proceedings of the guilt-innocence, sentencing and motion for new trial phases of the case, and all proceedings conducted under these rules as well as any hearings conducted pursuant to law. The defendant may, if he wishes, file a notice of appeal but the case shall be transmitted to the Supreme Court by the Superior Court whether or not a notice of appeal shall have been filed. Except as provided in these rules, the appeal shall be presented, heard and determined in accordance with the rules of the Supreme Court and the Appellate Practice Act.

B. In the Supreme Court

Review proceedings in the Supreme Court shall be conducted in accordance with the following rules:

1. At any time after the case is docketed in the Supreme Court, the Superior Court may be directed by the Supreme Court to conduct further hearings, or to hold additional conferences for specified purposes, or to make additional findings of facts or conclusions of law in respect to issues raised by the parties on

appeal or perceived by the Supreme Court although not asserted by the defendant or the state. Any such matter may be referred to the Superior Court for disposition according to a timetable established by the order of the Supreme Court. The Supreme Court shall retain jurisdiction of the entire appeal, unless otherwise specified by order, notwithstanding any matter being referred to the Superior Court, and may take such actions in respect thereto as are necessary or proper pending a decision by the Superior Court on the matter or matters referred to the Superior Court.

2. In all cases the Supreme Court shall determine whether the verdicts are supported by the evidence according to law. The Supreme Court shall review each of the assertions of error timely raised by the defendant during the proceedings in the trial court regardless of whether or not an assertion of error was presented to the trial court by motion for new trial, and regardless of whether error is enumerated in the Supreme Court. However, except in cases of plain error, assertions of error not raised on appeal shall be waived. The Supreme Court may direct defense counsel and the state to brief and argue any or all additional grounds.

**Rules of the Court of Appeals
(September 17, 1998)
V. RECORDS AND TRANSCRIPTS**

Rule 17. Duty of Trial Court Clerks.

The clerk of the trial court shall certify and transmit to the Clerk of this Court the original transcript and copies of all records as required within the time prescribed by statute. Transmittal shall be by the clerk or deputy personally or by first class United States mail or express mail, charges prepaid. Transmittal by a party or attorney is prohibited.

Rule 18. Preparation and Arrangement of Records and Transcripts.

- (a) Records and transcripts, to include depositions, shall be printed on one side of white paper not less than letter size of good quality with ample spacing (at least double spaced) and margins so that they may be easily read. The margin at the top shall be of sufficient space so that the transcript may be read when folded over at the top. Type size shall not be smaller than Courier 10 cpi, 12 point (or equivalent).
- (b) Any records or transcripts delivered to this Court from the trial court, and sealed by the trial court, with an order of the trial court attached to the record, shall remain sealed until a motion is made to unseal the record and/or the record is unsealed by this Court. Counsel for any party may move this Court for an order to unseal or seal any record in Court.

Rule 19. Transmission of Transcript.

The original transcript shall be a separate document and not attached to the record. It should show the style of the case and an index. Voluminous transcripts may be bound in separate parts. The reporter and clerk shall certify each part.

Rule 20. Objections to Records or Transcripts; Waiver

Appellee shall be deemed to have waived any failure of the appellant to comply with the provisions of the Appellate Practice Act relating to the filing of the transcript of the evidence and proceedings or transmittal of the record to this Court, unless objection thereto was made and ruled upon in the trial court prior to transmittal and such order is appealed as provided by law.

Rule 21. Physical Evidence-Original Evidence.

Any party relying on physical evidence may include as a part of the transcript or record a photograph, a videotape or an audiotape of the evidence, together with an explanation or description if deemed necessary, in lieu of transmitting the original evidence. No original evidence or exhibits shall be transmitted to the Court unless the Court directs the clerk of the trial court to transmit such original evidence or exhibits, or upon the grant of a written motion of the party or parties desiring such original evidence or exhibits to be transmitted to the Court. The motion shall be specific as to what original evidence or exhibits shall be transmitted to the Court and the reason such original evidence or exhibits are necessary for the determination of the appeal. After the remittitur has been issued from the Court to the trial court, all original evidence or exhibits shall be returned to the clerk of the trial court. In no event, unless directed by this Court, shall physical evidence be transmitted to the Court which is bulky, cumbersome, or expensive to transport, or which, by reason of its nature, is dangerous to handle, or which is contraband

Unified Appeal Outline of Proceedings

NOTE: All proceedings in the Superior Court shall be recorded and transcribed. Defendant shall be present during all proceedings in the Superior Court.

The proceedings outlined here shall be applicable only in cases in which the death penalty is sought.

I. STATEMENT OF PURPOSES

A. Purposes of the Outline of Proceedings

The *Outline of Proceedings* is a procedure to be followed before, during and after trial, having as its purposes:

1. Insuring that all legal issues which ought to be raised on behalf of the defendant have been considered by the defendant and his attorney and asserted in a timely and correct manner.
2. Minimizing the occurrence of error and correcting as promptly as possible any error that nonetheless may occur.
3. Making certain that the record and transcripts of the proceedings are complete for unified review by the sentencing court and by the Supreme Court.

B. Purposes of the Checklist

1. Appended to the *Outline of Proceedings* is a *Checklist* of legal issues which may arise in a death-penalty case. Its purpose is to remind the court, defense counsel and the prosecuting attorney of these issues and to provide a quick reference to case authority on these issues. The parties may raise any issue, whether or not it is listed on the checklist. The checklist shall be revised and updated periodically.
2. Proper use of the *Checklist* as a means of avoiding or promptly correcting error will require the court to schedule conferences (see Sections II and III) during which defense counsel and the prosecuting attorney will be given an opportunity to present, or to schedule for presentation, issues which would be waived if not asserted in the proper and timely fashion. These conferences shall be transcribed by the official court reporter.

II. PRE-TRIAL PROCEEDINGS

A. First Proceeding

At the earliest possible opportunity after indictment and before arraignment, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the first proceeding:

1. The prosecuting attorney shall state whether or not he intends to seek the death penalty. (If the prosecuting attorney does not seek the death penalty, these procedures and the checklist are not applicable. If the prosecuting attorney later abandons seeking the death penalty or the sentencing jury returns a verdict of life imprisonment these procedures and the checklist are not applicable.)
2. Defense counsel shall be identified and it shall be made a matter of record whether he is retained or appointed.

3. The Unified Appeal Procedure, as amended, shall be published in The Georgia Court and Bar Rules. Copies of this procedure shall be given to the defendant, defense counsel, and the prosecuting attorney, all of whom shall be instructed to read and adhere to these provisions. A copy also shall be given to the reporter for inclusion in the record. The reporter shall be reminded that the trial shall be completely transcribed as set forth in Rule IV (A). Counsel for the defense shall be instructed that the outline and checklist are intended to assist him or her in protecting the defendant's rights, but it remains the responsibility of defense counsel to protect those rights; the outline and checklist do not take the place of diligent counsel actively representing the defendant.
4. Defense counsel shall be reminded of defendant's right under O.C.G.A. ' 17-7-110 to demand prior to arraignment a copy of the indictment and a list of the state's witnesses. The prosecuting attorney shall be reminded that the list of witnesses, if demanded, shall be accurate and complete.
5. The court shall determine whether or not the defendant intends to challenge the arrays of the grand or traverse juries. Challenges to the composition of the boxes from which the grand or traverse jury was drawn, and challenges to the manner in which the grand or traverse jury was drawn, shall be presented and heard at the earliest possible time consistent with the court's calendar and with the right of the defendant to seek a continuance. If a challenge is presented, the court shall hear the asserted factual and legal basis of challenge although under law the right to challenge may have been waived.
6. Whether or not a challenge is presented, the court shall nonetheless review the grand and traverse jury lists to determine whether whites, blacks, men and women over the age of eighteen (18) years are fairly represented on these lists. The court shall compare the percentages of whites, blacks, men and women over the age of eighteen (18) years in the county, according to the most recent official decennial census figures, with the percentages of whites, blacks, men and women over the age of eighteen (18) years on the grand jury list and on the traverse jury list. Significant under representation of whites, blacks, men or women over the age of eighteen (18) years on either jury list shall be corrected prior to trial. Imbalances greater than five percent (5%) shall be considered significant. This rule shall not be construed to deprive the defendant of any rights that he may have under the constitutions of the United States and the State of Georgia or under O.C.G.A. ' 15-12-40.
The court's findings shall be included in the trial judge's report, in the form specified by Rule II (C).
7. The court shall give the defendant an opportunity to state any objections he may have to defense counsel, or to the manner in which defense counsel has conducted or is conducting the defense.
8. The court shall review Section I of the checklist with defense counsel and the prosecuting attorney to determine which pre-trial issues the defendant intends to raise. Hearings shall be scheduled for any issues the defense wishes to present. The defendant shall be reminded that issues not raised may be waived if not timely presented.
9. The court shall instruct defense counsel to locate and interview all persons whose testimony might be helpful in discovering or supporting available theories (1) of defense or (2) in mitigation of punishment.
10. The court shall schedule for an appropriate time an arraignment and plea on the merits of the indictment.

B. Motion Hearing

At an appropriate time consistent with the court's calendar and with the right of the defendant to seek a continuance, the court shall conduct a motion hearing. The defendant shall be present, accompanied by his attorney. The hearing shall be recorded and transcribed. The hearing shall precede trial of the case.

The following matters shall be concluded during the motion hearing:

1. All motions previously filed shall be heard.

2. The court shall review Section I of the checklist with defense counsel and the prosecuting attorney to determine if there are possible pre-trial issues that have not been raised. The court shall determine during this conference whether defense counsel intends to allow the deadline for raising of any such issue to pass without presenting the issue for decision. If so, the court shall question defense counsel in the presence of the defendant to determine whether or not defense counsel has explained to the defendant his rights regarding that issue and whether defense counsel and the defendant have agreed not to assert the issue.
3. The court shall remind defense counsel to be prepared to present evidence during the sentencing phase as well as the guilt-innocence phase of the trial.
4. The court shall give the defendant an opportunity to state any objections he may have to defense counsel, or to the manner in which defense counsel has conducted or is conducting the defense.
5. The court reporter shall be advised that all pre-trial proceedings and hearings should be transcribed prior to trial.

C. Forms for Required Jury Certificates

The grand and traverse jury certificates required by Rule II (A) (6) shall comply with the following forms, and shall be included in the trial judge's report specified by O.C.G.A. ' 17-10-35 (a). (Note: To convert a decimal number to percentage notation, move the decimal point two places to the right. Example: .055 = 5.5%)

Grand Jury Certificate

This court has reviewed the Grand Jury List for _____ County from which the grand jury was selected that rendered the indictment in this case. This Grand Jury List was last revised in 19 _____. The percentages of whites, blacks, men, and women on this list have been compared by this court with the percentages of whites, blacks, men, and women in the total population of the county aged eighteen (18) and over, according to the 19 ____ United States Official Decennial Census. This court certifies that the following information is correct:

- | | |
|--|--------------|
| (1) Total county population is | (1) |
| (2) Total county population aged 18 and over is | (2) |
| (3) Total number of males in county, aged 18 and over is..... | (3) |
| (4) Total number of females in county, aged 18 and over is..... | (4) |
| (5) Total number of blacks in county, aged 18 and over is..... | (5) |
| (6) Total number of whites in county, aged 18 and over is..... | (6) |
| (7) Number of persons on grand jury list is..... | (7) |
| (8) Number of males on grand jury list is..... | (8) |
| (9) Number of females on grand jury list is..... | (9) |
| (10) Number of blacks on grand jury list is..... | (10) |
| (11) Number of whites on grand jury list is..... | (11) |
| (12) Male percentage of 18 and over population of county (divide answer 3 by answer 2) is..... | (12) _____ % |
| (13) Female percentage of 18 and over population of county (divide answer 4 by answer 2) is | (13) _____ % |
| (14) Black percentage of 18 and over population of county (divide answer 5 by answer 2) is | (14) _____ % |
| (15) White percentage of 18 and over population of county (divide answer 6 by answer 2) is | (15) _____ % |
| (16) Male percentage of grand jury list (divide answer 8 by answer 7) is | (16) _____ % |
| (17) Female percentage of grand jury list (divide answer 9 by answer 7) is | (17) _____ % |
| (18) Black percentage of grand jury list (divide answer 10 by answer 7) is | (18) _____ % |
| (19) White percentage of grand jury list (divide answer 11 by answer 7) is | (19) _____ % |
| (20) Grand jury list disparity regarding males (compare answers 16 and 12; subtract smaller from larger) is..... | (20) _____ % |
| (21) Grand jury list disparity regarding females (compare answers 17 and 13; subtract smaller from larger) is..... | (21) _____ % |

- (22) Grand jury list disparity regarding blacks (compare answers 18 and 14; subtract smaller from larger) is..... (22) %
- (23) Grand jury list disparity regarding whites (compare answers 19 and 15; subtract smaller from larger) is..... (23) %

This court certifies that answers (20) through (23), inclusive, are each less than 5%.

Traverse Jury Certificate

This court has reviewed the Traverse Jury List for _____ County from which the defendant's traverse jury panel will be selected. This Traverse Jury List was last revised in 19___. The percentages of whites, blacks, men, and women on this list have been compared by this court with the percentages of whites, blacks, men, and women in the total population of the county aged 18 and over, according to the 19 ___ United States Official Decennial Census. This court certifies that the following information is correct:

- (1) Total county population is(1)
- (2) Total county population aged 18 and over is (2)
- (3) Total number of males in county, aged 18 and over is..... (3)
- (4) Total number of females in county, aged 18 and over is..... (4)
- (5) Total number of blacks in county, aged 18 and over is..... (5)
- (6) Total number of whites in county, aged 18 and over is..... (6)
- (7) Number of persons on traverse jury list is (7)
- (8) Number of males on traverse jury list is (8)
- (9) Number of females on traverse jury list is (9)
- (10) Number of blacks on traverse jury list is (10)
- (11) Number of whites on traverse jury list is (11)
- (12) Male percentage of 18 and over population of county (divide answer 3 by answer 2) is..... (12) %
- (13) Female percentage of 18 and over population of county (divide answer 4 by answer 2) is (13) %
- (14) Black percentage of 18 and over population of county (divide answer 5 by answer 2) is (14) %
- (15) White percentage of 18 and over population of county (divide answer 6 by answer 2) is (15) %
- (16) Male percentage of traverse jury list (divide answer 8 by answer 7) is (16) %
- (17) Female percentage of traverse jury list (divide answer 9 by answer 7) is (17) %
- (18) Black percentage of traverse jury list (divide answer 10 by answer 7) is (18) %
- (19) White percentage of traverse jury list (divide answer 11 by answer 7) is..... (19) %
- (20) Traverse jury list disparity regarding males (compare answers 16 and 12; subtract smaller from larger) is..... (20) %
- (21) Traverse jury list disparity regarding females (compare answers 17 and 13; subtract smaller from larger) is..... (21) %
- (22) Traverse jury list disparity regarding blacks (compare answers 18 and 14; subtract smaller from larger) is..... (22) %
- (23) Traverse jury list disparity regarding whites (compare answers 19 and 15; subtract smaller from larger) is..... (23) %

This court certifies that answers (20) through (23), inclusive, are each less than 5%.

III. TRIAL PROCEEDINGS

A. Guilt-Innocence Phase

1. *Before commencement of trial*

Immediately before trial, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference:

- a. All pending motions shall be heard.
- b. The court shall determine whether there are any last-minute motions the defense wishes to present and give the prosecuting attorney and defense counsel an opportunity to present any stipulations to which they have agreed.
- c. The court shall ascertain whether counsel for both sides have reviewed Part II (A) through (H) of the checklist and are prepared to raise any possible trial issues in a timely manner.
- d. The court shall give the defendant an opportunity to state any objections he may have to defense counsel, or to the manner in which defense counsel has conducted or is conducting the defense.

2. *After close of the evidence*

After close of the evidence, but before closing arguments, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference after close of the evidence:

- a. Written requests to charge shall be presented to the court for rulings.
- b. The court shall make a final ruling on any issues as to which a tentative ruling or no ruling was made during presentation of the evidence.
- c. The court shall hear any timely and otherwise proper motions or objections the defense wishes to present. Defense counsel shall be given an opportunity to perfect the record by making a tender of proof as to any evidence that was excluded by the court.
- d. The court shall ascertain whether the parties have reviewed Part II (I) through (Q) of the checklist and are prepared to raise these issues in a timely manner. Defense counsel shall be advised that objections to the state's closing argument will be waived if not raised as soon as grounds for such objection arise, unless explicit permission is granted to reserve objection until the conclusion of argument.
- e. The court shall give the defendant an opportunity to state any objections he may have to defense counsel, or to the manner in which defense counsel has conducted or is conducting the defense.

3. *After charge of the court*

After charge of the court, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference after charge of the court:

- a. Any issue as to arguments of counsel or as to the charge of the court shall be presented and decided.
- b. The court shall hear any timely and otherwise proper motions or objections the defense wishes to present.
- c. The court shall give the defendant an opportunity to state any objections he may have to defense counsel, or to the manner in which defense counsel has conducted or is conducting the defense.

B. Sentencing Phase

1. Before commencement of sentencing phase

Immediately before the commencement of the sentencing phase of the trial, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be taken up during the conference:

- a. All pending motions shall be heard.
- b. The court shall review Part III of the checklist with defense counsel and the prosecuting attorney. Defense counsel shall be given the opportunity to raise in limine any objections to the state's anticipated evidence in aggravation. However, failure to object in limine shall not amount to a waiver of otherwise timely objections to the introduction of evidence. The court shall give the prosecuting attorney and defense counsel an opportunity to present any stipulations to which they have agreed.
- c. In the event of a retrial as to sentence, the court shall also review Part VI of the checklist with defense counsel and the prosecuting attorney.

2. After the close of the evidence

After the close of the evidence, but before closing arguments, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference:

- a. Written requests to charge shall be presented to the court for rulings.
- b. The court shall make a final ruling on any issues raised during the sentencing phase of the trial as to which a tentative ruling or no ruling was made during the presentation of the evidence.
- c. The court shall again review Part III of the checklist with defense counsel and the prosecuting attorney and shall hear any timely and otherwise proper motions or objections the defense wishes to present. Defense counsel shall be given an opportunity to perfect the record by making a tender of proof as to any evidence that was excluded by the court. If the court determines that a mistake was made in the exclusion of potentially mitigating evidence, the court shall reopen the evidence and allow its presentation to the jury.
- d. Defense counsel shall be advised that objections to the state's sentencing phase closing argument will be waived if not raised as soon as grounds for such objection arise, unless explicit permission is granted to reserve objection until the conclusion of argument.
- e. The court shall give the defendant an opportunity to state any objections he may have to defense counsel, or to the manner in which defense counsel has conducted or is conducting the defense.

3. After charge of the court

After charge of the court at the sentencing phase of the trial, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and

transcribed.

The following matters shall be concluded during the conference after the charge of the court:

- a. The court shall review Part III (C) and (D) with the prosecuting attorney and defense counsel. Any issue as to arguments of counsel or as to the charge of the court shall be presented and decided. Defense counsel shall be advised that any such issue not timely raised shall be waived. Reservations of objection to the sentencing-phase charge will not be permitted.
- b. The court shall also review Part III (E) of the checklist with the prosecuting attorney and defense counsel. Defense counsel shall be advised that objections to the form of the verdict must be raised when the verdict is returned. The court shall note that a poll of the jurors is required.
- c. The court shall give the defendant an opportunity to state any objections he may have to defense counsel or to the manner in which defense counsel has conducted or is conducting the defense.

IV. REVIEW PROCEEDINGS

A. In the Superior Court

Review proceedings in the Superior Court shall be conducted in accordance with the following rules:

1.
 - a. The filing of a motion for new trial is not a procedural prerequisite for review by the Superior Court and Supreme Court. A defendant may but is not required to file a motion for new trial. A defendant may elect to proceed either by motion for new trial, or direct appeal, or may allow the case to be presented directly to the Supreme Court for review. The case nevertheless shall be considered by the Supreme Court.
 - b. The sole function of a motion for new trial shall be to bring to the attention of the Superior Court after imposition of sentence such grounds as defense counsel may wish the trial court to decide.
 - c. It shall be the duty of the Superior Court to transmit the entire record of the case to the Supreme Court for review regardless of whether or not a motion for new trial or direct appeal has been filed unless the Superior Court sets aside the conviction or sentence. The Superior Court shall transmit the case to the Supreme Court for review within ten (10) days of the filing by the official reporter of the transcript of trial if no review proceedings have been commenced in the Superior Court in accordance with these rules.
2.
 - a. These rules shall not be construed so as to limit or restrict the grounds of review available through motion for new trial, motion to withdraw a guilty plea, direct appeal, writ of habeas corpus, or any other writ, motion or proceeding cognizable in the courts of this state. It is, however, the purpose of these rules to insure that as many issues as possible which heretofore could be raised by writ of habeas corpus or other posttrial procedure were timely raised before or during trial.
 - b. The procedures governing the writ of habeas corpus may be employed by any defendant to assert his rights and seek remedies if the procedures established by these rules are inadequate or ineffective in any constitutional sense.
3. It is not the intention of these rules to permit any issues to be raised or presented in the Superior Court or the Supreme Court that previously have been waived, procedurally defaulted, or abandoned pursuant to the laws of this state or of the United States

4. Within forty-five (45) days from the jury's verdict in the sentencing phase of the proceedings, the court reporter shall file with the Superior Court a complete transcript of all phases of the case unless the reporter has obtained an extension of time in writing from the judge who imposed the death sentence. No extension of time for filing the transcript shall exceed fifteen (15) days. When the court reporter files the complete transcript, he or she shall notify the trial judge and defense counsel. For purposes of this rule, the term "complete transcript" shall include a complete transcription of: all pre-trial hearings; the selection of the jurors, including challenges for cause; the voir dire examination and the striking; the opening statements and closing arguments of counsel; the examination of the witnesses; all documentary evidence, including photographs; all oral motions (whether pre-trial, during trial or after trial) and all hearings on oral and written motions; all oral objections and all hearings on oral and written objections; all conferences and hearings of every description and for every purpose conducted between court and counsel, including all bench and chamber conferences; all oral stipulations of counsel; the charges of the court to the jury during the guilt-innocence and sentencing phases of the proceedings; the publication of the verdict and the polling of the jury; the pronouncement of sentence; and all oral comments, instructions, directions, admonitions, rulings and orders of the court in the case from the first proceeding through conclusion of the trial.
5.
 - a. The hearing on the motion for new trial shall be taken down and transcribed by the reporter. Within twenty (20) days of the hearing by the trial court on the motion for new trial, the court reporter shall file with the trial court a complete transcript of the proceedings on motion for new trial unless the reporter has obtained an extension of time in writing from the Chief Justice of the Supreme Court. No extension of time for filing the transcript shall exceed fifteen (15) days.
 - b. Additional evidence may be heard under the rules applicable to extraordinary motions for new trial or otherwise as necessary to perfect the record and to rule upon the motion for new trial.
 - c. The defendant shall be present during the entire hearing on the motion for new trial unless he knowingly, voluntarily, and intelligently has waived this right in writing made a part of the record or upon the transcript of proceedings.
6. The hearing on the motion for new trial shall not be limited to the grounds of motion asserted by the defendant.
7. Every defendant shall have the right to be represented by appointed or retained counsel in all matters and at all times during the pendency of a motion for new trial.
8. Within thirty (30) days from entry of an order denying a motion for new trial, the Superior Court shall transmit to the Supreme Court the entire record, the trial judge's report required by O.C.G.A. ' 17-10-35 (a), and the entire transcript of proceedings of the guilt-innocence, sentencing and motion for new trial phases of the case, and all proceedings conducted under these rules as well as any hearings conducted pursuant to law. The defendant may, if he wishes, file a notice of appeal but the case shall be transmitted to the Supreme Court by the Superior Court whether or not a notice of appeal shall have been filed. Except as provided in these rules, the appeal shall be presented, heard and determined in accordance with the rules of the Supreme Court and the Appellate Practice Act.

B. In the Supreme Court

Review proceedings in the Supreme Court shall be conducted in accordance with the following rules:

1. At any time after the case is docketed in the Supreme Court, the Superior Court may be directed by the Supreme Court to conduct further hearings, or to hold additional conferences for specified purposes, or to make additional findings of facts or conclusions of law in respect to issues raised by the parties on appeal or perceived by the Supreme Court although not asserted by the defendant or the state. Any such matter may be referred to the Superior Court for disposition according to a timetable established by the order of the Supreme Court. The Supreme Court shall retain jurisdiction of the entire appeal, unless otherwise specified by order, notwithstanding any matter being referred to the Superior Court, and may take such actions in respect thereto as are necessary or proper pending a decision by the Superior Court on the matter or matters referred to the Superior Court.

2. In all cases the Supreme Court shall determine whether the verdicts are supported by the evidence according to law. The Supreme Court shall review each of the assertions of error timely raised by the defendant during the proceedings in the trial court regardless of whether or not an assertion of error was presented to the trial court by motion for new trial, and regardless of whether error is enumerated in the Supreme Court. However, except in cases of plain error, assertions of error not raised on appeal shall be waived. The Supreme Court may direct defense counsel and the state to brief and argue any or all additional grounds.

**Rules of the Court of Appeals
(September 17, 1998)
V. RECORDS AND TRANSCRIPTS**

Rule 17. Duty of Trial Court Clerks.

The clerk of the trial court shall certify and transmit to the Clerk of this Court the original transcript and copies of all records as required within the time prescribed by statute. Transmittal shall be by the clerk or deputy personally or by first class United States mail or express mail, charges prepaid. Transmittal by a party or attorney is prohibited.

Rule 18. Preparation and Arrangement of Records and Transcripts.

(a) Records and transcripts, to include depositions, shall be printed on one side of white paper not less than letter size of good quality with ample spacing (at least double spaced) and margins so that they may be easily read. The margin at the top shall be of sufficient space so that the transcript may be read when folded over at the top. Type size shall not be smaller than Courier 10 cpi, 12 point (or equivalent).

(b) The record with pages numbered at the bottom and a manuscript cover shall be arranged as follows:

- (1) Index;
- (2) Notice of Appeal;
- (3) Other items in chronological order; and
- (4) Clerk's certificate.

Voluminous records may be bound in separate parts but each part shall be certified separately.

Rule 19. Transmission of Transcript.

The original transcript shall be a separate document and not attached to the record. It should show the style of the case and an index. Voluminous transcripts may be bound in separate parts. The reporter and clerk shall certify each part.

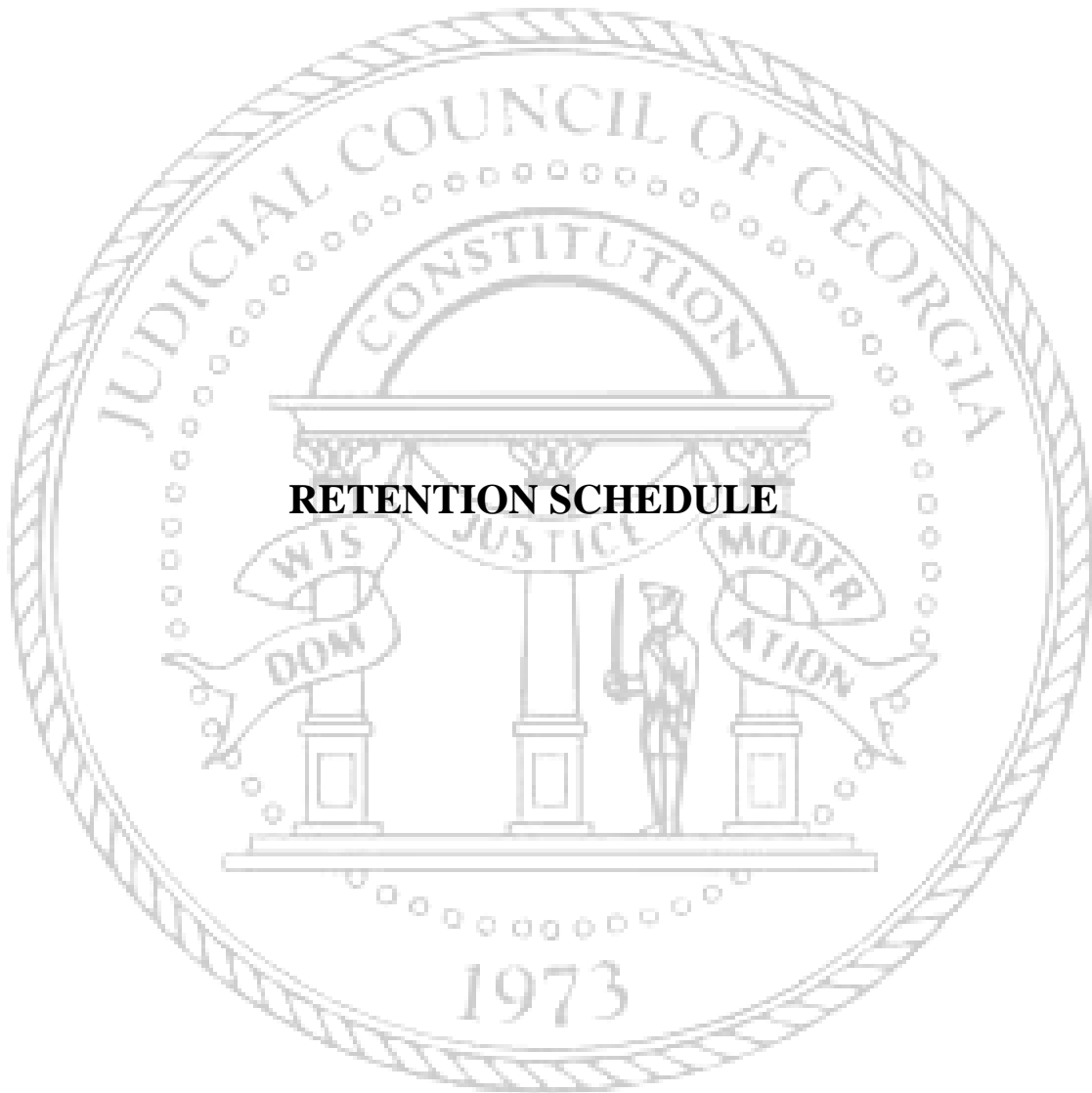
Rule 20. Objections to Records or Transcripts; Waiver

Appellee shall be deemed to have waived any failure of the appellant to comply with the provisions of the Appellate Practice Act relating to the filing of the transcript of the evidence and proceedings or transmittal of the record to this Court, unless objection thereto was made and ruled upon in the trial court prior to transmittal and such order is appealed as provided by law.

Rule 21. Physical Evidence.

Any party relying on physical evidence may include as a part of the transcript or record a photograph, a videotape or an audiotape of the evidence, together with an explanation or description if deemed necessary, in lieu of transmitting the original evidence. No original evidence or exhibits shall be transmitted to the Court unless the Court directs the clerk of the trial court to transmit such original evidence or exhibits, or upon the grant of a written motion of the party or parties desiring such original evidence or exhibits to be transmitted to the Court. The motion shall be specific as to what original evidence or exhibits shall be transmitted to the Court and the reason such original evidence or exhibits are necessary for the determination of the appeal. After the remittitur has been issued from the Court to the trial court, all original evidence or exhibits shall be returned to the clerk of the trial court. In no event, unless directed by this Court, shall physical evidence be transmitted to the Court which is bulky, cumbersome, or expensive to transport, or which, by reason of its nature, is dangerous to handle.

**Judicial Council of Georgia
Board of Court Reporting**



RETENTION SCHEDULE

Common Records Retention Schedules Approved For Use

SUPERIOR COURT SCHEDULES

Schedule Number

Certified Felony Transcripts

Capital Felonies: Documents relating to certified verbatim records or narrative recollections of judicial proceedings in felony cases. Included are certified records of court reporter's transcripts and certified records in narrative form of recollections of the motions, colloquies, objections, ruling, evidence (documentary or otherwise), charge of the court, and all other proceedings in any judicial action based on a charge of a felony offense punished by death or life imprisonment.

Non-Capital Felonies: Documents relating to certified verbatim records or narrative recollections of judicial proceedings in felony cases. Included are certified records in narrative form of recollections of the motions, colloquies, objections, rulings, evidence (documentary or otherwise), charge of the court, and all other proceedings in any judicial action based on a charge of a felony offense punished by a term of imprisonment less than life.

Certified Felony Transcripts Filed in Case Files

Capital and Non-Capital Felonies.

Criminal Evidence Books

Capital and Non-Capital Felonies: This includes well-bound books used to contain court reporter's transcripts and recollection transcripts of judicial proceedings involving charge of a felony offense. These books are not indexed or indexed alphabetically by surname of defendant or numerically by case number.

Court Reporter's Note Files

Capital and Non-Capital Felony Offenses: Documents of recordings, notes or other records relating to generation of certified transcripts. Included are: recordings, notes, and other records which have not been reduced to typed or printed documents.

RETENTION

Certified Felony Transcripts

SCO0101 *Capital Offenses:* Cut off file at end of each calendar year; hold for seventy (70) years; then destroy.

SCO0102 *Non-Capital Felonies:* Cut off file at end of calendar year; hold for twenty (20) years; then destroy.

Certified Felony Transcripts Filed in Case Files

SCO0103 *Capital and Non-Capital Felonies:* Dispose of in accordance with retention schedules for felony case files.

Criminal Evidence Books

SCO0104 a) *General:* Hold twenty (20) years after date of most recent transcript entered; remove capital felony transcripts; then destroy. Hold capital felony transcripts an additional fifty (50) years; then destroy.
b) *Duplicate Records:* If books duplicate felony transcripts on file, check for and remove non-duplicated transcripts; then destroy books. Hold non-duplicated transcripts for recommended retention periods; then destroy.

Court Reporter's Note Files:

SCO0105 Cut off file at end of each calendar year; hold two (2) years; then destroy.

ADDITIONAL INFORMATION:

Schedule

Number

1. This schedule applies to all superior, state, or other courts whose decisions in proceedings involving a charge of a felony offense are subject to review by the Supreme Court or Court of Appeals.

2. This schedule applies to transcripts and court reporter's notes of felony cases in which there are subordinate misdemeanor charges of felony cases in which all charges are reduced to misdemeanors during the proceedings.

3. Felony offenses which can result in capital punishment (i.e. death or life imprisonment) in Georgia include: murder, kidnapping, armed robbery, rape, treason, sodomy, aggravated sodomy, perjury and aircraft hijacking. Only murder is treated consistently as a capital offense. In cases involving the other offenses, aggravating circumstances must be found in order to impose capital punishment; O.C.G.A. ' 17-10-30. *Unless the death penalty or life imprisonment is imposed as a sentence, transcripts should be treated as resulting from non-capital offenses, retained for twenty (20) years, and then destroyed.*

4. This schedule does not apply to any uncertified transcripts of felony cases which are generated strictly for private use.

5. A court may move its felony transcripts to an off-site storage room (i.e. a storage room other than the clerk of the court's office) if it does so in compliance with all statutes and the orders of the Supreme Court.

Approved June 30, 1981

Superior, State and Probate Court Misdemeanor Transcripts

Documents relating to certified verbatim records or narrative recollections of judicial proceedings in misdemeanor cases. Included are certified records of court reporter's transcriptions and certified records in narrative form of recollections of the motions, colloquies, objections, rulings, evidence (documentary or otherwise), charge of the court and all proceedings in any judicial action based on a charge of a misdemeanor offense.

RETENTION

Certified Misdemeanor Transcripts:

SCO0301 Cut off file at end of calendar year; hold 3 years; destroy. Exception: Transcripts of cases resulting in sentences of 5 or more years. Hold for duration of sentence imposed; then destroy.

Certified Misdemeanor Transcripts Filed in Case Files:

SCO0302 Use retention schedules for case files.

Court Reporter's Note Files:

SCO0303 Cut off file at end of calendar year; hold 1 year; destroy.

Approved June 30, 1981

MAGISTRATE COURT SCHEDULES

84-39

MAGISTRATE COURT TRANSCRIPTS, RECORDINGS OR NOTES OF PROCEEDINGS AS COURT OF INQUIRY

Documents relating to certified transcripts, recordings or notes of proceedings as a court of inquiry. Included are: 1) certified verbatim records or narrative recollections of committal hearings in criminal cases, and 2) recordings or notes made by electronic, mechanical or manual means of committal hearings in criminal cases.

RETENTION

Cut off file series at the end of each calendar year. In cases in which the defendant is bound over to another court for trial, transfer the transcript, recording, or notes with the warrant to the trial court. Otherwise, hold transcript, recording or notes for 2 years; then destroy.

Approved June 25, 1984

**Schedule
Number**

87-65

MAGISTRATE COURT CIVIL CASE FILES

Documents relating to trying of civil cases in Magistrate Courts. Included are all pleadings, exhibits, transcripts, judgments, and related papers appropriated for inclusion in case files as required by statute or by the Uniform Rules for the Magistrate Courts. (Some courts maintain indexes to their case files and dockets. The retention of these indexes is covered in the schedule for Magistrate Court Civil Dockets.)

RETENTION

Series July 1, 1983 to present. Hold in active file until case is closed. Then place in inactive file. Then cut off the active file at end of calendar year; hold ten years and then destroy. Transfer of inactive file one year after cut-off to a county records center or local holding area is authorized. If a judgment is renewed or enforcement is actively pursued in accordance with O.C.G.A. '9-12-60 within the ten-year period, transfer case back to current files area and treat as a newly closed case.

Approved June 25, 1987

JUVENILE COURT SCHEDULES

83-821

JUVENILE COURT REPORTERS' NOTES AND FILES

Documents relating to verbatim recording of oral proceedings before the court. Included are stenographic machine tapes and/or notes. May also include tape recordings, dictagraph belts, paper strips, steno pads, and other recording media.

RETENTION

Series 1950 to present: cut off file at end of calendar year; hold in current file area 2 months; transfer to local holding area; hold 3 years; destroy.

Approved May 26, 1983

83-822

**JUVENILE COURT NON-APPEALED TRANSCRIPTS OF COURT
PROCEEDING FILES**

Documents relating to preliminary, adjudicatory and dispositional hearings conducted by the juvenile court which were not appealed. Included are verbatim transcriptions of same proceedings before the juvenile court.

RETENTION

Series 1955 to present: cut off file immediately; hold in current file area 2 years; destroy.

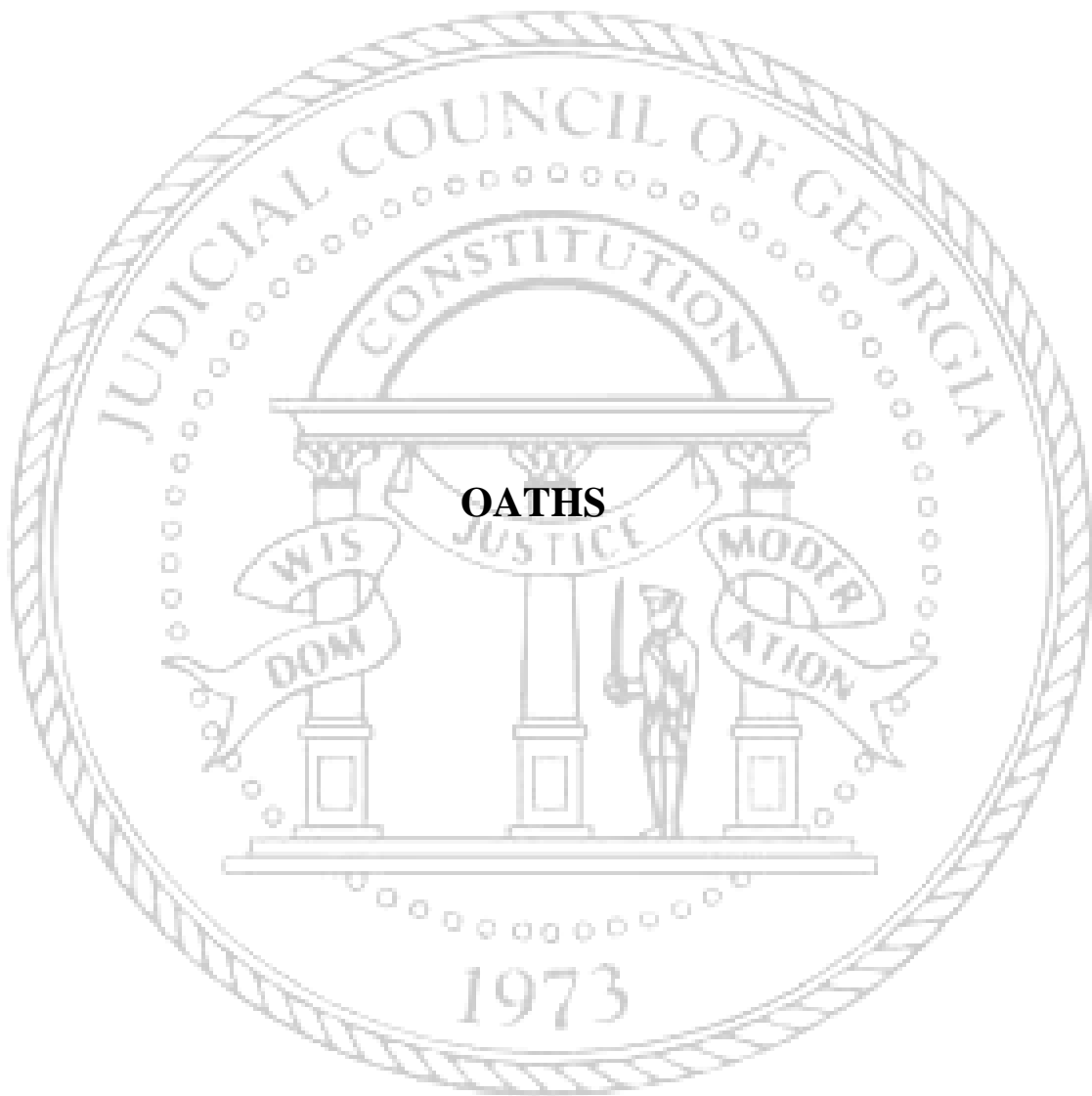
Approved May 26, 1983

83-823

**INDIVIDUAL JUVENILE COURT CASE FILES EXCLUDING TERMINATION OF
PARENTAL RIGHTS**

Documents relating to complaints, petitions, dispositions, evaluations, treatment, and a rehabilitation of individuals referred to juvenile court including sealed records. Included are complaints, petitions, court orders, summons, referee recommendations, data sheets, social histories, investigative reports, supervision summaries, court copies of police reports, psychiatric and psychological evaluations, detention reports, and correspondence pertaining thereto. May include transcripts.

**Judicial Council of Georgia
Board of Court Reporting**



OATH OF OFFICIAL COURT REPORTER

STATE OF GEORGIA
SUPERIOR COURT
_____ JUDICIAL CIRCUIT.

I, _____, do solemnly swear (or affirm) that I will accurately and correctly take down, record and transcribe all proceedings, in the manner in which I am certified by the Board of Court Reporting of the Judicial Council of Georgia, when called upon to do so in the discharge of my duties as Official Court Reporter for the _____ Court(s) of _____.

I do further solemnly swear (or affirm) that I am not the holder of any public money due this state unaccounted for; and that I am otherwise qualified to hold the office of Official Court Reporter for said Court(s), according to the Constitution of the United States and Laws of Georgia, and that I will support the Constitution of the United States and of this State.

SO HELP ME GOD!

Signature of Court Reporter

Sworn to and subscribed before me, this
_____ day of _____, 20__.

Judge, _____ Court(s)

_____ Judicial Circuit.

15-12-139. Oath in criminal case.

In all criminal cases, the following oath shall be administered to the trial jury:

"You shall well and truly try the issue formed upon this bill of indictment (or accusation) between the State of Georgia and (name of accused), who is charged with (here state the crime or offense), and a true verdict give according to the evidence. So help you God." The judge or clerk of the court shall administer the oath to the jurors.

Oath of Interpreters [Sign Language & Foreign Language Interpreter]

O.C.G.A. ' 24-9-107(a) provides that prior to providing any service to a hearing impaired person, any qualified interpreter or intermediary interpreter shall subscribe to an oath that he or she will interpret all communications in an accurate manner to the best of his or her skill and knowledge.

Note: The statute provides no specific language for the oath itself. The suggested oath for foreign language interpreters may either serve as an acceptable oath or, alternatively, serve as the basis for the court to fashion an oath to satisfy the requirements of the statute.

From the Supreme Court of Georgia Uniform Rule: Interpreter=s Oath

ADo you solemnly swear or affirm that you will faithfully interpret from [state the language] into English and from English into [state the language] the proceedings before this Court in an accurate manner to the best of your skill and knowledge?@

From the Superior Court Judge Bench book Interpreter=s Oath:

ADo you solemnly swear that you will interpret accurately and impartially to the best of your ability, in the case now pending before this court, abiding by the code of professional responsibility for court interpreters?@ or

ADo you solemnly swear (or affirm) that you will accurately, truly, and impartially interpret and communicate to_____ the oath about to be administered to him(her), and the questions which may be asked him(her), and the answers that he(she) shall give to such questions and that you shall accurately repeat his(her) answers in English language to the best of your skill and judgment, relative to the case now under consideration before this court? So help you God@.

Videographer=s Oath

AI, _____, solemnly swear to accurately and in a trustworthy manner, videotape the deposition and see that the original videotape is not altered or edited in any fashion unless ordered by the Court or agreed to by counsel and I shall file the same with the Clerk of the Superior Court of _____ County, Georgia.@

17-8-52. Oath to be administered to witnesses.

The following oath shall be administered to witnesses:

"Do you solemnly swear or affirm that the evidence you shall give to the court and jury in the matter now pending before the court shall be the truth, the whole truth, and nothing but the truth? So help you God."

45-3-1. Oath required in addition to oath of office and constitutional oath.

Every public officer shall:

- (1) Take the oath of office;
- (2) Take any oath prescribed by the Constitution of Georgia;
- (3) Swear that he or she is not the holder of any unaccounted for public money due this state, or any political subdivision or authority thereof;
- (4) Swear that he or she is not the holder of any office of trust under the government of the United States, any other state, or any foreign state which he or she is by the laws of the State of Georgia prohibited from holding;
- (5) Swear that he or she is otherwise qualified to hold said office according to the Constitution and laws of Georgia;
- (6) Swear that he or she will support the Constitution of the United States and of this state; and
- (7) If elected by any circuit or district, swear that he or she has been a resident thereof for the time required by the Constitution and laws of this state.

Official Oath of the Board of Court Reporting of the Judicial Council of Georgia

AI, _____, do solemnly swear (or affirm) that I will truly and faithfully perform the duties of a member of the Board of Court Reporting of the Judicial Council of Georgia, to the best of my ability@.

AI do further solemnly swear (or affirm) that I am not the holder of any public money due this State unaccounted for; and that I am otherwise qualified to hold said office, according to the Constitution of the United States and Laws of Georgia, and that I will support the Constitutions of the United States and of this State@

Oath Used for Installation of GCCRA Officers

ADo you solemnly swear (or affirm) that you will faithfully discharge the duties of the office to which you have been elected as set out in the bylaws of the Georgia Certified Court Reporters Association, according to the best of your ability and understanding, so help you God?

**Judicial Council of Georgia
Board of Court Reporting**



**Board of Court Reporting
Of the Judicial Council of Georgia**

BYLAWS

ARTICLE I: Name and Purpose

Section 1. This Board shall be known as the Board of Court Reporting of the Judicial Council of Georgia.

Section 2. The purpose of this Board shall be to act in aid of the judiciary so as to ensure minimum proficiency in the practice of court reporting in this state and to specifically:

- (a) establish rules and regulations to effectively carry out the provisions of the Georgia Court Reporting Act (O.C.G.A. ' 15-14-20 through ' 15-14-35);
- (b) develop and conduct examinations necessary to measure minimum proficiency among those individuals desiring to practice court reporting in Georgia;
- (c) provide a mechanism for continuing education of court reporters certified under the Court Reporting Act;
- (d) to make recommendations to the Judicial Council of Georgia concerning problems and needed improvements for the establishment of an equitable fee schedule for official court reporters in Georgia;
- (e) to take other actions authorized under the Georgia Court Reporting Act to ensure that the practice of court reporting in the courts of Georgia is an integral part of an effective judicial system.

ARTICLE II: Membership

Section 1. The membership of the Board of Court Reporting of the Judicial Council shall be composed of nine members; five members to be certified court reporters; two members to be representatives from the State Bar of Georgia, who are practicing attorneys in good standing; and two members from the judiciary, one to be a superior court judge and one to be a state court judge. All members shall be appointed by the Judicial Council of Georgia for a term of two years, except that a person appointed by the Judicial Council to fill a vacancy on the Board of a member who resigns or is unable to complete his or her term, shall serve for the remainder of the term of the member originally appointed. Members shall not be eligible for more than two successive terms; however, completing a vacant term shall not preclude a person's appointment for two successive terms on the Board. The superior court judge, one practicing attorney, and two court reporter members shall be appointed in even numbered years, and the state court judge, one practicing attorney, and three court reporter members shall be appointed in odd numbered years. The Judicial Council shall fill vacancies on the Board at any time.

ARTICLE III: Officers and their Duties

Section 1. The officers of the Board shall be a chair, vice-chair and secretary.

Section 2. Chair. The Chair shall call the meetings, notify the members as required, preside at all meetings, name committees, represent the Board with respect to releases to the media and in dealing with private or governmental agencies, and perform such other duties and acts as usually pertain to the office.

Section 3. Vice-Chair. The Vice-Chair shall preside at meetings of the Board in absence of the Chair. Upon the death, resignation, or during the disability of the Chair, the Vice-Chair shall perform the duties of the Chair for the remainder of the Chair's term or until a replacement shall have been elected or until the disability ends, whichever first occurs.

Section 4. Secretary. The Secretary of the Board shall be the Director of the Administrative Office of the Courts and shall be the custodian of all papers, documents, and other property of the Board, including

money. The Secretary shall keep a true record of all proceedings of all meetings of the Board; shall keep an accurate record of all monies appropriated to, collected and expended for the use of the Board; and shall assist in the preparation of all notices, correspondence, policy statements, and opinions of the Board as directed. The Secretary shall serve in an *ex officio* capacity and shall not have a vote in Board activities. In addition, the Secretary shall perform all other duties as may be assigned, either by the Board or by the Judicial Council.

ARTICLE IV: Nomination and Election of Officers

Section 1. The Board shall, at the first meeting after July 1 of each year, elect from its members a Chair and Vice-Chair who shall serve until the first meeting following July 1 of the succeeding year or until new officers are elected. The Secretary shall be the Director of the Administrative Office of the Courts.

Section 2. The Secretary shall establish the dates for the first meeting of any new Board appointed by the Judicial Council and said first meeting shall occur within 30 days after the effective date of appointment of the new members.

ARTICLE V: Meetings

Section 1. Meetings of the Board shall be at such time and place as the Chair may determine or upon written request of three members. The Board shall, in any event, meet no less than four times per year. Notices of all meetings shall be given by the Chair at least seven days in advance thereof. Notice shall include the time and place of said meeting.

Section 2. A majority of the voting members then on the Board shall constitute a quorum.

Section 3. All binding action of the Board shall be by a majority vote of the members present and voting. The Chair shall be a voting member but shall exercise a vote only in the case of a tie vote on an issue.

ARTICLE VI: Committees

Section 1. There shall be an Executive Committee composed of the Chair, Vice-Chair and one other board member selected by the full Board. The Executive Committee shall have general supervisory charge of the affairs of the Board in the interim between meetings subject to general policy guidelines which may be established by the full Board.

Section 2. It shall be the privilege of the chair to name such other committees as shall from time to time be required. Members of such committees shall serve during the term of, and at the pleasure of, the Chair.

ARTICLE VII: Miscellaneous Provisions

Section 1. Agendas for meetings shall be the responsibility of the Chair and shall be mailed to all members at least seven days in advance of scheduled meetings. Members who desire to have an item placed on the meeting agenda should communicate this to the Chair prior to the advance date for mailing to other members. Failure to have an item included on the agenda, however, does not exclude it from consideration at the scheduled meeting.

Section 2. These bylaws may be amended at any meeting of the Board by a majority vote of the full membership, subject to ratification by the Judicial Council. Provided however, that notice of said changes to the bylaws must have been mailed to all Board members at least seven days in advance of the meeting date.

Section 3. Members of the Board shall maintain the policies and direction of the Board as a whole in their contacts with the media, other state agencies and the general public.

BYLAWS OF THE COURT REPORTERS' TRAINING COUNCIL

A. Name and Purpose

1. This Council shall be known as the Court Reporters' Training Council.
2. The purpose of this Council shall be to improve the quality of court reporting services in Georgia through the development of training standards, curriculum and continuing education for the court reporters in Georgia, and to specifically:
 - a) Promulgate rules and regulations to carry out this charge;
 - b) Prescribe, by rules and regulations, the minimum requirements for curricula and standards comprising the continuing education courses and for credit-worthy activity;
 - c) Identify areas of training needs by reviewing programs being attended by court reporters and suggest program refinements to training providers;
 - d) Review and investigate requests for extensions of time based on disability, hardship, or extenuating circumstances;
 - e) Evaluate course exceptions when presented for credit;
 - f) Cooperate with and secure the cooperation of every department, agency, or board of the state government or its political subdivision in furtherance of the purpose of this Council; and
 - g) Do any and all things necessary or convenient to enable it to adequately perform its duties and to exercise the power granted to it.

B. Membership

The membership of the Council shall be composed of 7 voting members provided, however, that there shall be two freelance stenomask reporters, two freelance shorthand reporters, one official stenomask reporter, one official shorthand reporter and one official certified in any method who shall be appointed by the Board of Court Reporting and the Georgia Certified Court Reporters' Association. Members are eligible to succeed themselves provided, however, they may not exceed two consecutive three-year terms. In the event of a vacancy, the appointing body shall make an appointment for the remainder of the unexpired term.

C. Officers and Their Duties

1. The officers of the Council shall be a Chair, Vice Chair and Secretary.
2. Chair. The chair shall call the meetings, notify the members as required, preside at all meetings, name committees, and perform such other duties and acts as usually pertain to the office. The Chair or a designee shall provide a written report of the previous calendar year's activities to the Board of Court Reporting by March 1 of each year. The Chair may be re-elected for one additional year, but may not serve for more than two consecutive years.
3. Vice-Chair. The Vice-Chair shall preside at meetings of the Council in the absence of the Chair. Upon the death, resignation, or during the disability of the Chair, the Vice-Chair shall perform the duties of the Chair for the remainder of the Chair's term or until a replacement shall have been elected or until the disability ends, whichever first occurs. The Vice-Chair shall serve for one year.

4. **Secretary.** The Secretary shall be the custodian of all papers, documents, and other property of the Council, including money. The Secretary shall also maintain minutes of all meetings of the Council; and assist in the preparation of all notices, correspondence, policy statements, and opinions of the Council as directed. The Secretary shall serve for one year.

D. Nomination and Election of Officers

The Council shall, at the first meeting after July 1 of each year, elect from its members a Chair, Vice-Chair, and Secretary who shall serve until the first meeting following July 1 of the succeeding year, or until new officers are elected.

E. Meetings

1. Meetings of the Council shall be at such time and place as the Chair may determine or upon written request of two members. The Council shall, in any event, meet no less than two times per year. Notices of all meetings shall be given by the Chair at least seven days in advance thereof. Notice shall include the time and place of said meeting.
2. The voting members of the Council present, not less than three, shall constitute a quorum.
3. All binding action of the Council shall be by a majority vote of the members present and voting.

F. Committees

1. There shall be an Executive Committee composed of the Chair, Vice-Chair and Secretary. The Executive Committee shall have general supervisory charge of the affairs of the Council in the interim between meetings, subject to general policy guidelines which may be established by the full Council.
2. It shall be the privilege of the Chair to name such other committees as shall from time to time be required. Members of such committees shall serve during the term of and at the pleasure of the Chair.

G. Miscellaneous Provisions

1. No salary or compensation shall be paid to any member of the Council, however, expenses incurred in performance of Council duties may be reimbursed according to the State of Georgia Travel Regulations, provided funds are available for such reimbursement.
2. These bylaws may be amended at any meeting by a majority vote of the full membership.
3. The Administrative Office of the Courts shall provide staff assistance.
4. Members of the Council shall maintain the policies and direction of the Council as a whole in their relations with the media, other state agencies and the general public for dissemination of information.

**Judicial Council of Georgia
Board of Court Reporting**



QUESTION AND ANSWER

COMMON QUESTIONS AND ANSWERS

1. The duty of the court reporter to remain in the courtroom during reported portions of a trial.

It shall be the reporter's duty to attend all courts in which the judge he or she works for is presiding. (*See*: O.C.G.A. § 15-14-1) The reporter shall affix to each transcript a signed certificate reciting that the transcript is true, complete, and correct. (*See*: O.C.G.A. § 15-14-5)

2. Procedure to ensure compensation of civil takedown fees.

In an effort to standardize procedures for the payment of the civil takedown fee allowed by the fee schedule for official court reporters, it is recommended that one of the two alternatives be followed:

a. That a stipulation be entered in the pre-trial order setting forth the terms under which the case will be reported and provided that the **attorneys** (not the parties) will be responsible for compensating the reporter; or,

b. In the alternative, that the foregoing be put in the record in the event a pre-trial order is not used. *See: Harrington v. Harrington*, 224 Ga. 305 (1968) and *Giddings v. Starks*, 240 Ga. 496 (1978).

3. What provisions can be made for the signing of the original deposition? Can lawyers and their clients be required to come to the reporter's office to read and sign the original? What if they don't come?

The Problems and Recommendations Committee of GCCRA suggests the following procedures be followed in acquiring signatures on depositions:

If the attorney does not order a copy, you may require them to come to the office to read and sign the original.

If the attorney does order a copy, send the errata sheet from the original along with the copy. The attorney then returns the errata sheet to you for filing with the original.

As a professional courtesy to doctors and other expert witnesses, where both attorneys agree, you may elect to send them the original for signing, but make an extra copy just in case.

(Approved June 1984 at the GCCRA seminar.)

In addition, the following is provided for your information. It is an *unpublished* opinion of Judge Robert L. Vining, United States District Court, Northern District of Georgia, Atlanta Division.

Horace Johnson v. Alcan Aluminum Corporation (Alcan Cable Division)

In a recent case, a deposition was taken of the plaintiff by defendant with plaintiff reserving the right to read and sign the deposition, but not ordering a copy of same. Upon completion of the transcript, the court reporter requested that plaintiff come to her office for completion of this formality. Plaintiff refused to do so and stated that he did not consider the transcript "submitted" under Rule 30(E) unless and until such time as it was received in the offices of his counsel.

A ruling by Judge Robert L. Vining, Jr., U.S. District Court holds as follows: "Rule 30(E) provides in pertinent part: 'When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination (signature).' Rule 30(E) nowhere specifies the manner in which (or where) the transcript must be "submitted" to plaintiff. Additionally the case law does not require, contrary to the plaintiff's contention, that the transcript be presented to the plaintiff at his counsel's office in order to be "submitted" in compliance with Rule 30(E). Hence, the Court finds that the court reporter has adequately "submitted" the transcript to the plaintiff under Rule 30(E), and consequently denies the plaintiff's motion."

4. Should a court reporter continue to report a deposition once an attorney declares the deposition is concluded, although the opposing attorney wants to continue on the record?

A reporter in this situation should continue to write regardless of which attorney engaged the services of the court reporter. It is not the reporter's responsibility to decide which attorney is correct if an argument arises about when the deposition is concluded. *See also: Acres v. King*, 109 Ga. App. 571.

(Submitted by the Legislative and Procedural Research Committee of GSRA, 1991)

5. Mandatory transcripts furnished to the Attorney General's office.

The Attorney General's office requires a mandatory copy of the transcript of trial and motion hearings for all murder convictions, both death and life sentences. They do **not** want an "automatic" copy of all pleas, or all felony life sentence convictions. Murder is the only capital felony.

O.C.G.A. § 5-6-41(e) requires that, upon a defendant's conviction of a capital felony, the court reporter is required to file a copy of the transcript of the evidence for the exclusive use of the Attorney General. Because the statute mandates that a transcript be provided, the rate of compensation for a capital felony transcript will be determined by the date of conviction, as that is the date the transcript is considered to be ordered.

Habeas corpus transcripts shall be billed as of the date that the proceeding was conducted. The transcript is considered ordered at the time that the case is taken down by the court reporter. The habeas transcripts provided to the Attorney General's office will be paid at the rate of \$.625 per page, which is based upon the Judicial Council's Official Court Reporters' Fee Schedule rate for civil takedown of \$.25 per 100 words. The average number of words per page has been determined to be 250.

6. Rules for taking Video Depositions.

Note: The following rules are the formal rules for the taking of video depositions, as promulgated by the Georgia Court of Appeals in Mayor & City of Savannah v. Palmerio, et al, 135 Ga. App. 147, 217 S.E.2d 430 (1974). Although not codified, these rules are followed by the courts and have been applied in cases where a question related to video depositions has been at issue.

1. The depositions shall take place at a time and place to be agreed upon by counsel and a written notice thereof shall be filed with the Court;
2. Plaintiff shall use equipment of sufficient quality and quantity to produce an accurate and trustworthy record and to record all voices participating in the deposition; placement and positioning of the equipment shall be agreed upon by counsel;
3. A Certified Court Reporter shall takedown in the traditional method.
4. Transcript shall be filed in the traditional method in the Office of the Clerk. (by the court reporter.)
5. Plaintiff shall supply the person to operate the video equipment (See No. 2 above) who shall be sworn by the Court Reporter as follows:

“I, _____, solemnly swear to accurately and in a trustworthy manner, videotape the deposition and see that the original videotape is not altered or edited in any fashion unless ordered by the Court or agreed to by counsel and I shall file the same with the Clerk of the Superior Court of _____ County, Georgia.”
6. The witness shall be administered an oath in the usual manner by the court reporter.
7. The Court Reporter shall note stenographically as to when the tape is changed and whenever there is an interruption of continuous tape exposure for the purpose of off-the-record discussion, mechanical failure, adjustment, moving of equipment or other similar technical problem.

8. The videotape shall not be rewound or re-exhibited absent agreement of all parties.
9. Objections which might be raised during the deposition shall be reserved except as to the form of question or responsiveness of the answer and it shall not be necessary to assign any reason for the objection.
10. If during the course of the deposition there shall be a failure of video or auditory equipment or if video/audio is of such poor quality as to render the use of the tape unfair to the interest of any party, then no part of the videotape shall be utilized by either party and the parties shall use the stenographic transcription in the usual manner.
11. Smoking shall not be permitted during the deposition.
12. At the completion of the deposition, the operator of the videotape equipment shall certify the correctness and completeness of the videotape recording in the same manner as the stenographic reporter certifies an oral deposition, and the video shall be appropriately labeled, sealed and filed with the Clerk of Court with such certification which shall be supplied by the stenographic reporter.
13. All video costs shall be taxed to the requesting party.
14. Upon application of either party, the Court shall make available the video deposition for viewing purposes only.
15. During a pretrial conference the Court will hear objections to the admissibility of any answers given during a deposition, and if the Court rules out certain questions and answers given during the deposition, a copy of the original videotaped deposition shall be made, and the objectionable material shall be deleted. At the pretrial conference the Court will use only the stenographic transcription to determine if the questions and answers are objectionable and should be stricken from the record. Upon application of either party, and at his expense, the Court will review the video tape of the depositions to determine if the quality of same is sufficient to be viewed by the jury.

(Editorial note, see O.C.G.A. § 9-11-30(b)(4))

7. Firm Registration Guidelines:

You might be a firm if:

1. You are a freelance reporter who refers out a job to another reporter or group of reporters, but you do the billing for the whole job. This true whether or not you pay a percentage to the taking reporter.
2. You are a sole proprietor who employ/contracts with one or more other court reporters.
3. You are incorporated as a sub-chapter S or other corporation.
4. You are an official reporter who is paid by the county and you pay someone else to cover your court for you.

If you answered “yes” to one or more of these scenarios, then you are considered a firm for the purposes of O.C.G.A. § 15-14-37. You must register with the Board of Court reporting and pay the \$100 Firm Registration fee.

You may not be a firm if:

1. You give your overflow to another reporter or group of reporters, but all work given away is billed by the taking reporter or group. The payment of a referral fee is immaterial.
2. You have a substitute official reporter submit an invoice directly to the county or the judge. The judge may even require your signature.
3. You are an individual reporter who employs someone other than a certified court reporter (e.g., typist, proofreader, scopist, etc.)

If your category changes during the year, you have 30 days in which to notify and register with the Board.

If you require further explanation as to whether your business is a firm or not, please contact an attorney. The Board of Court Reporting and its staff are not in a position to interpret what the General Assembly may have envisioned any further than what is provided here.

8. Official Reporting by Tape Recorder.

If the reporter is being paid a per diem or a salary as the official reporter; is using only a tape recorder for takedown; and, is producing a certified transcript, the reporter is violating the law because electronic recording is not a certified method of takedown in Georgia. The one possible exception to this would be those reporters who were grand-fathered in 1974 without a specified method of takedown. The validity of the transcripts produced in this manner has not been examined.

9. Request for Filing Notes and Tapes as Part of the Original Record.

The general consensus of the Board is that the reporter should do whatever is necessary to provide a clear, legible copy of the original notes which may be filed rather than the originals.

10. Contracts for Court Reporting Services are Prohibited.

There are two means of enforcement suggested by the contracting law. One is through criminal action. O.C.G.A. § 15-14-36(3) specifies that it is a misdemeanor to violate any portion of the Court Reporting Act, or of Code Section 9-11-28(c). The other is the complaint procedure available through the Board of Court Reporting. The new contracting law gives the Board responsibility to take disciplinary action if is proven that:

- A) a court reporter interested in the case, financially or by relationship, takes a deposition;
- B) a court reporter fails to make a disclosure at each deposition;
- C) a court reporter negotiates an exclusionary contract for a court reporting incident.

There is a wide variety of disciplinary action available to the Board.