UNIFORM RULES

MAGISTRATE COURTS OF THE STATE OF GEORGIA

COUNCIL OF MAGISTRATE COURT JUDGES

Table of Contents

PART I. GENERAL AND ADMINISTRATIVE PROVISIONS 7

Rule 1. Preamble 7

1.1. Repeal of Local Rules 7

1.2. Authority to Enact Local Rules Which Deviate From the Uniform Magistrate Court Rules 7

1.3. Matters of Statewide Concern 8

1.4. Deviation 8

1.5. Amendments 8

1.6. Publication of Rules and Amendments 8

Rule 2. Definitions 8

2.1. Judge 8

2.2. Clerk 9

2.3. Party(ies) 9

Rule 3. Hours of Court Operation 9

Rule 4. Assignment of Cases 9

4.1. Case Assignment 9

4.2. Recusal/Disqualification of Judge 9

4.2.1 Motions. 9

4.2.2 Affidavit 10

4.2.3 Duty of the Trial Judge. 10

4.2.4 Procedure upon a Motion for Disqualification. 10

4.2.5 Selection of Judge. 11

4.2.6 Findings and Ruling 11

4.2.7 Voluntary Recusal. 11

4.3. Disqualification of Chief Magistrate 11

Rule 5. Dockets 11

5.1. Docket Categories 11

5.2. Time of Docketing 11

Rule 6. Withdrawal of Papers From Magistrate Court 11

Rule 7. Duties of Attorneys and All Parties 12

7.1. Notification of Representation 12

7.2. Withdrawal of Counsel 13

7.3. Notification of Previous Presentation to Another Judge 13

7.4. Prohibition on *Ex Parte* Communications 13

Rule 8. Resolution of Conflicts - State and Federal Courts 13

Rule 9. Leaves of Absence 14

Rule 10. Terms of Court 14

Rule 11. Electronic and Photographic News Coverage of Magistrate Court Proceedings 15

Rule 12. Completion of Quarterly Caseload Reports 17

Rule 13. Notice of Selection of Magistrates, Constables and Clerks of Magistrate Court 17

Rule 14. AT&T Language Line Service 17

Rule 15. Telephone and Video Conferencing 17

15.1. Telephone Conferencing. 17

15.2. Video-Conferencing. 17

Rule 16. Maintenance of Evidence 19

16.1. Maintenance of Non-criminal Evidence. 19

16.2. Maintenance of Criminal Evidence. 20

Rule 17. Clerical Assistance for Pro Se Litigants 20

Rule 17 Appendix A. 21
Rule 18. Head Coverings 42
PART II. CRIMINAL RULES 42
Rule 21. Administration of Oaths 42
Rule 22. Hearings on Issuance of Search Warrants 42
Rule 23. Bail in Criminal Cases 42
23.1. Misdemeanor Cases 42
23.2. Felony Cases 43
23.3. Categories of Bail 43
23.4. Amendment of Bail 43
Rule 24. Dismissal and Return of Warrants 43
24.1. Dismissal of Warrant 43
24.2. Return of Warrant to Magistrate Court 43
24.3. Assessment of Costs – Criminal 43
Rule 25. Initial Appearance/Committal Hearings 44
25.1. Initial Appearance Hearing 44
25.2. Commitment Hearing 44
25.3. Private Citizen Warrant Application Hearings 45
Rule 26. Appointment of Counsel for Indigent Defendants 46
26.1. Authority and Purpose 46
26.2. Application For and Appointment of Counsel 46
26.3. Responsibility for Determination of Eligibility 48
26.4. Uniform Eligibility Guidelines 48
26.5. County Selected Methods of Providing Counsel 49

26.6. Assignment of Cases to Private Attorneys 49

Rule 27. Arraignment 50

27.1. Calendar 50

27.2. Call for Arraignment 50

Rule 28. Motions, Demurrers, Special Pleas, and Similar Items in Criminal Matters 50

28.1. Time for Filing 50

28.2. Time for Hearing 50

28.3. Notice of Prosecution's Intent to Present Evidence of Similar Transactions 50

28.4. Notice of Intention of Defense to Raise Issue of Insanity, Mental Illness or Mental Competency 51

28.5. Motions and Orders for Mental Examination at Public Expense 51

Rule 29. Criminal Trial Calendar 55

29.1. Calendar Preparation 55

29.2. Removal From Calendar 55

Rule 30. Pleading by Defendant 55

30.1. Alternatives 55

30.2. Aid of Counsel - Time for Deliberation 55

30.3. Propriety of Plea Discussions and Plea Agreements 56

30.4. Relationship Between Defense Counsel and Client 56

30.5. Responsibilities of the Trial Judge 56

30.6. Consideration of Plea in Final Disposition 57

30.7. Determining Voluntariness of Plea 57

30.8. Defendant to Be Informed 57

30.9. Determining Accuracy of Plea 58

30.10. Stating Intention to Reject the Plea Agreement 58

30.11. Record of Proceedings 58
30.12. Plea Withdrawal 58
PART III. CIVIL RULES 59
Rule 31. Designated Agent for Civil Actions 59
Rule 32. Filing of Civil Actions by Mail 59
Rule 33. Computing Answer Dates in Civil Actions 59
Rule 34. Answer to Civil Actions 59
34.1. Oral Answers and Counterclaims to Civil Actions 59
34.2. Setting Hearing Date in Dispossessory Proceedings 59
Rule 35. Objections to Process, Jurisdiction or Venue 60
Rule 36. Transfer/Change of Venue 60
36.1. Lack of Jurisdiction Over Counterclaim 60
36.2. Transfer Between Magistrate Courts 60
36.3. Costs for Transfers Between Magistrate Courts 60
36.4. Hearing Transfer Requests 61
Rule 37. Amendments 61
Rule 38. Motions and Request for Relief Under the Civil Practice Act 62
Rule 39. Third-Party Practice 62
Rule 40. Pre-Trial Discovery 63
Rule 41. Summary Judgment 63
Rule 42. Bankruptcy Stay 63
Rule 43. Consent Judgments in Civil Actions 63
Rule 44. Deferred Partial Payments of Judgments by Defendants 64
44.1. Clerical and Accounting Costs Due 64

44.2. Clerical and Accounting Costs Withheld..... 64

Rule 45. Satisfaction of Fi. Fa. 64

PART I. GENERAL AND ADMINISTRATIVE PROVISIONS

Rule 1. Preamble

These rules are promulgated pursuant to the inherent powers of the Court and Article VI, Section IX, Paragraph I of the Georgia Constitution of 1983, in order to provide for the speedy, efficient and inexpensive resolution of disputes and prosecutions. It is not the intention, nor shall it be the effect, of these rules to conflict with the Constitution or substantive law, either per se or in individual actions and these rules shall be so construed and in case of conflict shall yield to substantive law.

1.1. Repeal of Local Rules

All local rules of the magistrate courts shall expire effective January 1, 1996. If any magistrate court by action of its chief magistrate proposes to prevent any local rule from expiring pursuant to Rule 1.1 then a proposal to prevent the local rule from expiring must be presented to the Supreme Court for approval 30 days prior to the expiration date as stated in Rule 1.1. Only those rules reapproved by the Supreme Court on or after January 1, 1996, shall remain in effect after that date. Rules timely resubmitted shall remain in effect until action by the Supreme Court.

1.2. Authority to Enact Local Rules Which Deviate From the Uniform Magistrate Court Rules

(A) The term "local rules" will no longer be used in the context of the Uniform Magistrate Court Rules.

(B) Each magistrate court by action of its chief magistrate, from time to time, may propose to make and amend rules which deviate from the Uniform Magistrate Court Rules, provided such proposals are not inconsistent with general laws, these Uniform Magistrate Court Rules, or any directive of the Supreme Court of Georgia. Any such proposals shall be filed with the clerk of the Supreme Court; proposals so submitted shall take effect 30 days after approval by the Supreme Court. It is the intendment of these rules that rules which deviate from the Uniform Magistrate Court Rules be restricted in scope.

(C) Notwithstanding the expiration of previously approved local rules January 1, 1996, courts may continue to promulgate rules which relate only to internal procedure and do not affect the rights of any party substantially or materially, either to unreasonably delay or deny such rights. These rules, which will be designated "internal operating procedures," do not require the approval of the Supreme Court. "Internal operating procedures," as used in these Uniform Magistrate Court Rules, are defined as rules which relate to case management, administration, and operation of the court or govern programs which relate to filing costs in civil actions, costs in criminal matters, case management, administration, and operation of the court.

(D) Notwithstanding these uniform rules, the chief magistrate may promulgate experimental rules applicable to pilot projects, upon approval of the Supreme Court, adequately advertised to the local bar, with copies to the State Bar of Georgia, not to exceed a period of one year, subject to extension for one additional year upon approval of the Supreme Court. At the end of the second year, any such pilot projects will either be approved by the Supreme Court or will be

allowed to sunset. Programs developed under the Alternative Dispute Resolution Rules of the Supreme Court will be approved by the Georgia Commission on Dispute Resolution before attaining permanent status under these rules.
(E) Rules which are approved as deviations from the Uniform Magistrate Court Rules and internal operating procedures of courts shall be published by the judicial circuit in which the rules are effective. Copies must be made available through the clerk of the magistrate court for the county where the rules are effective. Any amendments to deviations from the Uniform Magistrate Court Rules or to internal operating procedures must be published and made available through each magistrate court clerk's office within 15 days of the effective date of the amendment or change.
(F) Internal operating procedures effective in any court must be filed with the Supreme Court even though Supreme Court approval is not needed for these rules.

1.3. Matters of Statewide Concern

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

1.4. Deviation

These rules are not subject to local deviation except as provided herein. A specific rule may be superseded in a specific action or case or by an order of the court entered in such case explaining the necessity for deviation and served upon the attorneys in the case.

1.5. Amendments

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

The State Bar of Georgia shall receive notice of the proposed changes and additions and be given the opportunity to comment.

1.6. Publication of Rules and Amendments

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

Amended effective June 7, 1990; October 28, 1993; November 9, 1995; July 15, 2004.

Rule 2. Definitions

2.1. Judge

The word "judge" as used in these rules refers to any person serving or acting as either a chief magistrate or magistrate in the Magistrate Courts of Georgia.

2.2. Clerk

The word "clerk" as used in these rules refers to the person designated as the clerk and to other members of the staff serving as deputy clerks. The chief magistrate may designate deputy clerks who shall have the same authority as the clerk.

2.3. Party(ies)

The word "party" or "parties" as used in these rules shall include law enforcement officers participating in criminal proceedings and attorney(s) of record unless the context clearly indicates otherwise.

Amended effective October 28, 1993.

Rule 3. Hours of Court Operation

The hours of court operation shall be set by the chief magistrate of each court and shall be recorded with the clerk of the magistrate court. Such information shall include the following:
(1) Normal hours and location of court.
(2) Emergency after-hours availability of judges and the names of such judges.
(3) Holidays during which the court will be closed and a plan for the availability of judges on such days.
(4) Days on which the court holds civil and criminal hearings (if not handled on the same day), and the times and locations of such hearing.

Amended effective October 28, 1993; November 9, 1995.

Rule 4. Assignment of Cases

4.1. Case Assignment

If the caseload is such, the chief magistrate shall assign cases among the magistrates.

4.2. Recusal/Disqualification of Judge

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

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

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

4.2.4 Procedure upon a Motion for Disqualification. The motion shall be assigned for hearing to another judge, who shall be selected in the following manner:
(a) If within a single-judge jurisdiction, the most senior in service District Representative judge serving on the Executive Committee of the Council of Magistrate Court Judges shall select the judge.
(b) If within a two-judge jurisdiction, the other judge, unless disqualified, shall hear the motion.
(c) If within a multi-judge jurisdiction, composed of three (3) or more judges, selection shall be made by use of the judge's existing random, impartial case assignment method. If the judge does not have random, impartial case assignment rules, then assignment shall be made as follows:
(1) The chief judge shall select a judge within the jurisdiction to hear the motion, unless the chief judge is the one against whom the motion is filed; or
(2) In the event the chief judge is the one against whom the motion is filed, the assignment shall be made by the judge of the magistrate court who is most senior in terms of service other than the chief judge and who is not also a judge against whom the motion is filed; or
(3) When the motion pertains to all active judges in the magistrate court, the most senior in service District Representative judge serving on the Executive Committee of the Council of Magistrate Court Judges shall select a judge outside the county to hear the motion.
(d) If the most senior in service District Representative judge serving on the Executive Committee of the Council of Magistrate Court Judges is the one against whom the motion is filed, the District Representative judge within the district next senior in time of service shall serve in this selection process instead.

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

(e) If all judges within a county are disqualified, including all District Representative judges, the matter shall be referred by the disqualified most senior in service District Representative judge to

the most senior in service District Representative judge of an adjacent district for the appointment of a judge who is not a member of the district to preside over the motion or case.

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

4.2.6 Findings and Ruling. The judge assigned may consider the motion solely upon the affidavits, but may, in the exercise of discretion, convene an evidentiary hearing. After consideration of the evidence, the judge assigned shall rule on the merits of the motion and shall make written findings and conclusions. If the motion is sustained, the selection of another judge to hear the case shall follow the same procedure as established in Rule 4.2.4 above. Any determination of disqualification shall not be competent evidence in any other case or proceedings.

4.2.7 Voluntary Recusal. If a judge, either on the motion of one of the parties or the judge's own motion, voluntarily disqualifies himself or herself, another judge, selected by the procedure set forth in Rule 4.2.4 above, shall be assigned to hear the matter involved. A voluntary recusal shall not be construed as either an admission or denial to any allegations which have been set out in the motion.

4.3. Disqualification of Chief Magistrate

[Deleted effective April 12, 2012.]

Amended effective October 28, 1993; April 12, 2012.

Rule 5. Dockets

5.1. Docket Categories

Each magistrate court shall keep a docket for criminal and search warrants, and a separate docket for all civil actions.

5.2. Time of Docketing

Actions shall be entered by the clerk, deputy clerk, or magistrate in the proper docket immediately or within a reasonable period after being received in the clerk's office.

Rule 6. Withdrawal of Papers From Magistrate Court

(A) *General Provisions*: No original papers may be withdrawn from the magistrate court.

(B) *Civil Cases*: Copies of documents in civil cases may be obtained upon payment of costs to the clerk.

(C) *Criminal Cases*: Copies of documents in criminal cases may be provided; however, the court may, at its discretion, remove from said copies information concerning the location addresses, phone numbers, and similar information, the disclosure of which would violate the Victim's Protection Act (OCGA § 17-17-10) or would expose alleged witnesses or victims of crimes to danger of assault and/or intimidation by criminal defendants, or their agents. Names of confidential informants of police officers shall not be released, except after court order requiring such release, which may only issue following motion and in camera review by the trial court under guidelines set out in statutory and case law.

(D) *Order to Limit Access*: Upon motion by any party to any civil action, after hearing, and for good cause shown, the court may limit access to court files respecting that action. The order of limitation shall specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for the limitation.

An order limiting access shall not be granted except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest. Under compelling circumstances, a motion for temporary limitation of access, not to exceed 30 days, may be granted, ex parte, upon motion accompanied by supporting affidavit.

Upon notice to all parties of record and after hearing, an order limiting access may be reviewed and amended by the court entering such order or by the Superior Court of the Circuit where the magistrate court is located at any time, on the court's own motion, or upon the motion of any person for good cause.

(E) *Notes and Private Information*: This rule does not authorize release of papers containing a judge's application, trial or hearing notes or research notes pertaining to any case, civil or criminal. Further, this rule does not require release of any person's social security number, except to authorized state or federal authorities, as provided by applicable statutes.

(F) *Certification of Documents*: Upon request for certified copies of documents, the Court may provide the same, stating on the said certification what information was deleted as provided above.

Amended effective July 6, 2006.

Rule 7. Duties of Attorneys and All Parties

7.1. Notification of Representation

No attorney shall appear in that capacity before a magistrate court until he or she has entered an appearance by filing a signed entry of appearance form or by filing a signed pleading in a pending action. An entry of appearance shall state (1) the style and number; (2) the identity of the party for whom the appearance is made; and (3) the name and current office address and telephone number of the attorney; and in criminal cases, the home telephone number of the attorney.

In criminal cases, immediately upon agreeing to represent the defendant in a criminal matter pending in magistrate court, each attorney shall notify the magistrate court orally, followed by written confirmation in conformity with the preceding paragraph.

7.2. Withdrawal of Counsel

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

7.3. Notification of Previous Presentation to Another Judge

Attorneys and parties shall not present to a judge any matter which has been previously presented to another judge without first advising the second judge of said fact and results of the previous presentation.

7.4. Prohibition on *Ex Parte* Communications

Except as authorized by law or by rule, judges shall not initiate, permit or consider *ex parte* communications by interested parties or their attorneys concerning a pending or impending proceeding. Where circumstances require, *ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or the merits of the case are authorized, provided:
1. the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and
2. the judge takes reasonable steps to promptly notify all parties of the substance of the *ex parte* communication and allows an opportunity to respond.

Amended effective October 28, 1993; December 19, 2002.

Rule 8. Resolution of Conflicts - State and Federal Courts

(A) An attorney shall not be deemed to have a conflict unless:
(1) the attorney is lead counsel in two or more of the actions affected; and,
(2) the attorney certifies that the matters cannot be adequately handled, and the client's interest adequately protected, by other counsel for the party in the action or by other attorneys in lead counsel's firm; certifies compliance with this rule and has nevertheless been unable to resolve the conflicts; and certifies in the notice a proposed resolution by list of such cases in the order of priority specified by this rule.
(B) When an attorney is scheduled for a day certain by trial calendar, special setting or court order to appear in two or more courts (trial or appellate; state or federal), the attorney shall give prompt written notice as specified in (A) above of the conflict to opposing counsel, to the clerk of each court and to the judge before whom each action is set for hearing (or, to an appropriate judge if there has been no designation of a presiding judge). The written notice shall contain the attorney's proposed resolution of the appearance conflicts in accordance with the priorities established by this rule and shall set forth the order of cases to be tried with a listing of the date and data required by (B)(1)-(4) as to each case arranged in the order in which the cases should

prevail under this rule. In the absence of objection from opposing counsel or the courts affected, the proposed order of conflict resolution shall stand as offered. Should a judge wish to change the order of cases to be tried, such notice shall be given promptly after agreement is reached between the affected judges. Attorneys confronted by such conflicts are expected to give written notice such that it will be received at least seven (7) days prior to the date of conflict. Absent agreement, conflicts shall be promptly resolved by the judge or the clerk of each affected court in accordance with the following order of priorities:
(1) Criminal (felony) actions shall prevail over civil actions;
(2) Jury trials shall prevail over non-jury matters, including trials and administrative proceedings;
(3) Trials shall prevail over appellate arguments, hearings and conferences;
(4) Within each of the above categories only, the action which was first filed shall take precedence.
(C) Conflict resolution shall not require the continuance of the other matter or matters not having priority. In the event any matter listed in the letter notice is disposed of prior to the scheduled time set for any other matter listed or subsequent to the scheduled time set but prior to the end of the calendar, the attorney shall immediately notify all affected parties, including the court affected, of the disposal and shall, absent good cause shown to the court, proceed with the remaining case or cases in which the conflict was resolved by the disposal in the order of priorities as set forth heretofore.

Amended effective June 7, 1990.

Rule 9. Leaves of Absence

Requests for leaves of absence shall be submitted in writing to the presiding magistrate or his or her designee accompanied by a listing of cases by case number, name, and hearing date for which protection is required.

Such request shall be accompanied by an appropriate order for signature if the petition is granted.

The request must be filed at least seven (7) business days prior to the date the requested leave is to commence.

Leave will not be granted merely by stipulation or agreement of parties.

Amended effective October 28, 1993.

Rule 10. Terms of Court

Where statutes or case law of general application in this state require action within term of court, in the magistrate court this shall signify within thirty (30) days; where readiness is required by the next term of court, this shall signify after thirty (30) days.

Former Rule 10 renumbered as new Rule 22 effective October 28, 1993. New Rule 10 adopted effective October 28, 1993.

Rule 11. Electronic and Photographic News Coverage of Magistrate Court Proceedings

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

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

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

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

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

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

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

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

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

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

(J) Court proceedings shall not be interrupted by a reporter or technician with a technical or an equipment problem.
(K) Reporters, photographers, and technicians should do everything possible to avoid attracting attention to themselves. Reporters, photographers, and technicians will be accorded full right of access to court proceedings for obtaining public information within the requirements of due process of law, so long as it is done without detracting from the dignity and decorum of the court.
(L) Other than as permitted by these rules and guidelines, there will be no photographing, radio or television broadcasting, including video taping pertaining to any judicial proceedings on the floor where the trial, hearing or proceeding is being held or any other floor whereon is located a courtroom, whether or not the court is actually in session.
(M) No interviews pertaining to a particular judicial proceeding will be conducted in the courtroom except with the permission of the judge.
(N) A request for installation and use of electronic recording, transmission, videotaping or motion picture or still photography of any judicial proceeding shall be evaluated pursuant to the standards set forth in OCGA § 15-1-10.1.
(O) A request for media access to a court proceeding shall be in substantially the following form:

IN THE MAGISTRATE COURT OF _____ COUNTY
STATE OF GEORGIA

CASE NAME _____ CASE NO. _____

REQUEST FOR ELECTRONIC AND PHOTOGRAPHIC
MEDIA ACCESS TO COURT PROCEEDINGS

Pursuant to Uniform Magistrate Court Rule 11, the undersigned hereby requests permission to record, photograph or televise all or portions of the proceedings in the above-captioned case.
This request is for the following scheduled hearing (provide date, time, etc.): _____.
The following equipment will be installed in the courtroom: _____
The person who will be responsible for the installation and operation of this equipment is: _____
The undersigned requests courtroom access prior to the scheduled event for the purpose of setting up equipment, as follows: _____
The undersigned hereby certifies that the equipment to be installed and the locations and operation of such equipment will be in conformity with the rules and guidelines issued by the court.

_____ Signature and date
_____ Print name, title, and organization/company name
_____ Organization/company address and contact telephone number

APPROVED: _____
Judge, Magistrate Court of _____ County

Former Rule 11 amended and renumbered as new Rule 23 effective October 28, 1993. Former Rule 23 amended and renumbered as new Rule 11 effective October 28, 1993; amended effective December 19, 2002.

Rule 12. Completion of Quarterly Caseload Reports

In order to compile accurate data on the operation of the magistrate courts, each chief magistrate shall insure the accurate completion and timely submission of the Quarterly Caseload Reports sent to them by the Administrative Office of the Courts.

Former Rule 12 amended and renumbered as new Rule 24 effective October 28, 1993. Former Rule 24 amended and renumbered as new Rule 12 effective October 28, 1993.

Rule 13. Notice of Selection of Magistrates, Constables and Clerks of Magistrate Court

Whenever a magistrate, constable, or clerk (but not deputy clerks) of the magistrate court shall take the oath required for office in OCGA § 15-10-3, the chief magistrate shall forward to the Administrative Office of the Courts the name and title of the person taking the oath; the name of the person being succeeded; the term of office, if appropriate; the date assuming duties; and the address and telephone number the official wishes to use for business correspondence.

Former Rule 13 amended and renumbered as new Rule 25 effective October 28, 1993. Former Rule 25 amended and renumbered as new Rule 13 effective October 28, 1993; amended effective June 10, 1999; March 22, 2001.

Rule 14. AT&T Language Line Service

The AT&T Language Line Service is authorized for use in the magistrate courts whenever interpreting is needed in criminal and civil proceedings.

Adopted effective November 30, 1995.

Rule 15. Telephone and Video Conferencing

15.1. Telephone Conferencing.

The trial court on its own motion or upon the request of any party may in its discretion conduct pre-trial or post-trial proceedings in civil actions by telephone conference with attorneys for all affected parties. The trial judge may specify:
(A) The time and the person who will initiate the conference;
(B) The party which is to incur the initial expense of the conference call, or the apportionment of such costs among the parties, while retaining the discretion to make an adjustment of such costs upon final resolution of the case by taxing same as part of the costs; and
(C) Any other matter or requirement necessary to accomplish or facilitate the telephone conference.

15.2. Video-Conferencing.

(A) The following matters may be conducted by video-conference:
1. Determination of indigence and appointment of counsel;
2. Hearings on appearance and appeal bonds;
3. Initial appearance hearings and waiver of extradition hearings; subsection 15.2(E)(4) below notwithstanding, public access to these hearings may provided by a video-conferencing system meeting the requirements of subsection 15.2(E)(2) and (3);
4. Probable cause hearings;
5. Applications for and issuance of arrest warrants;

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

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

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

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

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

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

1. All participants must be able to see, hear, and communicate with each other simultaneously;
2. All participants must be able to see, hear, and otherwise observe any physical evidence or exhibits presented during the proceeding, either by video, facsimile, or other method;
3. Video quality must be adequate to allow participants to observe each other's demeanor and nonverbal communications; and
4. The location from which the trial judge is presiding shall be accessible to the public to the same extent as such proceeding would if not conducted by video conference. The court shall accommodate any request by interested parties to observe the entire proceeding.

Adopted effective July 15, 2004.

Rule 16. Maintenance of Evidence

16.1. Maintenance of Non-criminal Evidence.

In cases where the trial court sits as a court of record, the Clerk of Court, Court Reporter, or Judge in possession of documents, electronic documents, audio and video recordings of whatever form, exhibits, and other material objects or any other items admitted and retained as evidence in a civil case shall maintain a log or inventory of all such items with the case number, party names, description of the item, the name and official position of the custodian, and the location of the storage of the items. Dangerous or contraband items shall be placed in the custody of the Clerk of Court, Sheriff or other appropriate law enforcement official and maintained in the courthouse or other such location as allowed by law and be available during court proceedings and accessible to the Court Reporter. All such items presented by the parties as evidence that are admitted and retained by the Court shall be identified or marked by the Clerk of Court, Court Reporter, or Judge with the case number and the exhibit number and recorded in the log or inventory.

Within 30 days after disposition of the case, the Court Reporter shall transfer the items of evidence, along with the evidence log or inventory, to the Clerk of Court of the originating court. The Clerk of Court shall update the log or inventory to show the current custodian and the location of admitted and retained evidence. Dangerous or contraband items shall be transferred to the Sheriff or other appropriate law enforcement officer along with a copy of the log or inventory. The law enforcement officer shall acknowledge the transfer with a signed receipt and the receipt shall be retained with the log or inventory created and maintained by the Clerk of Court. The Clerk of Court and the appropriate law enforcement officer shall each maintain a log or inventory of such items of evidence. In all cases, the Court Reporter shall be granted the right of access to such items of evidence necessary to complete the transcript of the case.

Evidence in the possession of the Clerk of Court, Court Reporter, or Judge shall be maintained in accordance with local standard court operating procedures or as directed by a court order. After no less than 30 days or after the time to file a direct appeal has run, the custodian of the record may prepare a notification to the parties, signed by the judge, that admitted and retained evidence may be claimed by the parties. After the time stated in the notification has expired, the custodian may request an order from the judge to subject admitted and retained evidence that was unclaimed by the parties to the provisions of the Disposition of Unclaimed Property Act, OCGA § 44-12-190 to § 44-12-236. The designated custodian shall be responsible for recording on the evidence log the party, the date, and the type of action taken for the release of any such items of evidence and the party to whom it was released and the destruction of any such items of evidence. The Court on its own motion, or upon the motion of any party, Clerk of Court, Court Reporter, or Sheriff who is the custodian of such items of evidence in a case shall petition the Court prior to making a substitute photograph, photocopy, audio recording, digital recording, video recording, electronic image, or other equivalent in lieu of the original evidence. Upon granting of an order for substitution, the order shall be entered into the log or inventory and the

original item of evidence shall be returned to the custody of the party who tendered such evidence.

16.2. Maintenance of Criminal Evidence.

The Clerk of Court or the Court Reporter in possession of documents, electronic documents, audio and video recordings of whatever form, exhibits, and other material objects or any other items admitted and retained as evidence in a criminal case shall maintain a log or inventory of all such items with the case number, party names, description of the item, the name and official position of the custodian, and the location of the storage of the items. All such items admitted by the parties as evidence and retained by the Court shall be identified or marked by the Clerk of Court, Court Reporter, or Judge with the case number, the exhibit number and recorded in the log or inventory and shall be in the custody of the Clerk of Court and shall not be removed from the courthouse or other such locations as ordered by the Court and shall be available during court proceeding and accessible to the Court Reporter. In all cases where Magistrate Court does not make a final disposition of the case, within 30 days after the conclusion of the proceedings, the Clerk of Court shall transfer custody of the items of evidence, along with the evidence log or inventory, to the Clerk of Court of the Court with authority to make a final disposition of the case. The Clerk of Court shall update the log or inventory to show the current custodian and the location of evidence. Dangerous or contraband items shall be transferred to the sheriff or other appropriate law enforcement officer along with a copy of the log or inventory. The law enforcement officer shall acknowledge the transfer with a signed receipt and the receipt shall be retained with the log or inventory created and maintained by the Clerk of Court. In all such transfers, the items transferred shall be photographed or recorded by a visual image and the photograph or visual image shall be placed into the court file. In all cases, the Court Reporter shall be granted the right of access to such items of evidence necessary to complete the transcript of the case.

Evidence in the possession of the Clerk of Court or Court Reporter which was admitted and retained by the Court shall be maintained in accordance with the law, particularly as found in OCGA § 17-5-55. The Court on its own motion, or upon the motion of any party, Clerk of Court, Court Reporter, Prosecutor or Sheriff who is the custodian of such items of evidence in a case, shall petition the Court prior to making a substitute photograph, photocopy, audio recording, digital recording, video recording, electronic image, or other equivalent in lieu of the original evidence. Upon granting of an order for substitution, the order shall be entered into the log or inventory and the original item of evidence shall be returned to the custody of the party who tendered such evidence.

Adopted effective February 28, 2008.

Rule 17. Clerical Assistance for Pro Se Litigants

Magistrate Court clerks may not practice law, but may provide basic information regarding procedures, routine legal forms, available forms, and proceedings in the Magistrate Court. Each Chief Magistrate may institute methods for clerks to assist litigants and may utilize Appendix A "Guidelines and Instructions for Clerks Who Assist Pro Se Litigants in Georgia's Courts," in directing the conduct of clerical personnel. Clerks may also, in the absence of contrary judicial

direction, rely on Appendix A for guidance in avoiding unlawful practice of law. Said Appendix shall not be considered a directory rule, nor as binding authority, but may be considered by Magistrates and the Supreme Court as persuasive authority on the scope of lawful provision of legal information by clerks; further such guidelines shall be admissible in showing good faith by clerks in providing information and assistance to the public.

Adopted effective February 19, 2009.

Rule 17 Appendix A.

Guidelines & Instructions for Clerks Who Assist Pro Se Litigants in Georgia's Magistrate Courts

Prepared by:

THE COUNCIL OF MAGISTRATE COURT JUDGES,

RULES COMMITTEE

Guidelines & Instructions for Clerks Who Assist Pro Se Litigants in Georgia's Magistrate Courts

TABLE OF CONTENTS

Introduction

Guidelines for Clerks Who Assist *Pro Se* Litigants

Suggested Responses to FAQs From *Pro Se* Litigants

A. General Questions

1. Issues that are common to all types of cases
a. Assistance from Clerks
b. Attorneys (Recommending One)
c. Communication with Judges
d. Judicial Decisions
e. Legal Research
f. Scheduling & Court Appearances
g. Sealed Records

B. Civil Cases

1. General Civil Matters
a. Filing a Petition
b. Answering a Petition
c. Bankruptcy
d. Collection/Enforcement of Judgments
e. Eviction: Dispossessory Actions
f. Name Change
g. Real Estate Issues
h. Dismissals

2. Domestic Abuse
a. Process
b. Appointment of Attorney

3. Domestic: Dissolutions, Modifications and Support
a. Filing & Modification Issues
b. Child Support
c. Custody & Visitation

4. Probate

5. Small Claims
a. Filing a Small Claim Case
b. Answering a Small Claim Petition
c. Bankruptcy & Its Impact
d. Collecting on a Judgment
e. Landlord & Tenant Cases
f. Satisfying & Releasing the Judgment

C. Criminal and Traffic Cases

1. General Criminal Matters
a. Appeals
b. Attorneys
c. Bond

d. Charges & Charging Issues
e. Complaints (Regarding Police Officers)
f. Court Costs
g. Fines
h. Guilty Pleas
i. License Suspension
j. Notices--Missed Court Date
k. Records & Warrants
l. Sentences: Outcomes & Options

Exhibit A (Subject to change)

INTRODUCTION

Throughout the U.S. an increasing number of litigants are bringing their legal problems before the courts without the assistance of lawyers (*pro se*). Court users who are not attorneys often ask court clerks for information or advice that requires some legal expertise. Court staff know the maxim that they may not give legal advice, but in many situations it is difficult to discern what constitutes "legal advice". Due to fear of stepping over the line and providing legal advice, some clerks might be overly cautious in providing assistance and information. In these situations, some court users might leave the courts unnecessarily frustrated and may lose confidence in the court system. This training and reference manual is intended to help clerks determine the appropriate way to respond to most questions from *pro se* litigants, thereby providing the best service possible within the limits of their responsibilities.

This manual contains two general sections: 1) *Guidelines for Clerks Who Assist Pro Se Litigants,* and 2) *Suggested Responses to FAQs from Pro Se Litigants*.

The *Guidelines* section provides both general policy principles and specific directions for staff for determining when and how to respond to requests for assistance or information. Subsection C.2 of the *Guidelines* may be of particular interest to clerks' office staff. It provides 15 specific examples of "legal advice" that court staff should avoid. The comments following some of the guidelines clarify their meaning or discuss exceptions. Together, the *Guidelines* and comments should provide a substantial degree of clarity for court and clerks' office staff regarding the appropriate level of assistance to provide *pro se* litigants.

Section 2 of the manual, *Suggested Responses to FAQs from Pro Se Litigants* (hereafter, *FAQs*), provides a long list of frequently asked questions from *pro se* litigants and appropriate responses for clerks. Clerks' staff should become very familiar with the *Guidelines* and *FAQs* as soon as possible. Clerks may refer *pro se* litigants to the reference manual, which could be placed at the counter where *pro se* litigants are likely to appear to ask questions.

Naturally, this manual cannot anticipate all the possible questions that *pro se* litigants might ask clerks. When new questions raise concerns about giving legal advice, clerks' staff should refer to the general principles set forth in the *Guidelines*. If they refer to the *Guidelines* but still are not

clear about how to respond to the question, they should consult with their supervisor. If a supervisor is not available, or if the question clearly calls for legal advice, the clerk should explain to the *pro se* litigant that clerks are not allowed to provide legal advice. Remember, litigation can be a mine field for those who do not know what they are doing. Most litigants may benefit from consulting with legal counsel. So--when in doubt--suggest that the *pro se* litigant consult an attorney, but do not recommend specific attorneys. You may refer parties to the Georgia Lawyer Referral Program, see Exhibit A, attached for a full listing of potential referral sources (or a local referral service approved by the Chief Magistrate).

There are other sources of information that might be helpful to *pro se* litigants. The State Bar of Georgia provides several pamphlets in a variety of areas of the law. They may be obtained through the State Bar of Georgia. They are written in easy to understand language and would be very helpful to *pro se* litigants. You can find the pamphlets on the State Bar of Georgia website or people can call the State Bar of Georgia. (See Exhibit A)

The Georgia Landlord and Tenant Hotline (Exhibit A) also provides a helpful guide on landlord/tenant cases.

Finally, some of the responses to the *FAQs* include references to chapters of the Georgia Code or rules of procedure. These may be offered to the litigant. You should also consider having the most recent version of the Georgia Code available for public use, to make it easier for people to follow up on these references. If the most recent version is not available, clerks should caution *pro se* litigants that the Georgia Code section may have been amended by subsequent legislation. *Clerks should caution each pro se litigant that in addition to the Georgia Code sections cited in this manual, there may be other code sections or case law (Supreme Court or Court of Appeals decisions) that apply in a particular case. Parties should not rely solely on the information provided by the clerk's office. In most cases, litigants should consult an attorney.*

Guidelines for Clerks Who Assist *Pro Se* Litigants

A. The primary goal of court and clerks' staff is to provide high quality service to court users.

Court staff strives to provide accurate information and assistance in a prompt and courteous manner. However, in many or most situations involving *pro se* litigants (or represented litigants who come to the clerk's office without their attorneys), the best customer service might be to advise the litigant to seek the assistance of an attorney.

B. Absolute duty of impartiality.

Court staff must treat all litigants fairly and equally. Court staff must not provide assistance for the purpose of giving one party an advantage over another, nor give assistance to one party that they would not give to an opponent. It is important to avoid even an appearance of partiality or favoritism in <u>all</u> circumstances.

C. Prohibition against giving legal advice.
Court staff shall not provide legal advice. (*See Guideline* C.2 for examples of legal advice.)
1. If a court user asks for legal advice, court staff should advise the person to seek the assistance of an attorney.
2. Court staff should not apply the law to the facts of a given case, nor give directions regarding how a litigant *should* respond or behave in any aspect of the legal process. For example, court or clerks staff shall not:[1]
a. Recommend whether to file a petition or other pleading.
b. Recommend phrasing or specific content for pleadings.[2]
c. Fill in a form for the *pro se* litigant.
(Exception: If a litigant has a physical disability or is illiterate and therefore unable to complete a form, and the litigant explains the disability to a clerk's staff member and requests appropriate assistance, then the staff member may complete the form. However, the clerk's staff member must write down the *exact words* provided by the litigant, and another staff member must witness the action.)
d. Recommend specific people against whom to file petitions or other pleadings.
e. Recommend specific types of claims or arguments to assert in pleadings or at trial.
f. Recommend what types or amount of damages to seek or the specific litigants from whom to seek damages.
g. Recommend specific questions to ask witnesses or other litigants.
h. Recommend specific techniques for presenting evidence in pleadings or at trial.[3]
i. Recommend which objections to raise to an opponent's pleadings or motions at trial or when and specifically how to raise them.
j. Recommend when or whether a litigant should request or oppose a continuance.
k. Recommend when or whether a litigant should settle a dispute.
l. Recommend whether a litigant should appeal a judge's decision.
m. Interpret the meaning or implications of statutes or appellate court decisions as they might apply to an individual case.
n. Perform legal research.[4]
o. Predict the outcome of a particular case, strategy, or action.
3. If you are uncertain whether the advice or information constitutes " legal advice"--seek the assistance of a supervisor. If a supervisor is not available, inform the litigant that you are not able to provide the information and that the litigant should seek help from an attorney.

D. Authorized information and assistance. When a *pro se* court user seeks help--excluding legal advice--court or clerks' staff should respond to questions to the best of her or his ability. Court and clerks' staff are authorized to:
1. Provide public, non-privileged, information contained in:
a. dockets or calendars
b. case files
c. indexes, and
d. other reports.
2. Recite common, routinely employed:[5]
a. court rules,
b. court procedures, and

c. administrative practices.
3. Tell the *pro se* litigant that Georgia statutes can be found in the official Code of Georgia and rules of procedure can be found in the Uniform Magistrate Court Rules 6. The Clerk should not perform legal research or point the litigant to any specific Title or Rule.
4. Identify forms that might meet the needs of the *pro se* litigant, and provide forms that the Court has prepared for use.[6]
5. Answer questions about how to complete forms (*e.g.*, where to write in particular types of information), but not questions about how the litigant *should* phrase his or her responses on the forms.
6. Define terms commonly used in court processes.
7. Provide phone numbers for lawyer referral services. (See Exhibit A.)

E. Prohibition against revealing the outcome of a case before the information is officially released to the litigants or public. Court or clerks' staff shall not disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record, or until the judge directs disclosure of the matter.

F. *Ex parte* communications. As a general rule, parties are prohibited from having ex parte communication with a judge. However, there may be limited occasions when ex parte communication may be allowed. (Conflicts, continuances, etc.--**No "substantive"** communications allowed.)
1. If a litigant or attorney submits an *ex parte* written communication for a judge (*e.g.*, to grant a continuance; to stop or limit a garnishment), court staff must deliver it to a judge who should decide what action, if any, is appropriate.
2. If a party makes a verbal request that a judge take some type of action in a case, the clerk should tell the litigant to put the request in writing and:
a. address the request to the court;
b. include the case number (if any) on the document;
c. write the date on the document;
d. sign the written document;
e. print the person's name under the signature;
f. write the person's address and telephone number on the document;
g. deliver the written request to the clerk's office; and
h. ensure that a copy of the document is served to the opposing litigant or litigant's attorney as required Georgia law.
3. If a party or attorney contacts a clerk by telephone with a verbal request for judicial action and there is insufficient time to deliver a written request to the clerk's office (i.e., an emergency situation), the clerk shall communicate the request to a judge in accordance with rules established by the Chief Magistrate for handling such communications. The clerk, however, should tell the caller that the clerk cannot guarantee that the judge will grant or even consider the request.

Suggested Responses to FAQs from *Pro Se* Litigants

A. General Questions

1. Issues that are common to all types of cases

a. Assistance from Clerks

I have asked you several questions and you won't answer them. Why aren't you more helpful?

The clerk should politely advise that, first, many questions require the clerk to explain or interpret the law or how the law would apply in the litigant's case. This constitutes legal advice, and the law prohibits clerks from providing legal advice to litigants. Second, if a litigant misunderstands a statement by a clerk, or a clerk gives an incorrect answer to a question and the litigant loses his or her case as a consequence the litigant might blame the clerk. For these reasons, clerks must refrain from answering many questions that people ask and refer people to competent legal counsel.

b. Attorneys (Recommending One)

What attorney should I call to handle my case? Who would be good?

Clerks are not allowed to recommend specific attorneys or law firms. Parties should contact the Georgia Lawyer Referral Program (see Exhibit A) . Parties may also check the yellow pages in the phone book or ask their friends for a recommendation. The local bar association may also have an attorney referral service.

c. Communication with Judges

Can I talk to a judge?

Clerks must be cautious about allowing people to talk to a judge because judges must avoid *ex parte* contacts with litigants. [For guidance on this issue, *see Guideline* F.] The clerk should ask for the person's name and why she or he needs to talk to the judge.

If the issue is unrelated to any case before the court, the clerk should refer the question to the judge, if available.

If the issue involves an emergency scheduling matter (e.g., request for a continuance due to car problems on the morning of a hearing), the clerk should write down the request and contact the judge in a manner that has been set by the Chief Magistrate. The Clerk cannot tell the litigant whether the request will be granted.

If the issue involves a non-emergency request for a continuance, most judges require the request to be submitted in writing. (This might vary by county or judge.) But the clerk should refer the question to the judge, if available.

If the person wants to talk to a judge about issues under litigation, the judge usually cannot allow such communication unless all parties involved in the case are present (i.e., at a hearing). If the person wants to give the judge information pertinent to a case or wants the judge to take some *action* related to a case, the person must: 1) put the request *in writing;* 2) file it in the clerk's office; and 3) provide copies to the other parties in the case. *(See Guideline* F.2).

Georgia has a specific Warrant Application procedure when non-law enforcement litigants seek the arrest of other persons. The procedure for such warrant applicants shall be set by the Chief Magistrate and may involve direct contact between a litigant and a judge in an ex parte fashion.

d. Judicial Decisions

What will the judge say?

Clerks may not speculate on what a judge might say or do. Clerks should avoid telling anyone what a judge "usually does" or otherwise guessing what may happen in any individual matter as the facts may dictate an unusual or extraordinary result.

e. Legal Research

Georgia's statutes (laws passed by the state legislature) are in the official Code of Georgia (also known as the Georgia Code). The Georgia Magistrate Court Rules contain the procedures that litigants must follow in Georgia's Magistrate courts. Your county law library should have copies of these volumes. Every Georgia county has a law library. **Many legal materials are available on the internet. However, the clerk cannot verify the authenticity or accuracy of any website. It is always ultimately the litigant's responsibility to determine that they have researched the most recent law or case.

Further, in some circumstances a litigant might have to examine decisions by the Georgia Supreme Court or Georgia Court of Appeals to see how these courts have interpreted the laws and rules. A person might have to go to a law library to find up-to-date research materials on appellate court decisions. Ask a librarian for assistance with these materials.

It can be difficult to know and understand all the laws and procedures that might apply in a particular case. If a person is uncertain about the laws or procedures involved in the case, the person should consult an attorney.

f. Scheduling & Court Appearances

1. Do I have to be in court today?

The clerk may review whatever notice the party has to determine whether the party must appear in court and where the hearing (if any) will be held.

2. Can I reschedule (continue) my hearing to a later date?

Only the judge can continue a hearing. If the party files a written request with the clerk and provides a copy of the request to the other parties (or the prosecuting attorney in a criminal case),

the judge will consider the request. (See Guidelines F & 1C above for guidance on emergency scheduling requests.)

3. My car won't start, so I can't get to the hearing today. Can you tell the judge?

The answer to this answer depends on local custom. Some clerk's offices will convey a message regarding case scheduling to a judge, but others prefer that the party speak directly to the judge.

g. Sealed Records

Can I see my sealed file? (e.g., adopted person seeking information)

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matter. All information concerning adoptions can be found in the Superior Court, not the Magistrate Court. Matters involving juvenile matters may be found in the Juvenile Court. Any records sealed by Magistrate Court are addressed within Uniform Magistrate Court Rule 6.

B. Civil Cases

1. General Civil Matters

a. Filing a Petition

1. How long do I have to file my petition?

The party should consult an attorney concerning the relevant statute of limitations.

2. How do I serve my petition on the opposing party?

The clerk may point out the various means of service that are set out in Georgia law. The inquirer should consult an attorney to determine the proper means of service for the party's particular case.

3. $___ (county specific) seems like a high filing fee? Why is it so steep?

Filing fees are set by the legislature, not by the court or clerk's office. There are several agencies who are partially or fully funded by court fees.

4. In what county [or state] do I file my case? (How do I know where venue lies?)

The answer to this question depends on the type of case that is being filed, where litigants live, whether a corporation is a party and where events took place. Sorting out the impact of these factors would constitute legal advice. The clerk should advise the party to consult an attorney.

b. Answering a Petition

1. How do I file an answer?

A litigant's answer must be in writing and filed with the clerk within a certain number of days after the petition was served on the party. (Understand that certain types of civil actions have different limitations i.e.--dispossessory actions vs. tort cases). The litigant must provide a copy to the opposing party. The clerk may point out the various means of service. The answer includes a response to each specific allegation or paragraph in the petition or pleading to which the defendant is responding. Since the answer should also incorporate any affirmative defenses, the clerk should suggest that the party consult with an attorney. Georgia law allows the clerk to write the answer for a litigant who is incapable of writing his/her own answer.

2. A petition was filed on me ___ days ago, now here I am to make my appearance.

A written answer must be filed in the clerk's office within ___ days after the petition was served on the party. (See response in b.1 above.) The answer also must be served on the other parties in the case. A defendant may file an answer after the ___ day time period, but the clerk cannot guarantee what effect the answer will have in the case. This is an administrative question, which may be answered by the clerk. Once a petition is filed it must be served upon the opposing party who is then given a specific time to respond, usually 30 days from date of service, however dispossessory actions and personal property foreclosures must be answered within 7 days. If an answer is filed denying the claim, the magistrate clerk will set the case for hearing according to the magistrate's schedule and notice will be mailed to all parties. In some counties, unless waived by court order, *mediation* is required prior to setting the case for hearing. In those counties the clerk should inform the party about that requirement and that notice for the mediation will be sent to all parties the same as the notice for the hearing.

3. A petition was filed on me more than ___ days ago. Can I still file an answer?

The clerk can accept an answer at any time, even if it is late. But the clerk cannot speculate about the legal consequences of filing the answer late. If the plaintiff has already filed an application for default judgment or has obtained a default judgment, the defendant should definitely consult an attorney for options. Georgia law requires the payment of certain costs to open a default and the Chief Magistrate will direct the procedure for such instances.

In dispossessory/distress actions, the rules are different and the litigant seeking to file an answer more than 7 days after service, that person should be advised to seek legal counsel.

c. Bankruptcy

If I file bankruptcy will my debts go away?

The clerk should not speculate about how bankruptcy laws would apply in a particular case, which would be a clear example of providing legal advice. In addition, bankruptcy is a complicated area of the law. Strongly recommend that the party consult an attorney. The defendant should advise the court if he or she is under Bankruptcy protection. (With stays, encourage party to provide a case number.)

d. Collection/Enforcement of Judgments (Liens, etc.)

1. Are there any liens on my property?

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Property liens are generally recorded in Superior Court.

2. How do I collect my judgment?

Litigants seeking to collect a judgment issued by the Court should be advised to seek the advice of an attorney concerning the collection of the judgment. The Chief Magistrate may establish procedures for collection of its judgments, issuance of FiFas or similar matters. A party may file statutory post-judgment interrogatories as allowed by Georgia law.

e. Eviction: Dispossessory Actions

How do I evict someone who has failed to pay rent, violated the terms of the lease or is holding the premises over past the end of the term of the lease?

The clerk may provide to the litigant the appropriate form necessary to initiate a dispossessory action. There are several complicated issues that are connected with the dispossessory actions which should not be addressed by the clerk (i.e.--when a security deposit has to be returned; should the landlord request damages in addition to the back due rent; was notice required prior to filing the dispossessory action, etc.). Therefore, it is important that the clerk not get involved with telling the litigant whether the form is correct because every fact pattern is different.

f. Name Change

How do I change my name? [Not part of divorce case.]

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Name changes are generally handled by Superior Court.

g. Real Estate Issues

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Real estate records are generally maintained by Superior Court.

h. Dismissals

If the plaintiff no longer wants to continue with their case for whatever reason (i.e. the case is settled, the plaintiff has changed their position, the plaintiff simply does not want to pursue the matter any further), the plaintiff can seek a dismissal form from the clerk's office. Understand that the filing and dismissal of a civil case is an important event. If the dismissal is done “with prejudice”, the plaintiff could not later refile that same action. If the petition is dismissed “without prejudice” then the case could be reinitiated within certain time limitations by the plaintiff.

It is also important to understand that the dismissal of the case by the plaintiff will not dismiss the counterclaim of the defendant, if any. The defendant is also authorized to dismiss their counterclaim on many of the same principles addressed above.

2. Domestic Abuse

a. Process

How do I get a restraining order against someone?

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Restraining Orders are generally handled by Superior Court.

Many people incorrectly believe that the Magistrate Court has the authority to issue a restraining order, domestic violence protective order, temporary protective order, or similar "restraining orders." Magistrate court does not have the authority to do so unless it has been specifically appointed to do so by a Superior Court Judge. Therefore, it is important that the party seeking a protective order or domestic violence order seek assistance through Superior Court which has the authority to consider a "restraining order."

Other restraining orders: For other types of restraining orders the clerk should suggest the party consult with an attorney. The party might also seek assistance from a local domestic abuse assistance center. However, in some Magistrate Courts, Good Behavior Bonds are used in the same manner but they are only authorized for the particular county in which the Good Behavior Bond is issued.

b. Appointment of Attorney

1. Will the County Attorney represent me?

The County Attorney or District Attorney usually represents the state in criminal cases.

2. Can you appoint an attorney for me?

Only a judge can appoint an attorney, and a judge may appoint an attorney only in certain criminal cases. In most civil cases there is no provision for the appointment of counsel, but the clerk may refer the party to Legal Aid, which may assist civil litigants who cannot afford to hire an attorney.

3. What other legal assistance can be provided for me?

Georgia Legal Aid Services around the state of Georgia, through Volunteer Lawyers Foundations or other legal services per direction of chief judge

3. Domestic: Dissolutions, Modifications and Support

a. Filing & Modification Issues

1. How do I file a divorce?

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Domestic relations matters (divorces, modifications, legal separations, contempts) are handled by Superior Court.

b. Child Support

1. How do I get my ex-spouse to pay child support?

The establishment and modification of child support is generally a matter for Superior Court determination in a civil case. If you desire to request an arrest warrant for abandonment of child or similar crime, please see the process set forth under the criminal section of this pamphlet.

2. Can I get my ex-spouse's wages garnished for not paying child support?

It depends upon the circumstances of the case. Does the ex-spouse have a court-ordered child support obligation that is in arrears? If the answer to this question is "Yes," then the person might be able to obtain garnishment of the ex-spouse's wages. However, the clerk should explain that garnishing wages can be a complicated process, and that further assistance from the clerk could be interpreted as providing legal advice (aside from providing forms)--which the clerk may not do. The party should seek assistance from a private attorney, from Legal Aid or Legal Services offices (if he or she cannot afford an attorney), or from the Child Support Recovery Unit.

c. Custody & Visitation

Where do I go for custody battles?

Superior Court handles all domestic relations matters.

4. Probate

1. Can I file my own guardianship and conservatorship?

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Probate Court has jurisdiction over such matters.

2. Do you have my will?

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. Probate Court would be the appropriate referral for all probate matters.

5. Small Claims

a. Filing a Small Claim Case

1. How do I file a small claim?

See B.1.a.

2. Whom do I file against?

This question requires the clerk to offer legal advice, which a clerk may not provide. Advise the plaintiff to consult with competent legal counsel.

3. Do I have a case against this guy?

This question requires a clerk to interpret how the law will apply in a particular litigant's case, which would constitute legal advice. Clerks cannot provide legal advice. The party should ask an attorney this question.

4. I live in Georgia and the defendant lives in ANOTHER STATE. Where do I file?

The answer to this question depends on the particular circumstances of the case. The clerk should advise the plaintiff to consult with competent legal counsel.

5. I live in this county and the person I want to sue lives in ANOTHER COUNTY in Georgia. Where do I file?

The answer to this question depends on the particular circumstances of the case. The clerk should advise the plaintiff to consult with competent legal counsel.

6. Once I file my claim, how long before I go to court?

This is an administrative question, which may be answered by the clerk. Once a petition is filed it must be served upon the opposing party who is then given a specific time to respond, usually 30 days from date of service, however distress/dispossessory actions and personal property foreclosures must be answered within 7 days. If an answer is filed denying the claim, the magistrate clerk will set the case for hearing according to the magistrate's schedule and notice will be mailed to all parties. In some counties, unless waived by court order, *mediation* is required prior to setting the case for hearing. In those counties the clerk should inform the party about that requirement and that notice for the mediation will be sent to all parties the same as the notice for the hearing.

7. My case was dismissed a year ago. Can I refile?

The answer depends upon how the case was dismissed (i.e., with or without prejudice) and whether the statute of limitations has expired, which can be a complicated issue. The party should seek advice from competent legal counsel.

8. Will you mail me thirty small claims forms?

Most clerks' offices will not do this. Clerks will mail one copy free of charge. The recipient is allowed to make copies from the original. Some courts also have forms available via the Internet.

b. Answering a Small Claim Petition

1. I received a small claim notice in the mail. What do I do now?

The defendant should follow the instructions on the notice and perhaps seek advice from an attorney. The clerk cannot tell the defendant whether to admit or deny the claim or how to respond to the notice; this would be legal advice, which clerks cannot provide. (Clerks may provide an answer form.)

2. How do I file a counterclaim?

The clerk may provide the appropriate forms and indicate where the information should be placed on the form, but cannot suggest phraseology or whether a counterclaim should be filed.

c. Bankruptcy & Its Impact

I filed a debt collection case against a person. After that, the person filed for bankruptcy. How will the bankruptcy case affect my case against that person?
The answer to this question can be complicated. It requires legal advice, which clerks cannot provide. From a procedural standpoint the clerk may advise that the filing of bankruptcy generally suspends ("stays") the state court proceedings. The party should seek advice from competent legal counsel as to how the bankruptcy might affect the plaintiff's claim. However, litigants should advise the Magistrate Court if they believe bankruptcy has a bearing on the case and provide case number if known.

d. Collecting on a Judgment

1. Once a judgment is obtained, how long before I get my money? Can I have the defendant arrested until he/she pays?
This question requires *caution* by the clerk. A judgment coupled with a FiFa gives the judgment creditor a lien against the defendant, but the judgment and lien do not guarantee voluntary payment. The judgment creditor may pursue collection through various legal forms of execution, but these can be complicated. The party should seek advice from an attorney.

U.S. law does not allow for a party to be arrested for non-payment of a debt- including a judgment.

2. How do I obtain garnishment?
The clerk may provide appropriate forms that are available for this process and point out where information should be placed on the forms, but the clerk should not give any advice as to how the garnishment should be pursued.

3. How do I find out where the defendant works?
Georgia law allows for post-judgment interrogatories and some courts have forms for such a process. The litigants should be encouraged to seek legal counsel in this circumstance. Clerks may provide the standard interrogatory form.

4. I tried an execution, but it didn't work. What do I do now?
The clerk cannot tell the person what he or she should do in this circumstance.

5. How do I stop a garnishment?
The clerk may provide the defendant with appropriate forms for requesting a hearing, if such forms are available. Otherwise, the clerk should advise the defendant that a traverse needs to be filed with the clerk's office with notice to the garnishing party. A hearing will then be scheduled before a judge.

6. Why can't the judge just put the defendant in jail?
The clerk may advise that jail is not a legal remedy available in civil proceedings. The plaintiff may wish to consult competent legal counsel to explore other available options.

7. Can the defendant make installment payments on the judgment?
The judgment order may provide for installment payments, or the defendant may petition the court for installment payments. The judgment creditor may also accept partial payments even if they are not explicitly authorized in the judgment, but the defendant should seek advice from an attorney as to whether the judgment creditor who has accepted partial payments will be prevented from seeking accelerated collection of the judgment through other legal means. The parties are free to contact one another.

8. The other party paid me just the judgment and not court costs. How do I collect the court costs?
If the judgment required the defendant to pay court costs, the judgment lien does not have to be released until those costs are paid. The plaintiff may pursue payment through execution and the clerk should provide forms for doing so, if available.

e. Landlord & Tenant Cases

1. Does a three day "notice to quit" include weekends and holidays?
Yes.

2. Other questions about dispossessory cases
This can be a very complicated area of the law, so the party should consult an attorney on almost all other questions. Legal Aid may provide free or low cost legal services for low-income residents who cannot afford an attorney.

f. Satisfying & Releasing the Judgment

1. I paid my judgment in full and the plaintiff has not released it. How do I get the judgment released?
There is a procedure for this contingency found in the Georgia Code, but the party should seek advice from competent legal counsel on this issue.

2. I paid my judgment so why don't you satisfy it?
The judgment creditor (the person who was owed the money) is responsible for satisfying the judgment, not the clerk.

C. Criminal and Traffic Cases

1. General Criminal Matters

a. Appeals

How do I file a notice of appeal?
An appeal of a criminal matter is complicated and time-limited. The Clerk may provide a form, if available, but the clerk cannot tell a litigant what information the appeal should include.

b. Attorneys

1. How do I get an appointed attorney?
Parties have the right to hire their own attorney. If financially unable to do so, a party may apply for a court-appointed attorney, and the clerk should provide the appropriate forms, if available in a criminal case. The judge will then consider the request and, based on criteria established by the state legislature, determine whether the party is eligible for court-appointed counsel. Some counties have an Indigent Defense Office that addresses appointment of counsel. As rules and guidelines may change, the clerk should not attempt to advise the person whether they qualify as indigent.

2. Why do I have to reimburse the state for court-appointed attorney fees?
The legislature passed a law that may require the courts to order such reimbursement.

3. Why can't I have a court-appointed attorney?
Clerks do not play a role in determining who gets a court-appointed attorney.

c. Bond

1. How do I get a friend out of jail (out on bond)?
If bond has been set, advise the party to contact the appropriate law enforcement agency concerning bond.

2. When will I get my bond money back?
Bonds are only released upon order by a judge or final resolution of the charges. Furthermore, the bond is returned only to the party posting it, and the bond is subject to the clerk's procedures for returning cash bonds. Any monies paid to a professional bail bondsman would have to be addressed between the surety and the bail bondsman.

d. Charges & Charging Issues

1. What have I been charged with?
The clerk may show the defendant the file assuming it is not confidential or sealed consistent with Uniform Magistrate Court Rule 6. Ensure the information to be released is approved by the

Judge pursuant to Uniform Magistrate Court Rule 6. If the defendant has further questions, the clerk should suggest that the party consult with an attorney or with the prosecutor's office.

2. It wasn't my car so why did I get a ticket for _____?

Clerks are not authorized to speak for law enforcement officers or to speculate as to why an officer did or did not issue a ticket. Encourage the party to seek advice from competent legal counsel or ask the prosecuting attorney.

e. Complaints (Regarding Police Officers)

How do I file a complaint about a police officer?

The clerk may refer the party to the relevant law enforcement agency.

f. Court Costs

1. Why are my court costs so high?

Court costs are established by the legislature; the clerk's duty is merely to assess and collect those costs.

2. Why do I have to pay court costs when I didn't go to court?

Court costs are established by the legislature and they are fees for the filing and processing of the case rather than a fee for personal appearances.

3. Why are there so many surcharges on my fine?

The Georgia legislature has established several different surcharges that apply to all criminal fines in Georgia. Those surcharges are used to fund a variety of different operations and agencies throughout the state, specifically including but not limited to indigent defense. The fines set by the court have automatic surcharges that are applied to it and are not within the discretion of the court whether to assess them or not.

g. Fines

Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. The Probate Court, State Court, Juvenile Court or Superior Court may have jurisdiction over certain fines.

On any fine assessed by the Magistrate Court, the clerk may refer the party to the appropriate probation office or clerk who accepts the payment of fines. Consult with supervisors as to whether your court allows for the payment of the fine without a formal hearing being conducted. In most cases, the payment of a fine constitutes a waiver of certain constitutional rights and may, in some circumstances, constitute an admission of guilt. Therefore, simply “paying the fine” is likely to be a matter that needs to be addressed between the party and their attorney to insure that the party understands all of the consequences of a payment of a fine.

1. When do I have to pay my fine?
Fines are usually due at sentencing unless additional time to pay is granted by the court.

2. Why won't you take my check?
Procedures for accepting fine payments are set by the Chief Magistrate.

3. Will you give me an extension to pay my fine?
Only a judge may grant an extension. The defendant should file a request in writing with the clerk who will then give the request to the judge for consideration.

4. What do the police do with all the money I pay?
Fine payments do not go to officers or law enforcement agencies directly, but are paid to the general fund of the cities or counties of the jurisdiction.

h. Guilty Plea

How do I plead guilty?
Generally, guilty pleas are only accepted in open court after proper waiver of certain Constitutional rights. The Chief Magistrate shall set all criminal procedures for the Court and the clerks'.

i. License Suspension

Why is my license suspended when I paid my ticket?
Magistrate Courts in Georgia have a limited jurisdiction and do not handle all types of legal matters. The Legislature sets rules for license suspensions and clerks are not given discretion over such matters.

j. Notices-Missed Court Dates

1. I missed my court date. What happens now?
A defendant is responsible for being in court on the date that is appointed for court. If the defendant believes that they have an appropriate excuse for not being present, they should present that excuse in writing to the clerk for consideration by the judge. A missed court date may result in either an order for arrest (bench warrant for failure to appear) or some sort of Rule Nisi or other order requiring the defendant to come to court on another court date to show cause why they should not be held in contempt for failure to appear. Again, recommending that the defendant hire a lawyer to look into this matter for them may be advisable.

2. I've moved since the matter began. What do I do now?
It is always the responsibility of the party to an action, whether it be civil or criminal, to keep the court notified of any changes of address. It is not the court's responsibility to“find” any party to either a civil or criminal action. It is the responsibility of the clerk to notify a litigant of their relevant court dates or other matters at the last known address. If that address has changed and

the litigant failed to notify the court, a failure to timely respond or be present for a hearing may have repercussions to the litigant and their case which cannot all be summarized in this response.

k. Records & Warrants

1. Why won't you do a record check for me?

The clerk's office is required to keep the records open and accurate. Due to staffing and liability considerations, however, the clerk does not conduct record searches. Notify the person requesting the document of the times and dates when records may be received (see Uniform Magistrate Court Rule 6).

2. This isn't supposed to be on my record. Why is it showing up?

The clerk should first determine if the matter was recorded properly and, if so, advise the party to seek advice and assistance from competent legal counsel.

3. Is there a warrant out for my arrest?

The party should check with local law enforcement; clerks are not authorized to provide this information.

l. Sentences: Outcomes & Options

1. What will my sentence be?

The judge imposes the sentences and it would be inappropriate for the clerk to speculate.

2. Am I going to jail?

Sentencing depends on a variety of factors and it would be inappropriate for the clerk to speculate on what the judge might do.

3. How do I get probation?

Because this is such an important issue, the clerk should emphasize that the best option would be to consult with competent legal counsel. However, if the defendant is not going to contact an attorney, the clerk may suggest that the defendant could make the request to the judge at sentencing. But the clerk may not tell the defendant the likelihood of probation following a hearing.

*If the court provides informational pamphlets or websites for pro se litigants, the clerk may provide the relevant pamphlet or point out a portion of the website or pamphlet that addresses their question.

[1] COMMENT on C2: This list provides examples of prohibited types of assistance. It is not comprehensive. In general, clerks must avoid advising litigants that they *should* include specific content in what they write or say or that they *should* take a particular course of action.

[2] COMMENT on C2b: Clerks may inform litigants that some *general content* may be required in a pleading (*e.g.*, identification of the other parties involved in the incident; a description of the facts surrounding the incident). But clerks may not tell a litigant whom to identify or which

particular facts might be relevant in the pleading. If there is a form generally used by the Court, the clerk may offer such form to the litigant but cannot require a specific form be utilized.

[3] COMMENT on C.2.h.: Clerks should provide, or identify the place where someone can obtain, pamphlets or other documents that address the issue and that have been prepared for general distribution to the public (*e.g., pamphlets,* prepared by the State Bar of Georgia).

[4] COMMENT on C.2.n.: Clerks may refer litigants to Georgia court rules or Georgia Code for rules or statutes that govern matters of routine administration, practice, or procedure; and they may give definitions of common, well-defined legal terms used in those Code sections. However, clerks may not *interpret* the meaning of statutes or rules.

[5] COMMENT on D.2: Reciting a common rule is permissible, but court staff should not attempt to apply the rule to the facts in the litigant's case. Sometimes, after a clerk recites a rule (*e.g.*, "After a judge enters a judgment in your small claims case, you have ___ days to file an appeal."), a *pro se* litigant will ask whether or how the rule would apply, or if the rule might be applied differently, given the facts in his or her case. This calls for an *interpretation* of the law or rule of procedure. *Court and clerk's office staff must avoid offering interpretations of laws or rules*.

[6] COMMENT on D.4.: When a clerk is reasonably certain about which form is most appropriate for use by a given litigant, the clerk should identify the appropriate form. However, clerks should avoid telling litigants that they *should* or *must* use a particular form. The appropriate approach in most situations is to tell the litigant: a) a particular form probably will meet the individual's needs; b) clerks *cannot guarantee* that this is the correct form; and c) the litigant should read the form very closely or consult an attorney to determine the appropriateness of the form for the litigant's purposes.

EXHIBIT A

Helpful Resources for People Who Need Legal Assistance of Information

State Bar of Georgia -- 1-800-334-6865, www.gabar.org

Council of Magistrate Court Judges (Georgia) -- www.georgiacourts.org/councils/magistrate

Administrative Office of the Courts of Georgia -- 404-656-5171

Georgia Supreme Court -- 404-656-3470

Child Support Recovery -- ocss.dhr.georgia.gov/

Safe Homes of Augusta (National Crisis Hotline) -- 1-800-334-2836

Legal Aid -- legalaid-ga.org

GBI -- 404-244-2600

Georgia Lawyer Referral Program -- 1-800-215-1644

Georgia Landlord and Tenant Hotline -- 1-800-369-4706, www.georgialawyerreferral.com

* Information is subject to change

Rule 18. Head Coverings

(A) All members of the public traveling through courthouse security are permitted to wear head coverings for medical or religious reasons. Individuals wearing such head coverings may be subject to the possibility of additional security screening, which may include a pat-down search of the head covering, or the individual will be offered the opportunity and may be required to remove the head covering in a private screening area by an officer of the same gender.
(B) Judges have authority to control decorum in the courtroom, including directing the manner and mode of dress of anyone who appears therein. Persons who appear in court are expected to dress appropriately. Head coverings and hats are generally not permitted in courtrooms, except in cases where the covering is worn for medical or religious reasons.

Adopted effective December 8, 2011.

PART II. CRIMINAL RULES

Rule 21. Administration of Oaths

A clerk of the magistrate court may administer the oath and sign the jurat for affidavits, including those in support of arrest and search warrants and bad check citations. This rule shall not be interpreted as otherwise affecting the responsibilities of a judge in hearing applications for arrest and search warrants.

Adopted effective October 28, 1993.

Rule 22. Hearings on Issuance of Search Warrants

Whenever the hearing on the issuance of a search warrant is not recorded, the magistrate should make a written notation or memorandum of any oral testimony which is not included in the affidavit.

Former Rule 10 renumbered as new Rule 22 effective October 28, 1993.

Rule 23. Bail in Criminal Cases

23.1. Misdemeanor Cases

Bail in misdemeanor cases shall be set as provided in OCGA §§ 17-6-1 and 17-6-2.

23.2. Felony Cases

Bail in felony cases shall be set by the magistrate court except for those offenses as to which OCGA §§ 17-6-1 or 17-10-1 provides that bail shall be set by the superior court or shall not be available. All defendants in custody must be transported and presented to this court for initial appearance within the time requirements of OCGA § 17-4-26 and § 17-4-62 for further consideration of bail.

23.3. Categories of Bail

The court may set bail which may be secured by:
(1) *Cash* - by a deposit with the sheriff of an amount equal to the required cash bail; or
(2) *Property* - by real estate located within the State of Georgia with unencumbered equity, not exempted, owned by the accused or surety, valued at double the amount of bail set in the bond; or
(3) *Recognizance* - in the discretion of the court;
(4) *Professional* - by a professional bail bondsman authorized by the sheriff and in compliance with the rules and regulations for execution of a surety bail bond.

Bail may be conditioned upon such other specified and reasonable conditions as the court may consider just and proper. The court may restrict the type of security permitted for the bond although the sheriff shall determine what sureties are acceptable when surety bond is permitted.

23.4. Amendment of Bail

The magistrate court has the authority to amend any bail previously authorized by the magistrate court under the provisions of OCGA § 17-6-18.

Former Rule 23 amended and renumbered as new Rule 11 effective October 28, 1993. Former Rule 11 amended and renumbered as new Rule 23 effective October 28, 1993.

Rule 24. Dismissal and Return of Warrants

24.1. Dismissal of Warrant

Any dismissal of a warrant of the magistrate court prior to the committal hearing and subsequent transfer to other courts shall be made exclusively by the magistrate court.

24.2. Return of Warrant to Magistrate Court

Once arrest of the defendant is effectuated, the original warrant shall be returned to the magistrate court or its designee for transfer to the appropriate prosecuting agency.

24.3. Assessment of Costs – Criminal

When, in a criminal action, costs are assessed by the Court upon the dismissal of a warrant the minimum amounts shall be $100.00 in felony cases and $50.00 in misdemeanor cases. Pursuant to OCGA § 17-11-4 (a) (3), where prosecution of a criminal action is abandoned before trial, the prosecuting attorney of the trial court or his or her designee shall promptly notify the judge who issued the warrant of the fact of abandonment and of the amount of accrued costs. The judge shall enter a judgment for said costs against the prosecuting party.

Former Rule 24 amended and renumbered as new Rule 12 effective October 28, 1993. Former Rule 12 amended and renumbered as new Rule 24 effective October 28, 1993.

Rule 25. Initial Appearance/Committal Hearings

25.1. Initial Appearance Hearing

Immediately following any arrest but no later than 48 hours if the arrest was without a warrant, or 72 hours following an arrest with a warrant, unless the accused has made bond in the meantime, the arresting officer or the law officer having custody of the accused shall present the accused in person before a magistrate or other judicial officer for first appearance.

At the first appearance, the judicial officer shall:

(1) Inform the accused of the charges;

(2) Inform the accused of the right to the presence and advice of an attorney, either retained or appointed, of the right to remain silent, and that any statement made may be used against him or her;

(3) Determine whether or not the accused desires and is in need of an appointed attorney and, if appropriate, advise the accused of the necessity for filing a written application;

(4) Inform the accused of the right to a pre-indictment commitment hearing, that the hearing will be postponed if the accused requests additional time to obtain counsel or subpoena witnesses or if state requests additional time to prepare its case, and inform the accused that giving a bond returnable to arraignment or trial shall be a waiver of the right to a commitment hearing although a magistrate may in his or her discretion hold a commitment hearing pursuant to Rule 25.2(A);

(5) Schedule a commitment hearing if authorized and if requested by the defendant and so notify the prosecuting attorney and the law officer having custody of the accused;

(6) In cases of warrantless arrest, unless a subsequent determination of probable cause has been made, make a fair and independent determination of probable cause for the arrest;

(7) Inform the accused of the right to grand jury indictment in felony cases, to accusation in misdemeanor cases, to uniform traffic citation in traffic cases, and the right to trial by jury, and, in felony cases, when the next grand jury will convene; in felony cases subject to OCGA § 17-7-70.1 (involving violations of OCGA §§ 16-8-2, 16-8-14, 16-8-18, 16-9-1, 16-9-2, 16-9-20, 16-9-31, 16-9-33, 16-9-37, 16-10-52, or 40-5-58), inform the accused that if the commitment hearing is expressly waived or the accused is bound over after the commitment hearing, the district attorney may prepare an accusation or seek an indictment;

(8) Inform the accused that the accused or his or her attorney may waive the right to a commitment hearing; and

(9) Set the amount of bail if the offense is not one bailable only by a superior court judge, or so inform the accused if it is.

25.2. Commitment Hearing

A. A magistrate, in his or her discretion, may hold a commitment hearing even though the defendant has posted a bail bond as provided in Rule 23.

B. At the commitment hearing by the court of inquiry, the judicial officer shall perform the following duties:

(1) Explain the probable cause purpose of the hearing;

(2) Repeat to the accused the rights explained at the first appearance;

(3) Determine whether the accused waives the commitment hearing;

(4) If the accused waives the hearing, the court shall immediately bind the entire case over to the court having jurisdiction of the most serious offense charged;
(5) If the accused does not waive the hearing, the court shall immediately proceed to conduct the commitment hearing unless, for good cause shown, the hearing is continued to a later scheduled date;
(6) The judicial officer shall bind the entire case over to the court having jurisdiction of the most serious offense for which probable cause has been shown by sufficient evidence and dismiss any charge for which probable cause has not been shown;
(7) On each case which is bound over, a memorandum of the commitment shall be entered on the warrant by the judicial officer. The warrant, bail bond, and all other papers pertaining to the case shall be forwarded to the clerk of the appropriate court having jurisdiction over the offense for delivery to the prosecuting attorney.
Each bail bond shall contain the full name, residence, business and mailing address and telephone number of the accused and any surety;
(8) A copy of the record of any testimony and the proceedings of the first appearance and the commitment hearing, if available, shall be provided to the proper prosecuting officer and to the accused upon payment of the reasonable cost for preparation of the record;
(9) A judicial officer, conducting a commitment hearing, is without jurisdiction to make final disposition of the case or cases at the hearing by imposing any fine or punishment, except where the only charge arising out of the transaction at issue is the violation of a county or state authority ordinance.
C. At the commitment hearing, the following procedures shall be utilized:
(1) The rules of evidence shall apply except that hearsay may be allowed;
(2) The prosecuting entity shall have the burden of proving probable cause; and may be represented by a law enforcement officer, a district attorney, a solicitor, a private attorney or otherwise as is customary in that court;
(3) The accused may be represented by an attorney or may appear pro se; and
(4) The accused shall be permitted to introduce evidence.

25.3. Private Citizen Warrant Application Hearings

A. Upon the filing of an application for an arrest warrant by a person other than a peace officer or law enforcement officer, and if the court determines that a hearing is appropriate pursuant to OCGA § 17-4-40, the court shall give notice of the date, time and location of the hearing to the applicant and to the person whose arrest is sought by personal service or by first class mail to the person's last known address or by any other means which is reasonably calculated to notify the person of the date, time and location of the hearing.
B. At the warrant application hearing the court shall:
a. Explain the probable cause purpose of the hearing;
b. Inform the accused of the charges;
c. Inform the accused of the right to hire and have the advice of an attorney, of the right to remain silent, and that any statement made may be used against him or her.
C. The warrant application hearing shall be conducted in accordance with OCGA § 17-4-40 (4) and (5) and Rule 25.2(C) of these rules.

D. A copy of the record of any testimony and the proceedings of the warrant application hearing, if available, shall be provided to the proper prosecuting officer and to the accused upon payment of the reasonable cost for preparation of the record.
E. The judge conducting a warrant application hearing is without jurisdiction to make final disposition of the case or cases at the hearing by imposing any fine or punishment.

Former Rule 25 amended and renumbered as new Rule 13 effective October 28, 1993. Former Rule 13 amended and renumbered as new Rule 25 effective October 28, 1993; amended effective December 19, 2002.

Rule 26. Appointment of Counsel for Indigent Defendants

26.1. Authority and Purpose

This rule is promulgated pursuant to OCGA§ 17-12-4 in order to provide indigent persons with competent legal counsel in criminal proceedings.

26.2. Application For and Appointment of Counsel

When an accused person, contending to be financially unable to employ an attorney to defend against pending criminal charges or to appeal a conviction, desires to have an attorney appointed, the accused shall make a request in the form of an application for appointment of counsel and certificate of financial resources, made under oath and signed by the accused. This form shall contain information as to the accused's assets, liabilities, employment, earnings, other income, number and ages of dependents, the charges against the accused and such other information as shall be required by the court. The purpose of the application and certification is to provide the court or its designee with sufficient information from which to determine the financial ability of the accused to employ counsel.
Upon a determination of indigency the court shall, in writing, authorize the appointment of counsel for the indigent accused. The original authorization of appointment shall be filed with the clerk of court; a copy of the authorization shall be forwarded to the clerk, court administrator, public defender or such other person designated by the court to assign an attorney to an indigent defendant. Such person shall notify the accused, the appointed attorney, the sheriff and the prosecuting attorney of the appointment. The application for an attorney and certificate of financial resources shall be in substantially the following form:

IN THE MAGISTRATE COURT OF _____ COUNTY
STATE OF GEORGIA

STATE OF GEORGIA CASE NO.
CHARGE(S):

v. _____

APPLICATION FOR APPOINTMENT OF COUNSEL AND
CERTIFICATE OF FINANCIAL RESOURCES

I am the defendant in the above-styled action. I cannot afford to hire a lawyer to assist me. I want the court to provide me with a lawyer. I understand that I am providing the following information in order for the court to determine my eligibility for a court-appointed lawyer to defend me on the above charges.

In jail ____ Out on bond ____ Arrest Date _____

1. Name _____ Telephone No. _____
Mailing address _____
Birth date _____ Age ____ Soc. Sec. No. _____
Highest grade in school completed _____

2. If employed, employer is _____ . My take home pay is _____

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

4. Are you married _____ Is spouse employed? _____
If yes, by whom _____ Spouse's net income _____ (week)

5. Number of children living in home: _____ Ages _____

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

7. Do you own a motor vehicle? Year and model _____ How much do you owe on it? _____

8. Do you own a home? ____ Value _____ How much do you owe on it?_____

9. Amount of house payment or rent payment each month _____

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

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

12. List indebtedness and amount of payments _____

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

14. Child support payable under any court order _____

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

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

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

The _____ day of _____, 20_.

_____
Defendant's Signature
Sworn to and subscribed before me this _____ day of _____, 20_.

_____
Notary Public
My Commission Expires _____

ORDER

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

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

Let the defendant and the assigned attorney be notified hereof and furnished a copy of this application and order.
This _____ day of _____, 20_.

_____
Magistrate Court Judge
_____ County

26.3. Responsibility for Determination of Eligibility

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

26.4. Uniform Eligibility Guidelines

Income eligibility - Eligible accused persons include all applicants for an attorney with net income below a level set by the court as revised periodically.
The following special needs of a family unit may be deducted from net income in determining eligibility:
(1) Child care expenses for working custodial parents; and,
(2) Legally required support payments to dependents, including alimony for the support of a child/children.
"Net income" shall include only a client's take-home pay, which is the gross income earned by a client minus those deductions required by law or as a condition of employment.
"Family unit" includes the defendant, a spouse, if the couple lives together, any minors who are unemployed and unmarried, and any infirm or permanently disabled person living with the defendant and for whom the defendant has assumed financial responsibility. The income of a minor who is attending school full time, but has after-school employment or does odd jobs, shall

not be attributed to that of the family unit. No other persons, even if living within the same household, will be deemed members of the family unit.
In the event an accused person is discovered to have been ineligible at the time of the appointment of an attorney, the court shall be notified. The court may discharge the appointed attorney and refer the matter to the private bar. The attorney should be paid for the time spent on the case and recoupment sought from the ineligible person.
Regardless of the prima facie eligibility on the basis of income, a person who has sufficient assets that are easily converted to cash by sale or mortgage may not be qualified for representation.

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

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

26.5. County Selected Methods of Providing Counsel

The court shall, whenever practicable, use an available public defender system, legal aid and defender society, agency for indigent defense, a panel of private attorneys, a combination of the above, or other existing means, to provide adequate legal defense for indigents as required by these rules and the laws of this State.

26.6. Assignment of Cases to Private Attorneys

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

Adopted effective December 19, 2002.

Rule 27. Arraignment

27.1. Calendar

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

27.2. Call for Arraignment

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

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

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

Adopted effective December 19, 2002.

Rule 28. Motions, Demurrers, Special Pleas, and Similar Items in Criminal Matters

28.1. Time for Filing

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

28.2. Time for Hearing

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

28.3. Notice of Prosecution's Intent to Present Evidence of Similar Transactions

(A) The prosecution may, upon notice filed in accordance with section 28.1 of these rules, request of the court in which the charging instrument is pending leave to present during the trial of the pending case evidence of similar transactions or occurrences.

(B) The notice shall be in writing, served upon the defendant's counsel, and shall state the transaction, date, county, and the name(s) of the victim(s) for each similar transaction or occurrence sought to be introduced. Copies of accusations or indictments, if any, and guilty pleas or verdicts, if any, shall be attached to the notice. The judge shall hold a hearing at such time as

may be appropriate, and may receive evidence on any issue of fact necessary to determine the request. The burden of proving that the evidence of similar transactions or occurrences should be admitted shall be upon the prosecution. The state may present during the trial evidence of only those similar transactions or occurrences specifically approved by the judge.
(C) Evidence of similar transactions or occurrences not approved shall be inadmissible. In every case, the prosecuting attorney and defense attorney shall instruct their witnesses not to refer to similar crimes, transactions or occurrences, or otherwise place the defendant's character in issue, unless specifically authorized by the judge.
(D) If upon the trial of the case the defense places the defendant's character in issue, evidence of similar transactions or occurrences, as shall be admissible according to the rules of evidence, shall be admissible, the above provisions notwithstanding.
(E) Nothing in this rule is intended to prohibit the state from introducing evidence of similar transactions or occurrences which are lesser included alleged offenses of the charge being tried, or are immediately related in time and place to the charge being tried, as part of a single, continuous transaction. Nothing in this rule is intended to alter the rules of evidence relating to impeachment of witnesses.
(F) This rule shall not apply to sentencing hearings.

28.4. Notice of Intention of Defense to Raise Issue of Insanity, Mental Illness or Mental Competency

(A) If, in any criminal proceeding, the defense intends to raise the issue that the defendant or accused was or is insane, mentally incompetent, or mentally ill at the time of act or acts charged against the accused, or at the time of trial, such intention must be stated, in writing, in a pleading denominated as "Notice of Intent of Defense to Raise Issue of Insanity or Mental Incompetence." This notice shall be filed and served upon the prosecuting attorney in accordance with section 28.1. of these rules. Upon the filing of such notice, the judge shall determine from the prosecuting attorney and the defense attorney whether such issue requires any further mental examination of the accused ahead of trial of the case on the merits.
(B) Except for good cause shown, the issue of insanity shall not be raised in the trial on the merits unless notice has been filed and served ahead of trial as provided in these rules.

28.5. Motions and Orders for Mental Examination at Public Expense

In pending cases where the mental competency of an accused is brought into question, the judge may, upon proper showing, exercise discretion and require a mental examination and evaluation at public expense. For a defendant who is represented by counsel, a motion for mental examination may be filed in writing by counsel setting out allegations and grounds for such motion, praying for a court-ordered evaluation. The judge may enter an order requiring psychiatric evaluation of the defendant for the purposes of competency to stand trial, degree of criminal responsibility at the time of the act in question and necessity of treatment. The judge may direct the Department of Human Resources (or any other forensic psychiatric service as may be necessary and available) to perform the examination at a time and place to be set by the department or service in cooperation with the county sheriff. A copy of the order shall be forwarded to the department or service accompanied by a copy of the accusation or specification of charges, a copy of the police arrest report, where available, and a brief summary of any known or alleged previous psychiatric treatment or hospitalization involving this particular person. Any

other background information available to the court shall also be forwarded to the evaluating department or service to assist in performing adequately the requested services.

Copies of suggested orders requesting psychiatric examination are attached as Specimen Psychiatric Evaluation Order #1 and Specimen Psychiatric Evaluation Order #2. The department or service shall submit its report to the requesting judge, who shall provide copies of the report to the defendant's attorney and the prosecuting attorney.

SPECIMEN COMMITTAL ORDER AFTER SPECIAL PLEA OF MENTAL INCOMPETENCE TO STAND TRIAL

IN THE MAGISTRATE COURT OF _____ COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA CASE NO.

v.

CHARGE(S):

_____

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

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

After a hearing on defendant's special plea of insanity and due consideration, the plea of Mental Incompetence to Stand Trial is sustained.

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

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

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

SO ORDERED, this the _____ day of _____, 20_____.

_____
Judge, Magistrate Court of _____ County, Georgia

SPECIMEN PSYCHIATRIC EVALUATION ORDER NO. 1

IN THE MAGISTRATE COURT OF _____ COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA CASE NO.
v.
_____ CHARGE(S):

ORDER FOR MENTAL EVALUATION
REGARDING COMPETENCY TO STAND TRIAL

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

IT IS HEREBY ORDERED that the Department of Human Resources (or Forensic Psychiatry Service) conduct an evaluative examination of said defendant, provide treatment of the defendant, if appropriate, and provide to this court a report of diagnosis, prognosis and its findings, with respect to: Competency to stand trial. Whether the accused is capable of understanding the nature and object of the proceedings; whether he comprehends his or her own condition in reference to such proceedings; and, whether the accused is capable of rendering counsel assistance in providing a proper defense.

IT IS FURTHER ORDERED that the department (or service) arrange with the county sheriff, or the sheriff's lawful deputies, for the prompt examination of said defendant, either at the county jail or at a designated hospital, with transportation of the defendant to be provided by the sheriff, where necessary, with transportation costs to be borne by the county. Upon completion of the examination, the examining facility shall notify the sheriff, who shall promptly reassume custody of the defendant.

Copies of documents supporting this request are attached hereto, as follows:
( ) Accusation
( ) Summary of previous mental health treatment
( ) Copy of arrest report
( ) Other _____

_____
So ordered, this the ____ day of _____, 20___.

Judge, Magistrate Court of _____ County, Georgia

SPECIMEN PSYCHIATRIC EVALUATION ORDER NO. 2

IN THE MAGISTRATE COURT OF _____ COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA
v. _____

CASE NO.
CHARGE(S):

ORDER FOR MENTAL EVALUATION
REGARDING COMPETENCY
AT THE TIME OF THE ACT

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

IT IS HEREBY ORDERED that the Department of Human Resources (or Forensic Psychiatry Service) conduct an evaluative examination of the defendant, provide treatment of the defendant, if appropriate, and provide to this court a report of diagnosis, prognosis and its findings, with respect to:

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

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

3. Any recommendations for disposition.

IT IS FURTHER ORDERED that the department or service arrange with the county sheriff, or the sheriff's lawful deputies, for the prompt examination of said defendant, either at the county jail or at a specified hospital, with transportation costs to be borne by the county. Upon completion of the examination, the examining facility shall notify the sheriff, who shall promptly reassume custody of the accused.

Copies of documents supporting this request are attached hereto, as follows:
( ) Accusation
( ) Summary of previous mental health treatment
( ) Copy of arrest report
( ) Other
So ordered, this the _____ day of _____, 20_.

_____
Judge, Magistrate Court of _____ County, Georgia

Adopted effective December 19, 2002; amended effective July 15, 2004.

Rule 29. Criminal Trial Calendar

29.1. Calendar Preparation

All cases shall be set for trial within a reasonable time after arraignment. The judge or designee shall prepare a trial calendar, shall deliver a copy thereof to the clerk of court, and shall give notice in person or by mail to each counsel of record, the bondsman (if any) and the defendant at the last address indicated in court records, not less than 7 days before the trial date. The calendar shall list the dates that cases are set for trial, the cases to be tried at that session of court, the case numbers, the names of the defendants and the names of the defense counsel.

29.2. Removal From Calendar

No case shall be postponed or removed from the calendar except by the judge.

Adopted effective December 19, 2002.

Rule 30. Pleading by Defendant

30.1. Alternatives

(A) A defendant may plead guilty, not guilty, or in the discretion of the judge, nolo contendere. A plea of guilty or nolo contendere should be received only from the defendant personally in open court, except when the defendant is a corporation, in which case the plea may be entered by counselor a corporate officer. In misdemeanor cases, upon the request of a defendant who has made, in writing, a knowing, intelligent and voluntary waiver of his right to be present, the court may accept a plea of guilty in absentia.
(B) A defendant may plead nolo contendere only with the consent of the judge. Such a plea should be accepted by the judge only after due consideration of the views of the parties and the interest of the public in the effective administration of justice. Procedurally, a plea of nolo contendere should be handled under these rules in a manner similar to a plea of guilty.

30.2. Aid of Counsel - Time for Deliberation

(A) A defendant shall not be called upon to plead before having an opportunity to retain counsel, or if defendant is eligible for appointment of counsel, until counsel has been appointed or right to counsel waived. A defendant with counsel shall not be required to enter a plea if counsel makes a reasonable request for additional time to represent the defendant's interest, or if the defendant has not had a reasonable time to consult with counsel.

(B) A defendant without counsel should not be called upon to plead to any offense without having had a reasonable time to consider this decision. When a defendant without counsel tenders a plea of guilty or nolo contendere to an offense, the court should not accept the plea unless it is reaffirmed by the defendant after a reasonable time for deliberation, following the advice from the court required in section 30.8.

30.3. Propriety of Plea Discussions and Plea Agreements

(A) In cases in which it appears that the interests of the public in the effective administration of criminal justice (as stated in section 30.6) would thereby be served, the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. The prosecuting attorney should engage in plea discussions or reach a plea agreement with the defendant only through defense counsel, except when the defendant is not eligible for or does not desire appointment of counsel and has not retained counsel.

(B) The prosecuting attorney, in reaching a plea agreement, may agree to one or more of the following, as dictated by the circumstances of the individual case:

(1) to make or not to oppose favorable recommendations as to the sentence which should be imposed if the defendant enters a plea of guilty or nolo contendere;

(2) to seek or not to oppose dismissal of the offense charged if the defendant enters a plea of guilty or nolo contendere to another offense reasonably related to defendant's conduct; or,

(3) to seek or not to oppose dismissal of other charges or potential charges against the defendant if the defendant enters a plea of guilty or nolo contendere.

30.4. Relationship Between Defense Counsel and Client

(A) Defense counsel should conclude a plea agreement only with the consent of the defendant, and should ensure that the decision to enter or not enter a plea of guilty or nolo contendere is ultimately made by the defendant.

(B) To aid the defendant in reaching a decision, defense counsel, after appropriate investigation, should advise the defendant of the alternatives available and of considerations deemed important by him in reaching a decision.

30.5. Responsibilities of the Trial Judge

(A) The trial judge should not participate in plea discussions.

(B) If a tentative plea agreement has been reached, upon request of the parties, the trial judge may permit the parties to disclose the tentative agreement and the reasons therefor in advance of the time for the tendering of the plea. The judge may then indicate to the prosecuting attorney and defense counsel whether the judge will likely concur in the proposed disposition if the information developed in the plea hearing or presented in the presentence report is consistent with the representations made by the parties. If the trial judge concurs but the final disposition differs from that contemplated by the plea agreement, then the judge shall state for the record what information in the presentence report or hearing contributed to the decision not to sentence in accordance with the plea agreement.

(C) When a plea of guilty or nolo contendere is tendered or received as a result of a plea agreement, the trial judge should give the agreement due consideration, but notwithstanding its existence, must reach an independent decision on whether to grant charge or sentence leniency under the principles set forth in section 30.6 of these rules.

30.6. Consideration of Plea in Final Disposition

(A) It is proper for the judge to grant charge and sentence leniency to defendants who enter pleas of guilty or nolo contendere when the interests of the public in the effective administration of criminal justice are thereby served. Among the considerations which are appropriate in determining this question are:

(1) that the defendant by entering a plea has aided in ensuring the prompt and certain application of correctional measures;

(2) that the defendant has acknowledged guilt and shown a willingness to assume responsibility for conduct;

(3) that the leniency will make possible alternative correctional measures which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant from the form of conviction;

(4) that the defendant has made public trial unnecessary when there are good reasons for not having the case dealt with in a public trial;

(5) that the defendant has given or offered cooperation when such cooperation has resulted or may result in the successful prosecution of other offenders engaged in equally serious or more serious criminal conduct;

(6) that the defendant by entering a plea has aided in avoiding delay (including delay due to crowded dockets) in the disposition of other cases and thereby has increased the probability of prompt and certain application of correctional measures to other offenders.

(B) The judge should not impose upon a defendant any sentence in excess of that which would be justified by any of the rehabilitative, protective, deterrent or other purposes of the criminal law merely because the defendant has chosen to require the prosecution to prove the defendant's guilt at trial rather than to enter a plea of guilty or nolo contendere.

30.7. Determining Voluntariness of Plea

The judge shall not accept a plea of guilty or nolo contendere without first determining, on the record, that the plea is voluntary. By inquiry of the prosecuting attorney and defense counsel, the judge should determine whether the tendered plea is the result of prior plea discussions and a plea agreement, and, if it is, what agreement has been reached. If the prosecuting attorney has agreed to seek charge or sentence leniency which must be approved by the judge, the judge must advise the defendant personally that the recommendations of the prosecuting attorney are not binding on the judge. The judge should then address the defendant personally and determine whether any other promises or any force or threats were used to obtain the plea.

30.8. Defendant to Be Informed

The judge should not accept a plea of guilty or nolo contendere from a defendant without first:

(A) Determining on the record that the defendant understands the nature of the charge(s);

(B) Informing the defendant on the record that by entering a plea of guilty or nolo contendere one waives:

(1) the right to trial by jury;

(2) the presumption of innocence;

(3) the right to confront witnesses against oneself;

(4) the right to subpoena witnesses;

(5) the right to testify and to offer other evidence;
(6) the right to assistance of counsel during trial;
(7) the right not to incriminate oneself; and that by pleading not guilty or remaining silent and not entering a plea, one obtains a jury trial; and
(C) Informing the defendant on the record:
(1) of the terms of any negotiated plea;
(2) that a plea of guilty may have an impact on his or her immigration status if the defendant is not a citizen of the United States;
(3) of the maximum possible sentence on the charge, including that possible from consecutive sentences and enhanced sentences where provided by law; and/or
(4) of the mandatory minimum sentence, if any, on the charge. This information may be developed by questions from the judge, the district attorney or the defense attorney, or a combination of any of these.

30.9. Determining Accuracy of Plea

Notwithstanding the acceptance of a plea of guilty, judgment should not be entered upon such plea without such inquiry on the record as may satisfy the judge that there is a factual basis for the plea.

30.10. Stating Intention to Reject the Plea Agreement

If the trial court intends to reject the plea agreement, the trial court shall, on the record, inform the defendant personally that
(1) the trial court is not bound by any plea agreement;
(2) the trial court intends to reject the plea agreement presently before it;
(3) the disposition of the present case may be less favorable to the defendant than that contemplated by the plea agreement; and
(4) that the defendant may then withdraw his or her guilty plea as a matter of right. If the plea is not then withdrawn, sentence may be pronounced.

30.11. Record of Proceedings

A verbatim record of the proceedings at which a defendant enters a plea of guilty or nolo contendere shall be made and preserved. The record should include:
(A) the inquiry into the voluntariness of the plea (as required in section 30.7);
(B) the advice to the defendant (as required in section 30.8);
(C) the inquiry into the accuracy of the plea (as required in section 30.9), and, if applicable;
(D) the notice to the defendant that the trial court intends to reject the plea agreement and the defendant's right to withdraw the guilty plea before sentence is pronounced.

30.12. Plea Withdrawal

(A) After sentence is pronounced, the judge should allow the defendant to withdraw his plea of guilty or nolo contendere whenever the defendant, upon a timely motion for withdrawal, proves that withdrawal is necessary to correct a manifest injustice.
(B) In the absence of a showing that withdrawal is necessary to correct a manifest injustice, a defendant may not withdraw a plea of guilty or nolo contendere as a matter of right once sentence has been pronounced by the judge.

Adopted effective December 19, 2002.

PART III. CIVIL RULES

Rule 31. Designated Agent for Civil Actions

Any full-time officer or employee of a corporation, sole proprietorship, partnership or unincorporated association may be designated by such entity as agent for purposes of representing it in civil actions to which it is a party in magistrate court. An action on behalf of a corporation, sole proprietorship, partnership, or unincorporated association, except affidavits in attachment, may be filed and presented by such designated agent.

Former Rule 14 renumbered as new Rule 31 effective October 28, 1993.

Rule 32. Filing of Civil Actions by Mail

Civil actions may be filed in magistrate court by mail providing such an action is properly verified by a notary or other attesting official. No magistrate court shall refuse to accept such mail filings.

Former Rule 15 renumbered as new Rule 32 effective October 28, 1993.

Rule 33. Computing Answer Dates in Civil Actions

Except as otherwise provided by time period computations prescribed by statute, to compute the date an answer is due in civil actions, begin counting on the day following the day of service and count the number of days. If the last day falls on a Saturday, Sunday, or legal holiday, then the next regular business day becomes the day the answer is due. When the period of time is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Former Rule 16 renumbered as new Rule 33 effective October 28, 1993.

Rule 34. Answer to Civil Actions

34.1. Oral Answers and Counterclaims to Civil Actions

Oral answers and counterclaims, if any, to civil actions must be given in person to a clerk or judge of the magistrate court. The clerk or judge shall reduce such answer to writing, have the defendant sign it and then file it with other papers in the case.

34.2. Setting Hearing Date in Dispossessory Proceedings

If a defendant in a dispossessory proceeding files an answer and/or counterclaim, a trial on the issues may be held within 7 days from the date the answer is filed.

Former Rule 17 amended and renumbered as new Rule 34 effective October 28, 1993. Former Rule 34 renumbered as subsection 34.1 and a new subsection 34.2 was added effective June 10, 1999; amended effective March 22, 2001.

Rule 35. Objections to Process, Jurisdiction or Venue

Objections to sufficiency of process, service of process, personal jurisdiction or venue must be raised at the time of filing the answer or are waived. Where a valid objection to personal jurisdiction or venue was not raised when the answer was filed and thus is waived, the court may nevertheless in the interest of justice transfer the case to another Georgia court having jurisdiction if the present court is an inconvenient forum and the transfer would not unduly prejudice the opposing party. Objections to subject matter jurisdiction are never waived.

No special formula shall be required to raise an issue of jurisdiction or venue. In addition to answers explicitly raising the issue of lack of jurisdiction or venue, any motion to transfer or answer stating that the action was filed in the wrong court or asking that the case be transferred to another court, or words to that effect, shall be sufficient to raise an objection to jurisdiction or venue.

Adopted effective October 28, 1993.

Rule 36. Transfer/Change of Venue

In all cases where it is determined by the court that the court in which a case is pending lacks jurisdiction, or venue, or both, that court shall by written order transfer the case in accordance with Article VI, Section 1, Paragraph 8, of the 1983 Constitution of the State of Georgia, or where this rule is not applicable, dismiss said case without prejudice.

36.1. Lack of Jurisdiction Over Counterclaim

Where the defendant asserts a legally sufficient counterclaim in good faith which is beyond the jurisdiction of the magistrate court but the entire case is within the jurisdiction of another Georgia court, the court shall transfer the case to a court with jurisdiction over the counterclaim. Where the parties agree on a transferee court with jurisdiction over the counterclaim, the court shall transfer the case to that court. Otherwise, the court shall select a proper court to which to transfer the case.

36.2. Transfer Between Magistrate Courts

Upon a judicial determination that the court lacks venue, the court shall transfer the case by written order to a magistrate court of proper venue. No court shall refuse to accept a transfer accompanied by the fees provided by paragraph 36.3. If it is later determined that the transferee court has no jurisdiction or venue to hear the case, it may in turn transfer the action pursuant to this rule.

36.3. Costs for Transfers Between Magistrate Courts

A. The case shall be transferred with the initial filing fee, and the transferred filing fee shall be the filing fee in the transferee court. All surcharges, such as for local law library funds, retirement funds, and the like shall be retained and reported in the court of initial filing. No additional filing costs shall be required by the transferee court, no surcharges will be collected from the parties or be required to be paid by the transferee court, nor shall any refund be made to the parties if the filing fee is less in the transferee court.

B. If service upon the defendant has not been perfected, a service fee in the amount provided for in OCGA § 15-16-21 (b) (1) for the transferee court shall be paid by the plaintiff prior to the transfer. If a service attempt (beyond a check of map, data base or index of addresses) has been made in the court where the action was originally filed, the original service fee shall be considered as expended and the entire service fee shall be billed to the plaintiff. If no service has been attempted, the plaintiff shall only be billed for the difference between the service fee originally paid and that required by this rule. A bill for the required service fee shall be sent to the plaintiff by regular mail and the case may be dismissed without prejudice for want of prosecution if the bill is not paid within thirty (30) days.

The service fee provided in OCGA § 15-16-21 (b) (1) shall be the service fee in all transferred cases irrespective of whether the transferee court uses sheriff, marshal, or constable as the office for service of process in that county. The parties shall not be entitled to any refund of a portion of the fee.

36.4. Hearing Transfer Requests

A. Where the defendant has not been served, the court may entertain a motion to transfer ex parte, either orally or upon written request and need not require a hearing.
B. Where the opposing party consents to a transfer, the court need not require a hearing. No transfer shall be made upon consent of the parties where no authorized factual grounds for transfer are asserted; however, the court may accept without further proof the factual assertions where the request is made by consent.
C. Where the defendant has been served and there is no consent to the request for transfer, the court may decide the request at the hearing regularly set in that case. Alternately, the court may, after reviewing the legal sufficiency of the request, notify the opposing party that the request will be granted unless a hearing is requested within ten days. Such notice shall be sent by regular mail to the address shown on the pleadings.
D. The transfer order shall not be entered until any required service fee is paid. The court shall transfer the case within 10 days of the entry of the order.
E. If an order allowing the plaintiff to proceed in forma pauperis has been entered in the court where the action was originally filed, it shall be honored in the transferee court unless and until successfully challenged by an opposing party.

Former Rule 18 amended and renumbered as new Rule 36 effective October 28, 1993.

Rule 37. Amendments

Amendments to pleadings in the magistrate court may be filed without leave of court. If the court finds that the opposite party is surprised and not prepared to go forward due to the lateness of notice of the amendment despite due diligence, the court shall continue the case. When the amending party has been negligent or dilatory in filing an amendment, the court may condition consideration of the amendment upon the payment of all or part of the costs to the opposing party attributable to the continuance of the case. The amending party may then elect to proceed immediately to trial in the magistrate court without consideration of the amendment or agree to pay the costs assessed by the court. Upon failure to pay those costs, the court may impose a default judgment or may hear the case on the merits and assess those costs as part of the final

judgment. Amendments filed at or prior to the hearing in the magistrate court shall be part of the pleadings upon de novo appeal even where such amendment was not considered in the magistrate court.

Adopted effective October 28, 1993.

Rule 38. Motions and Request for Relief Under the Civil Practice Act

No party or attorney shall be required to respond to a motion, including a request for relief under the Civil Practice Act (OCGA § 9-11-1 et. seq.) prior to a scheduled hearing unless otherwise directed by the court. Unless otherwise provided by the court, pre-judgment motions shall be ruled on at the first scheduled hearing for the case. Where a party contends that the grant or denial of the motion may require postponement of the hearing on the merits, the motion should so state. Post-judgment motions may be placed on a calendar for hearing. Motions may be denied without a hearing based upon the record of the court. Motions shall not be granted without a hearing unless hearing is waived by the respondent.
Parties and attorneys are reminded that the Georgia Civil Practice Act does not govern proceedings in Magistrate Court. Except as otherwise provided in these rules, any request for relief under that act will be considered under the standards of Howe v. Roberts, 259 Ga. 617 (1989).

No leave of court is required to file a suggestion, on the record, of death of a party.

Adopted effective October 28, 1993.

Rule 39. Third-Party Practice

A defendant may file with the answer a statement of claim against a person who is not a party to the action who is or may be liable for all or part of the plaintiff's claim. All claims arising out of the same transaction or occurrence as the plaintiff's claim may be asserted. After the answer is filed, third-party claims may only be filed with permission of the court. A plaintiff defending a counterclaim may also file such a third-party claim with permission of the court. The procedures applicable to any other action shall apply to a statement of claim filed against a third party defendant and the hearing on the entire case shall be set pursuant to OCGA § 15-10-43 calculating time limits from the day of the third-party defendant's answer.

The third-party defendant may assert a claim arising out of the same transaction or occurrence at the time of filing the answer against any other party to the action and may assert such related claims against non-parties with permission of the court. Existing parties other than the third-party plaintiff may file claims against the third party defendant arising out of the same transaction or occurrence as the original action any time before the third-party defendant's answer is due.

Adopted effective October 28, 1993.

Rule 40. Pre-Trial Discovery

Use of OCGA §§ 9-11-26 through 9-11-37 for purposes of pre-trial discovery in the magistrate court is not favored; however, requests for such discovery may be entertained when made by joint request of all parties. Requests for use of these provisions may also be allowed for preservation of testimony, obtaining evidence from out-of-state, minimizing expense and similar purposes in order to do substantial justice or lessen the expense to the parties.

No party or attorney may file any discovery request pursuant to OCGA §§ 9-11-26 through 9-11-37 without permission of the court; any such filing shall be a nullity.

Where discovery is permitted by the magistrate court, the magistrate may nevertheless decline to rule on a motion pursuant to OCGA § 9-11-37 in which case such motion may be renewed upon de novo appeal.

Adopted effective October 28, 1993.

Rule 41. Summary Judgment

Summary judgment motions in the magistrate court shall not be permitted and their filing shall be a nullity.

Adopted effective October 28, 1993.

Rule 42. Bankruptcy Stay

A party or attorney may file a signed notice of bankruptcy proceedings containing the bankruptcy case number; where the debtor in the bankruptcy case is the same as a party in the magistrate court, such a notice will stay proceedings in the magistrate court until further order of the court. Parties are encouraged to attach a copy of the first page of their bankruptcy filing to the notice. On the court's own motion, a judge or clerk may attempt to verify the filing with the U.S. Bankruptcy Court (which may be by telephone inquiry) and notify the parties to proceed with the case upon lack of verification.

Parties desiring to challenge the authenticity, scope, or continued duration of a bankruptcy stay shall file a written motion or request which shall be set for hearing before a magistrate.

Adopted effective October 28, 1993.

Rule 43. Consent Judgments in Civil Actions

Consent judgments must be reduced to writing, signed by the defendant and his or her attorney, if any, and filed with other papers in the case. If the consent judgment is for less than the amount of the claim as filed, then the plaintiff and his or her attorney, if any, shall also sign such consent judgment.

Former Rule 19 amended and renumbered as new Rule 43 effective October 28, 1993.

Rule 44. Deferred Partial Payments of Judgments by Defendants

44.1. Clerical and Accounting Costs Due

Where plaintiff does not request partial payments be made to the court but the defendant requests to make such partial payments to the court rather than to the plaintiff, the judge may do so at the expense of the defendant and for the clerical and accounting costs incurred thereby, may charge 10%, but not less than $1.00 and not to exceed $10.00 for each payment.

44.2. Clerical and Accounting Costs Withheld

No clerical and accounting costs shall be deducted from monies received in the magistrate court in answer to a summons of garnishment, levy on property where such property is redeemed prior to public sale, when a defendant pays a claim in full, or when a defendant pays rent into court on a dispossessory action.

Former Rule 20 amended and renumbered as new Rule 44 effective October 28, 1993.

Rule 45. Satisfaction of Fi. Fa.

Upon sufficient showing, the judge or clerk shall indicate on the face of the fi. fa. that it has been satisfied, if such payment is made prior to public sale.

Former Rule 21 amended and renumbered as new Rule 45 effective October 28, 1993.