



Atlanta February 4, 2016

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

It is ordered that Uniform Magistrate Court Rule 8 (relating to attorney conflicts), Rule 9 (relating to attorney leave of absence), and Rule 28.5 (relating to mental competency to stand trial) be amended, effective March 3, 2016, as follows:

Rule 8. Conflicts — State and Federal Courts

Rule 8.1. Method of Resolution

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

(1) the attorney is lead counsel and/or has been subpoenaed as a witness in two or more actions; and

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

(B) When an attorney is scheduled for a day certain by trial calendar, special setting or court order (including a subpoena compelling his or her appearance to testify) 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 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) and habeas actions shall prevail over civil actions. Criminal actions in which a demand for speedy trial has been timely filed pursuant to OCGA §§ 17-7-170 and/or 17-7-171 shall automatically take precedence over all other actions unless otherwise directed by the court in which the speedy trial demand is pending;

(2) Jury trials shall prevail over non-jury matters, including trials and administrative proceedings;

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

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

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

Rule 8.2. Attorneys Serving as Part-time Judges

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

Rule 9. Leaves of Absence

Rule 9.1. Leaves for 30 Calendar Days or Less

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

(A) a list of the actions to be protected, including the action numbers;

(B) the reason for the leave of absence; and

(C) the duration of the requested leave of absence.

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

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

Rule 9.2. Leaves for More Than 30 Calendar Days or Those Either on a Published Calendar, Noticed for a Hearing, or not Meeting the Time Requirements of Rule 9.1

Application for leaves of absence for more than 30 days, or those either on a published calendar, noticed for a hearing, or not submitted within the time limits contained in Rule 9.1 above, must be in writing, filed with the clerk of the court, and served upon opposing counsel at least ten days prior to submission to the appropriate judge of the court in which an action is pending. This time period may be waived if opposing counsel consents in writing to the application. This procedure permits opposing counsel to object or to consent to the grant of the application, but the application is addressed to the discretion of the court. Such application for leave of absence shall contain:

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

If an objection is filed, the court, upon request of any counsel, will conduct a conference with all counsel to determine whether the court will, by order, grant the requested leave of absence.

Rule 9.3. Effect of Leave

A leave granted pursuant to Rule 9.1 or Rule 9.2 shall relieve any attorney from all trials, hearings, depositions and other legal proceedings in that matter. This rule shall not extend any deadline set by law or the court.

Rule 9.4. Notice of Application for Leave

Any application for leave not filed in substantial compliance with this rule will be denied. Notice shall be provided substantially as on the following form:

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

From: Name of Attorney

Re: Notice of Leave of Absence

Date: _____

Comes now (attorney's name) and respectfully notifies all judges before whom he or she has cases pending, all affected clerks of court, and all opposing counsel, that he or she will be on leave pursuant to Georgia Uniform Magistrate Court Rule 9.

_____ This leave meets the requirements of Rule 9.1

_____ This leave is requested under Rule 9.2

1. The period of leave during which time Applicant will be away from the practice of law is: _____ (dates of leave). The purpose of the leave is: _____.
2. All affected judges and opposing counsel shall have ten days from the date of this Notice to object to it. Leaves with objections pursuant to Rule 9.1 and all leaves pursuant to Rule 9.2 require an Order from the Court, and it is the duty of the party requesting the leave to arrange a conference, if any party requests a conference, and obtain a written order granting the leave.

Name of attorney: _____

Bar no.: _____

Address of attorney: _____

Phone number of attorney: _____

CERTIFICATE OF SERVICE

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

This _____ day of _____, 20____.

Name of attorney

EXHIBIT A

(Sample)

Name of Case Case Number	Name of Judge County/Court	Opposing Counsel
Jones v. Jones 16CR123456	Brown DeKalb/Superior	Name of Attorney _____ Address _____
Smith v. Exxon 16-T-12345	Black Cobb/State	Name of Attorney _____ Address _____
Schwartz v. Craig & Co. 2016CV123456	Grey Fulton/Superior	Name of Attorney _____ Address _____

Rule 28. Motions, Demurrers, Special Pleas, and Similar Items

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Rule 28.5. Motion and Order for Evaluation Regarding Mental Competency to Stand Trial

(A) In pending magistrate court cases where the mental competency of a defendant is brought into question, the judge may, upon a proper showing, exercise discretion and require a mental evaluation at public expense. A motion for mental evaluation may be filed in writing, setting out allegations and grounds for such motion, praying for a court-ordered evaluation. The judge may enter an order requiring a mental evaluation of the defendant for the purposes of evaluating competency to stand trial. The judge may direct the Department of Behavioral Health and Developmental Disabilities to perform the evaluation at a time and place to be set by the department in cooperation with the county sheriff or counsel for the defendant if the defendant is not in custody. The clerk shall forward a copy of the order to the department accompanied by a copy of the indictment, accusation, or specification of charges, and where available, a copy of the police arrest report, and a brief summary of any known or alleged previous mental health treatment or hospitalization involving this particular person. Counsel for the defendant shall forward any other background information available to the evaluator to assist in performing adequately the requested services. Unless otherwise ordered by the court, the department shall submit its report to the requesting judge for distribution to the defendant's attorney. The evaluation shall be placed under seal and shall not be released absent a court order. Upon the filing of a Plea of Mental Incompetency to Stand Trial, the court shall submit a copy of the department's evaluation to the prosecuting attorney.

(B) Copies of suggested orders requesting psychiatric evaluation 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 INCOMPETENCY 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 INCOMPETENCY TO STAND TRIAL

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

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

IT IS, THEREFORE, THE ORDER of this court that the defendant be now delivered to the sheriff of _____ County and that the defendant be delivered by the sheriff, or the sheriff's lawful deputy, to the Department of Behavioral Health and Developmental Disabilities, 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 Behavioral Health and Developmental Disabilities 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 competency to stand trial is not expected at any time in the foreseeable future, the defendant shall be dealt with by the Department of Behavioral Health and Developmental Disabilities as provided in OCGA § 17-7-130.

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

Judge, Magistrate Court of _____
County, Georgia

SPECIMEN PSYCHIATRIC EVALUATION
ORDER #1

IN THE MAGISTRATE COURT OF _____ COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA

CASE NO. _____

CHARGE(S): _____

v.

ORDER FOR MENTAL EVALUATION
REGARDING COMPETENCY TO STAND TRIAL

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

IT IS HEREBY ORDERED that the Department of Behavioral Health and Developmental Disabilities (or Forensic Psychiatry Service) conduct an evaluation of said defendant, provide treatment of the defendant, if appropriate, and provide to this court a report of diagnosis, prognosis and its findings, with respect to:

Competency to stand trial — whether the defendant is capable of understanding the nature and object of the proceedings; whether the defendant comprehends his or her own condition in reference to such proceedings; and whether the defendant 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 evaluation of said defendant, either at the county jail or at a designated hospital, with transportation of the defendant to be provided by the sheriff, where necessary, with transportation costs to be borne by the county. Upon completion of the evaluation, the 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 #2

IN THE MAGISTRATE COURT OF _____ COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA

CASE NO. _____

v.

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 Behavioral Health and Developmental Disabilities (or Forensic Psychiatry Service) conduct an evaluation of the defendant, provide treatment of the defendant, if appropriate, and provide to this court a report of diagnosis, prognosis and its findings, with respect to:

1. Competency to Stand Trial — whether the defendant is capable of understanding the nature and object of the proceedings; whether the defendant comprehends his or her own condition in reference to the proceedings; and whether the defendant is capable of rendering counsel assistance in providing a proper defense.
2. Degree of Criminal Responsibility or Mental Competency at the Time of the Act — whether or not the defendant had the mental capacity to distinguish right from wrong in relation to the alleged act; or whether or not the presence of a delusional compulsion overmastered the defendant'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 evaluation of said defendant, either at the county jail or at a designated hospital, with transportation of the defendant to be provided by the sheriff, when necessary, with transportation costs to be borne by the

county. Upon completion of the evaluation, 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

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.

 Clerk