



SUPREME COURT OF GEORGIA

Atlanta June 15, 2017

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

It is ordered that Uniform Superior Court Rule 7.3 (relating to interpreters), Rule 31.1 (relating to time for filing) and Rule 31.5 (relating to notice of intention of defense to raise issue of insanity, mental illness, or intellectual disability) be amended. The amended Rule 7.3 replaces the existing rule in its entirety. Rules 31.1 and 31.5 are amended stylistically, to conform to new statutory language, and to state that notice of the defense's intention to raise the issue of insanity, mental illness, or intellectual disability is required whether that issue is raised "using expert or non-expert evidence," thereby abrogating this Court's interpretation of the current rules to apply only when the issue is raised using expert evidence. See Otis v. State, 298 Ga. 544 (782 SE2d 654) (2016); Abernathy v. State, 265 Ga. 754 (462 SE2d 615) (1995). The amendments, which shall be effective July 13, 2017, are as follows:

Rule 7. PRETRIAL CONFERENCES

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Rule 7.3. Interpreters

(A) In all civil and criminal cases, the party or party's attorney shall inform the court in the form of a notice of the need for a qualified interpreter, if known, within a reasonable time — at least 5 days where practicable — before any hearing, trial, or other court proceeding. Such notice shall be filed and shall comply with any other service requirements established by the court. The notice shall (1) designate the participants in the proceeding who will need the services of an interpreter, (2) estimate the length of the proceeding for which the interpreter is required, (3) state whether the interpreter will be needed for all proceedings in the case, and (4) indicate the language(s), including sign language for the Deaf/Hard of Hearing, for which the interpreter is required.

(B) Upon receipt of such notice, the court shall make a diligent effort to locate and appoint a licensed interpreter, at the court's expense, in accordance with the Supreme Court of Georgia's Rule on Use of Interpreters for Non-English Speaking and Hearing

Impaired Persons. If the court determines that the nature of the case (e.g., an emergency) warrants the use of a non-licensed interpreter, then the court shall follow the procedures as outlined in the Supreme Court of Georgia's Commission on Interpreters' Instructions for Use of a Non-Licensed Interpreter. Despite its use of a non-licensed interpreter, the court shall make a diligent effort to ensure that a licensed interpreter is appointed for all subsequently scheduled proceedings, if one is available.

(C) If a party or party's attorney fails to timely notify the court of a need for a court interpreter, the court may assess costs against that party for any delay caused by the need to obtain a court interpreter unless that party establishes good cause for the delay. When timely notice is not provided or on other occasions when it may be necessary to utilize an interpreter not licensed by the Supreme Court of Georgia's Commission on Interpreters (COI), the Registry for Interpreters of the Deaf (RID), or other industry-recognized credentialing entity, such as a telephonic language service or a less qualified interpreter, the court should weigh the need for immediacy in conducting a hearing against the potential compromise of due process, or the potential of substantive injustice, if interpreting is inadequate. Unless immediacy is a primary concern, some delay might be more appropriate than the use of an interpreter not licensed by the COI, RID, or other recognized credentialing entity.

(D) Notwithstanding any failure of a party or party's attorney to notify the court of a need for a court interpreter, the court shall appoint a court interpreter whenever it becomes apparent from the court's own observations or from disclosures by any other person that a participant in a proceeding is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to meaningfully participate in the proceeding.

(E) If the time or date of a proceeding is changed or canceled by the parties, and interpreter services have been arranged by the court, the party that requested the interpreter must notify the court 24 hours in advance of the change or cancellation. Timely notice of any changes is essential in order to cancel or reschedule an interpreter, thus precluding unnecessary travel by the interpreter and a fee payment by the court. If a party fails to timely notify the court of a change or cancellation, the court may assess any reasonable interpreter expenses it may have incurred upon that party unless the party can show good cause for its failure to provide a timely notification.

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

Rule 31.1. Time for Filing; Requirements

All motions, demurrers, and special pleas shall be made and filed at or before the time set by law unless time therefor is extended by the judge in writing prior to trial. Unless otherwise provided by law, notice of the state's intention to introduce child victim hearsay statements, notice of the defense's intention to raise the issue of insanity, mental illness, or intellectual disability by using expert or non-expert evidence, or the defense's intention to introduce evidence of specific acts of violence by the victim against third persons, shall be given and filed at least 10 days before trial unless the time is shortened or lengthened by the judge. Such filing shall be in accordance with the following procedures.

Rule 31.5. Notice of Intention of Defense to Raise Issue of Insanity, Mental Illness, or Intellectual Disability at the Time of the Act

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

Upon defense motion, the judge may enter an order requiring a mental evaluation of the defendant for the purposes of evaluating the degree of criminal responsibility or insanity at the time of the act in question. The judge may direct the Department of 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. A copy of the order shall be forwarded to the department accompanied by a copy of the indictment, accusation, or specification of charges, a copy of the police arrest report, where available, a copy of the defendant's Notice of Intent of Defense to Raise Issue of Insanity, Mental Illness, or Intellectual Disability if filed, and a brief summary of any known or alleged previous mental health treatment or hospitalization involving this particular person. Any other background information available to the court shall

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

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

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

- Indictment/Accusation
- Summary of previous mental health treatment and prior mental health records
- Copy of arrest report
- Other _____

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

JUDGE, SUPERIOR COURT

JUDICIAL CIRCUIT, GEORGIA

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

**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