



SUPREME COURT OF GEORGIA

Atlanta April 14, 2015

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the 2014-1 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Rule 1.15(I) (Safekeeping Property – General); Rule 1.15(II) (Safekeeping Property – Trust Account and IOLTA); and Rule 1.15(III) (Record Keeping; Trust Account Overdraft Notification; Examination of Records) be amended and that new Part XV regarding the Georgia Bar Foundation be approved, effective January 1, 2016 to read as follows:

PART IV GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1 GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

PART ONE CLIENT-LAWYER RELATIONSHIP

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RULE 1.15(I). SAFEKEEPING PROPERTY – GENERAL.

(a) A lawyer shall hold funds or other property of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own funds or other property. Funds shall be kept in one or more separate accounts maintained in an approved institution as defined by Rule 1.15(III)(c)(1). Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

(b) For the purposes of this Rule, a lawyer may not disregard a third person's interest in funds or other property in the lawyer's possession if:

- (1) the interest is known to the lawyer, and
- (2) the interest is based upon one of the following:
 - (i) A statutory lien;
 - (ii) A final judgment addressing disposition of those funds or property; or
 - (iii) A written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property.

The lawyer may disregard the third person's claimed interest if the lawyer reasonably concludes that there is a valid defense to such lien, judgment, or agreement.

(c) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(d) When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and a client or third person claim interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property as to which the interests are not in dispute.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[2] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration or interpleader. The undisputed portion of the funds shall be promptly distributed.

[3] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

[3A] In those cases where it is not possible to ascertain who is entitled to disputed funds or other property held by the lawyer, the lawyer may hold such disputed funds for a reasonable period of time while the interested parties attempt to resolve the dispute. If a resolution cannot be reached, it

would be appropriate for a lawyer to interplead such disputed funds or property.

[4] A "clients' security fund" provides a means through the collective efforts of the State Bar of Georgia to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate.

RULE 1.15(II). SAFEKEEPING PROPERTY – TRUST ACCOUNT AND IOLTA.

(a) Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available one or more trust accounts as required by these Rules. All funds held by a lawyer for a client and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from a trust account.

(b) No personal funds shall ever be deposited in a lawyer's trust account, except that unearned lawyer's fees may be so held until the same are earned. Sufficient personal funds of the lawyer may be kept in the trust account to cover maintenance fees such as service charges on the account. Records on such trust accounts shall be so kept and maintained as to reflect at all times the exact balance held for each client or third person. No funds shall be withdrawn from such trust accounts for the personal use of the lawyer maintaining the account except earned lawyer's fees debited against the account of a specific client and recorded as such.

(c) All client's funds shall be placed in either an interest-bearing account at an approved institution with the interest being paid to the client or an interest-bearing (IOLTA) account at an approved institution with the interest being paid to the Georgia Bar Foundation as hereinafter provided.

(1) With respect to funds which are not nominal in amount, or are not to be held for a short period of time, a lawyer shall, with notice to the clients, create and maintain an interest-

bearing trust account in an approved institution as defined in Rule 1.15(III)(c)(1), with the interest to be paid to the client.

- (i) No earnings from such an interest-bearing account shall be made available to a lawyer or law firm.
- (ii) Funds in such an interest-bearing account shall be available for withdrawal upon request and without delay, subject only to any notice period which the institution is required to reserve by law or regulation.

(2) With respect to funds which are nominal in amount or are to be held for a short period of time, such that there can be no reasonable expectation of a positive net return to the client or third person, a lawyer shall, with or without notice to the client, create and maintain an interest-bearing, government insured trust account (IOLTA) at an approved institution as defined in Rule 1.15(III)(c)(1) in compliance with the following provisions:

- (i) No earnings from such an IOLTA Account shall be made available to a lawyer or law firm.
- (ii) Funds in each IOLTA Account shall be available for withdrawal upon request and without delay, subject only to any notice period which the institution is required to reserve by law or regulation.
- (iii) As required by Rule 15-103, the rate of interest payable on any IOLTA Account shall not be less than the rate paid by the depositor institution to regular, non-lawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time periods or quantity minimums, such as those offered in the form of certificates of deposit, may be obtained by a

lawyer or law firm on some or all of the deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately.

(iv) Lawyers or law firms shall direct the depository institution:

(A) to remit to the Georgia Bar Foundation interest or dividends, net of any allowable reasonable fees as defined in Rule 15-102(c), on the average monthly balance in that account, at least quarterly. Any allowable reasonable fees in excess of interest earned on that account for any month, and any charges or fees that are not allowable reasonable fees, shall be charged to the lawyer or law firm in whose names such account appears, if not waived by the approved institution;

(B) to transmit with each remittance to the Georgia Bar Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the applicable IOLTA Account number, the rate of interest applied, the average monthly account balance against which the interest rate is being applied, the gross interest earned, the types and amounts of service charges of fees applied, and the amount of the net interest remittance;

(C) to transmit to the depositing lawyer or law firm periodic reports or statements in accordance with the approved institution's normal procedures for reporting to depositors.

(3) No charge of ethical impropriety or other breach of professional conduct shall attend the determination that such funds are nominal in amount or to be held for a short period of time, or to the decision to invest clients' funds in a pooled interest-bearing account.

(4) Whether the funds are designated short-term or nominal or not, a lawyer or law firm may, at the request of the client, deposit funds into a separate interest-bearing account and remit all interest earned, or interest earned net of charges, to the client or clients.

The maximum penalty for a violation of Rule 1.15(II)(a) and Rule 1.15(II)(b) is disbarment. The maximum penalty for a violation of Rule 1.15(II)(c) is a public reprimand.

Comment

[1] The personal money permitted to be kept in the lawyer's trust account by this Rule shall not be used for any purpose other than to cover the bank fees and if used for any other purpose the lawyer shall have violated this Rule. If the lawyer wishes to reduce the amount of personal money in the trust account, the change must be properly noted in the lawyer's financial records and the monies transferred to the lawyer's business account.

[2] Nothing in this Rule shall prohibit a lawyer from removing from the trust account fees which have been earned on a regular basis which coincides with the lawyer's billing cycles rather than removing the fees earned on an hour-by-hour basis.

[3] In determining whether funds of a client or other beneficiary can earn income in excess of costs, the lawyer may consider the following factors:

- (a) the amount of funds to be deposited;
- (b) the expected duration of the deposit, including the likelihood of delay in the matter with respect to which the funds are held;

- (c) the rates of interest or yield at financial institutions where the funds are to be deposited;
- (d) the cost of establishing and administering a non-IOLTA Trust Account for the benefit of the client or other beneficiary, including service charges, the costs of the lawyer's services and the costs of preparing any tax reports that may be required;
- (e) the capability of financial institutions, lawyers, or law firms to calculate and pay earnings to individual clients; and
- (f) any other circumstances that affect the ability of the funds to earn a net return for the client or other beneficiary.

[4] The lawyer or law firm should review the IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third party.

RULE 1.15(III). RECORD KEEPING; TRUST ACCOUNT OVERDRAFT NOTIFICATION; EXAMINATION OF RECORDS.

(a) Required Bank Accounts: Every lawyer who practices law in Georgia and who receives money or other property on behalf of a client or in any other fiduciary capacity shall maintain, in an approved financial institution as defined by this Rule, a trust account or accounts, separate from any business and personal accounts. Funds received by the lawyer on behalf of a client or in any other fiduciary capacity shall be deposited into this account. The financial institution shall be in Georgia or in the state where the lawyer's office is located, or elsewhere with the written consent and at the written request of the client or third person.

(b) Description of Accounts:

(1) A lawyer shall designate all trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, as an "Attorney Trust Account," "Attorney Escrow Account," "IOLTA Account," or "Attorney Fiduciary Account." The name of the lawyer or law firm responsible for the account shall also appear on all deposit slips and checks drawn thereon.

(2) A lawyer shall designate all business accounts, as well as all deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a "Payroll Account," an "Operating Account" or a "Regular Account."

(3) Nothing in this Rule shall prohibit a lawyer from using any additional description or designation for a specific business or trust account including fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, agent or in any other fiduciary capacity.

(c) Procedure:

(1) Approved Institutions:

(i) A lawyer shall maintain his or her trust account only in a financial institution approved by the State Bar of Georgia, which shall annually publish a list of approved institutions.

(A) Such institutions shall be located within the State of Georgia, within the state where the lawyer's office is located, or elsewhere with the written consent and at the written request of the client or third person. The institution shall be authorized by federal or state law to do business in the jurisdiction where located and shall be federally insured. A financial institution shall be approved as a depository for lawyer trust accounts if it abides by an agreement to report to the Office of the General Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, and the instrument is not honored. The agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty days notice in writing to the Office of General Counsel. The agreement shall be filed with the Office of the

General Counsel on a form approved by the Investigative Panel of the State Disciplinary Board. The agreement shall provide that all reports made by the financial institution shall be in writing and shall include the same information customarily forwarded to the depositor when an instrument is presented against insufficient funds. If the financial institution is located outside of the State of Georgia, it shall also agree in writing to honor any properly issued State Bar of Georgia subpoena.

(B) In addition to the requirements above, the financial institution must also be approved by the Georgia Bar Foundation and agree to offer IOLTA Accounts in compliance with the additional requirements set out in Part XV of the Rules of the State Bar of Georgia.

(ii) The Georgia Bar Foundation may waive the provisions of this Rule in whole or in part for good cause shown. A lawyer or law firm may appeal the decision of the Georgia Bar Foundation by application to the Supreme Court of Georgia.

(2) Timing of Reports:

(i) The financial institution shall file a report with the Office of the General Counsel of the State Bar of Georgia in every instance where a properly payable instrument is presented against a lawyer trust account containing insufficient funds and said instrument is not honored within three business days of presentation.

(ii) The report shall be filed with the Office of the General Counsel within fifteen days of the date of the presentation of the instrument, even if the instrument is

subsequently honored after the three business days provided in paragraph (2)(i) above.

(3) Nothing shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule.

(4) Every lawyer and law firm maintaining a trust account as provided by these Rules is hereby and shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule and shall indemnify and hold harmless each financial institution for its compliance with the aforesaid reporting and production requirements.

(d) **Effect on Financial Institution of Compliance:** The agreement by a financial institution to offer accounts pursuant to this Rule shall be a procedure to advise the State Disciplinary Board of conduct by lawyers and shall not be deemed to create a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of lawyers overdrawing lawyer trust accounts.

(e) **Availability of Records:** A lawyer shall not fail to produce any of the records required to be maintained by these Rules at the request of the Investigative Panel of the State Disciplinary Board or the Supreme Court. This obligation shall be in addition to and not in lieu of the procedures contained in Part IV of these Rules for the production of documents and evidence.

(f) **Audit for Cause:** A lawyer shall not fail to submit to an Audit for Cause conducted by the State Disciplinary Board pursuant to Bar Rule 4-111.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] Each financial institution wishing to be approved as a depository of client trust funds must file an overdraft notification agreement with the Office of the General Counsel of the State Bar of Georgia. The State Bar of Georgia will publish a list of approved institutions at least annually.

[2] The overdraft agreement requires that all overdrafts be reported to the Office of the General Counsel of the State Bar of Georgia whether or not the instrument is honored. It is improper for a lawyer to accept "overdraft privileges" or any other arrangement for a personal loan on a client trust account, particularly in exchange for the institution's promise to delay or not to report an overdraft. The institution must notify the Office of the General Counsel of all overdrafts even where the institution is certain that its own error caused the overdraft or that the matter could have been resolved between the institution and the lawyer within a reasonable period of time.

[3] The overdraft notification provision is not intended to result in the discipline of every lawyer who overdraws a trust account. The lawyer or institution may explain occasional errors. The provision merely intends that the Office of the General Counsel receive an early warning of improprieties so that corrective action, including audits for cause, may be taken.

Waiver

[4] A lawyer may seek to have the provisions of this Rule waived if the lawyer or law firm has its principal office in a county where no bank, credit union, or savings and loan association will agree or has agreed to comply with the provisions of this Rule. Other grounds for requesting a waiver may include significant financial or business harm to the lawyer or law firm, such as where the unapproved bank is a client of the lawyer or law firm or where the lawyer serves on the board of the unapproved bank.

[5] The request for a waiver should be in writing, sent to the Georgia Bar Foundation, and should include sufficient information to establish good cause for the requested waiver.

[6] The Georgia Bar Foundation may request additional information from the lawyer or law firm if necessary to determine good cause.

Audits

[7] Every lawyer's financial records and trust account records are required records and therefore are properly subject to audit for cause. The audit provisions are intended to uncover errors and omissions before the public is harmed, to deter

those lawyers who may be tempted to misuse client's funds and to educate and instruct lawyers as to proper trust accounting methods. Although the auditors will be employed by the Office of the General Counsel of the State Bar of Georgia, it is intended that disciplinary proceedings will be brought only when the auditors have reasonable cause to believe discrepancies or irregularities exist. Otherwise, the auditors should only educate the lawyer and the lawyer's staff as to proper trust accounting methods.

[8] An audit for cause may be conducted at any time and without advance notice if the Office of the General Counsel receives sufficient evidence that a lawyer poses a threat of harm to clients or the public. The Office of the General Counsel must have the written approval of the Chairman of the Investigative Panel of the State Disciplinary Board and the President-elect of the State Bar of Georgia to conduct an audit for cause.

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PART XV

GEORGIA BAR FOUNDATION

Preamble

The Georgia Bar Foundation ("the Foundation") is a 501(c)(3) organization named by the Supreme Court of Georgia in 1983 to receive and distribute Interest On Lawyer Trust Account ("IOLTA") funds to support legal services for the poor, to improve the administration of justice, to provide legal education to Georgia's children, to provide educational programs for adults in order to advance understanding of democracy and our system of government, to aid children involved in the justice system, and to promote professionalism in the practice of law.

CHAPTER 1

IOLTA ACCOUNTS

Rule 15-101. BANK ACCOUNTS.

(a) Every lawyer who practices law in Georgia, whether as a sole practitioner or as a member of a firm, association or professional corporation, who receives money or other property on behalf of a client or in any other fiduciary

capacity shall maintain or have available an interest-bearing trust account or accounts.

(b) An “IOLTA Account” is a trust account benefiting the Foundation. The interest generated by an IOLTA Account shall be paid to the Georgia Bar Foundation, Inc. as hereinafter provided.

Rule 15-102. DEFINITIONS.

(a) An “IOLTA Account” means a trust account benefiting the Foundation, established in an approved institution for the deposit of pooled nominal or short-term funds of clients or third persons, and meeting the requirements of the Foundation as further detailed below. The account product may be an interest-bearing checking account; a money market account with, or tied to, check writing; a sweep account, portions of which are regularly moved into a government money market fund or daily overnight financial institution repurchase agreement invested solely in, or fully collateralized by, United States government securities; or an open-end money market fund solely invested in, or fully collateralized by, United States government securities.

(1) “Nominal or short-term” describes funds of a client or third person that the lawyer has determined cannot provide a positive net return to the client or third person.

(2) “Open-end money market fund” is a fund that identifies itself as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and, at the time of the investment, having total assets of at least \$250,000,000.

(3) “United States government securities” are United States Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(b) An “approved institution” is a bank or savings and loan association which is an approved institution as defined in Rule 1.15(III)(c)(1) and which voluntarily chooses to offer IOLTA Accounts consistent with the additional requirements of this Rule, including:

(1) to remit to the Foundation interest or dividends, net of any allowable reasonable fees on the IOLTA Account, on the average

monthly balance in that account, at least quarterly. Any allowable reasonable fees in excess of the interest earned on that account for any month, and any fees or charges that are not allowable reasonable fees, shall be charged to the lawyer or law firm in whose names such account appears, if not waived by the approved institution.

(2) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the applicable IOLTA Account number, the rate of interest applied, the average monthly account balance against which the interest rate is applied, the gross interest earned, the types and amounts of service charges or fees applied, and the amount of the net interest remittance.

(3) to transmit to the depositing lawyer or law firm periodic reports or statements in accordance with the approved institution's normal procedures for reporting to depositors.

(4) to pay comparable interest rates on IOLTA Accounts, as defined below at Rule 15-103.

(c) "Allowable reasonable fees" for IOLTA Accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, Federal deposit insurance fees, and sweep fees. ("Allowable reasonable fees" do not include check printing charges, NSF charges, overdraft interest charges, account reconciliation charges, stop payment charges, wire transfer fees, and courier fees. Such listing of excluded fees is not intended to be all inclusive.) All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA Account. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts. Approved financial institutions may elect to waive any or all fees on IOLTA Accounts.

Rule 15-103. IOLTA ACCOUNTS; INTEREST RATES.

On any IOLTA Account, the rate of interest payable shall be:

(a) not less than the highest interest rate or dividend generally available from the approved institution to its non-IOLTA customers for each IOLTA Account that meets the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from

the institution to its non-IOLTA customers, the institution may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers if such factors do not discriminate between IOLTA Accounts and accounts of non-IOLTA customers. The institution also shall consider all product option types that it offers to its non-IOLTA customers, as noted at Rule 15-102(a), for an IOLTA Account by either establishing the applicable product as an IOLTA Account or paying the comparable interest rate or dividend on the IOLTA Account in lieu of actually establishing the comparable highest interest rate or dividend product; or

(b) alternatively, if an approved institution so chooses, a rate equal to the greater of (A) 0.65% per annum or (B) a benchmark interest rate, net of allowable reasonable fees, set by the Foundation, which shall be expressed as a percentage (an “index”) of the federal funds target rate, as established from time to time by the Federal Reserve Board. In order to maintain an overall comparable rate, the Foundation will periodically, but not less than annually, publish its index. The index shall initially be 65% of the federal funds target rate.

(c) Approved institutions may choose to pay rates higher than comparable rates discussed above.

CHAPTER 2

INTERNAL RULES

Rule 15-201. MANAGEMENT AND DISBURSEMENT OF IOLTA FUNDS; INTERNAL PROCEDURES OF FOUNDATION.

(a) **Mandatory Grants.** The Georgia Bar Foundation, Inc. (the “Foundation”), which is the charitable arm of the Supreme Court of Georgia, is the named recipient of IOLTA funds. The Foundation shall pay to the Georgia Civil Justice Foundation (“GCJF”) a grant of ten percent (10%) of all IOLTA revenues received, less administrative costs, during the immediately preceding calendar quarter. GCJF must maintain its tax-exempt charitable/educational status under Sections 115 and 170(c)(1) or under Section 501(c)(3) of the Internal Revenue Code, and the purposes and activities of the organization must remain consistent with the exempt purposes of the Foundation. If GCJF is determined either by the Internal Revenue Service or by the Georgia Department of Revenue to be a taxable entity at any time, or its purposes and activities become inconsistent with the

exempt purposes of the Foundation, then the Foundation shall retain all IOLTA funds which would have been granted to GCJF.

(b) Reporting by Organizations. As a condition to continued receipt of IOLTA funds, the Foundation and GCJF shall each present a report of its activities including an audit of its finances to the Supreme Court of Georgia annually. GCJF shall also send to the Foundation a copy of its annual report and audit.

(c) Discretionary Grants. The Foundation shall develop procedures for regularly soliciting, evaluating, and funding grant applications from worthy law-related organizations that seek to provide civil legal assistance to needful Georgians, to improve the working and the efficiency of the judicial system, to provide legal education to Georgia's children, to provide assistance to children who are involved with the legal system, to provide educational programs for adults intended to promote a better understanding of our democratic system of government, or to foster professionalism in the practice of law.

(d) IOLTA Account Confidentiality. The Foundation will protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained in the course of managing IOLTA operations.

(e) Report to the Office of the General Counsel. The Foundation will provide the Office of the General Counsel with a list of approved financial institutions which have agreed to abide by the requirements of this Part XV of the Rules of the State Bar of Georgia. Such list will be updated with such additions and deletions as necessary to maintain its accuracy.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
affixed the day and year last above written.

