



SUPREME COURT OF GEORGIA

Atlanta April 11, 2019

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

It is ordered that Georgia Uniform Probate Court Rule 3.1 (relating to judges), Rule 6.10 (relating to recusal), Rule 10.1 (relating to court protocol), Rule 10.2 (relating to interpreters), Rule 13 (relating to Council of Probate Court Judges), Rule 14.1 (relating to Probate Judges Training Council), Rule 14.2 (relating to program requirements), Rule 15.1 (relating to bail in criminal cases), Rule 15.3 (relating to arraignment), Rule 15.4 (relating to motions, demurrers, special pleas, etc.), and Rule 15.6.11 (relating to record of proceedings) be amended, effective May 9, 2019, as follows:

**UNIFORM PROBATE COURT RULES**

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**Rule 3. Officers of the Court**

**3.1 Judges.**

Pursuant to OCGA § 15-9-2.1, the probate court has the authority to appoint full-time and part-time associate judges. The probate court determines the salary and benefits paid to the associate judge, subject to county approval. Associate judges shall be equally as qualified as the elected probate judge to receive appointment. Full-time associate judges shall not practice law outside the associate judgeship, except as otherwise provided by law.

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**Rule 6. Motions and Applications**

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**6.10 Recusal.**

(A) Motions.

All motions to recuse or disqualify a judge presiding in a particular case or proceeding shall be in writing, accompanied by an affidavit asserting the facts upon which the motion is founded, and timely filed. Filing and presentation to the judge shall be not later than five days after the affiant first learned of the alleged grounds for disqualification, and not later than ten 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 requirements. In no event shall the motion be allowed to delay the trial or proceeding.

(B) Duty of the trial judge.

When a judge is presented with a motion to recuse or to 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 is sufficient, and the recusal would be authorized if some or all of the facts set forth in the affidavit are true, the judge shall immediately forward the matter to the Chief Superior Court Judge of the same circuit. The allegations of the motion shall stand denied automatically. The trial judge shall not otherwise oppose the motion. In reviewing a motion to recuse, the judge shall use the criteria set forth in Rule 6.10 (F).

(C) Voluntary recusal.

If a judge, either on his own motion or that of one of the parties, voluntarily disqualifies himself, the case shall be immediately transferred to the Chief Superior Court Judge of the same circuit to hear or assign the matter for hearing or trial according to the qualifications set forth in Rule 6.10 (D). A voluntary recusal shall not be construed as either an admission or a denial to any allegations that have been set out in the motion and shall not be competent evidence in any other case or proceeding.

(D) Hearing motion to recuse.

The Chief Superior Court Judge from the same circuit shall hear the motion to determine whether the recusal is warranted. The Chief Superior Court Judge may assign any or all of such duties to a probate judge from another county, senior probate judge, sitting or retired judge or attorney admitted to the State Bar of Georgia, according to the requirements set forth in the Official Code of Georgia Annotated for the probate court of that county. When the motion to recuse is filed in an Article 6 Probate Court, the judge or attorney assigned to determine the motion or hear the case shall have been admitted to the practice of law for at least seven years.

(E) Selection of a judge.

If a recusal motion is sustained, the Chief Superior Court Judge of the same circuit as the recused judge or the judge appointed by the Chief Superior Court Judge shall also hear the trial of the case or appoint another judge or attorney to hear the case, according to the qualifications set forth in Rule 6.10 (D).

In 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 person assigned to hear further proceedings in the involved action. Any determination of disqualification shall not be competent evidence in any other case or proceeding.

(F) Criteria.

The following criteria shall be used to determine whether or not the recusal is necessary:

1. Actual bias or impartiality;
2. Judge's personal knowledge of facts in dispute;
3. Judge's relationship to party or counsel;
4. Impartiality that might reasonably be questioned (speeches by others shall not be considered that of the judge);
5. Economic interest in the proceedings by the judge or judge's spouse, child, family, or household member. When determining impartiality with respect to campaign contributions the following may be considered:
  - (a) Amount of the contribution or support;
  - (b) Timing of support;
  - (c) Actual contributor's or support's relationship to the parties;
  - (d) Impact of support or contribution;
  - (e) Nature of contributor's prior political activities and prior relationship with the judge;
  - (f) Nature of case pending and its importance or the parties or counsel; or
  - (g) Any other factors relevant to issue of campaign support that cause the judge's impartiality to be questioned.
6. Public, non-courtroom, statements that commit or appear to commit the judge to a particular conclusion; and
7. Judge is previous party, employee, witness or party to a case.

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## **Rule 10. Hearings and Trials**

### **10.1 Court protocol.**

(A) Head coverings.

Head coverings are prohibited in the courtroom except in cases where the covering is worn for medical or religious reasons. To the extent security requires a search of a person wearing a permitted head covering, the individual has the option of having the inspection performed by a same-sex officer in private. The individual is allowed to replace his or her own head covering after the inspection is complete.

## (B) Accommodations.

1. Request for accommodations. Any party or witness who needs special accommodation for a disability or other assistance shall inform the court of such need not less than five days prior to the scheduled hearing or trial, or immediately upon learning of his required appearance at such hearing or trial if notice is received by the individual less than five days prior thereto. The party, the attorney representing the party, or the person calling the witness shall ensure compliance with this rule. Failure to comply with this rule shall result in remedies as set out in Rule 10.1 (B) (2).

2. Failure to notify court. If a party or party's attorney fails to timely notify the court of a need for an accommodation, the court may assess costs against that party for any delay caused by the need to arrange for the accommodation unless that party establishes good cause for the delay.

3. Appointment necessary for meaningful participation. Notwithstanding any failure of a party or party's attorney to notify the court of a need for an accommodation, the court shall make appropriate accommodation whenever it becomes apparent from the court's own observations or from disclosures by any other person that a participant in a proceeding is in need of an accommodation to the extent reasonably necessary to meaningfully participate in the proceeding.

4. Change or cancellation. If the time or date of a proceeding is changed or canceled by the parties and an accommodation has been arranged by the court, the party that requested the accommodation 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 accommodation, thus precluding unnecessary cost of an accommodation 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 cost of an accommodation it may have incurred upon that party unless the party can show good cause for its failure to provide a timely notification.

## **10.2 Interpreters.**

### (A) Request.

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 five 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 or Hard of Hearing, for which the interpreter is required.

(B) Diligent effort by court.

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) Failure to notify court.

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 or a video-conferencing service, 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) Appointment necessary for meaningful participation.

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) Change or cancellation.

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 13. Council of Probate Court Judges of Georgia**

There shall be a council known as “The Council of Probate Court Judges of Georgia.” The council shall be composed of the judges of the probate courts of this state. The council is authorized to organize itself and to develop a constitution and bylaws. The officers of said council shall consist of a president, president-elect, vice president, secretary-treasurer, and such other officers and committees as the council shall deem necessary. It shall be the purpose of The Council of Probate Court Judges of Georgia to effectuate the constitutional and statutory responsibilities conferred on it by law and to further the improvement of the probate courts and the administration of justice. Expenses of the administration of the council shall be paid from state funds appropriated for that purpose or from other funds available to the council. The council through its officers may contract with a person or firm including any member of the council for the production of educational material and compensate said member for producing such material, provided that funds are available to the council at the time of execution of the contract or will be available at the time of the completion of the contract and provided that the terms of the contract are disclosed to the full council and made available to the general public and news media. At the request of the council, the Executive Director of the Council shall be authorized to act as the agent of the council for the purpose of supervising and implementing the contract.

### **Rule 14. Mandatory Continuing Judicial Education**

#### **14.1 Probate Judges Training Council.**

The probate court judges shall elect one representative from each district to the Probate Judges Training Council. The Council of Probate Court Judges of Georgia may add up to four additional members to the training council. Said members shall be selected from the members of The Council of Probate Court Judges of Georgia at large and will serve for two-year terms. Such members may succeed themselves if they are reappointed by the council. If a vacancy occurs for the additional members added, the council shall determine how to fill the vacancy.

The members shall serve as specified in OCGA § 15-9-102. It shall be the duty of the Training Council to advise and coordinate with the Institute of Continuing Judicial Education of Georgia concerning educational programs for the probate judges and probate judges-elect.

#### **14.2 Program requirements.**

(A) Each new judge must satisfactorily complete the required new judge orientation training course as prescribed by the Probate Judges Training Council and the Institute of Continuing Judicial Education of Georgia at the first occasion such a course is offered. Such judge shall complete an attendance record of such training issued by the Institute of Continuing Judicial Education of Georgia and file it with the Probate Judges Training Council.

(B) Every judge, including senior judges and full-time associate judges, shall be required to complete additional training prescribed by the Probate Judges Training Council and the Institute of Continuing Judicial Education of Georgia during each year he or she serves as a judge of the probate court and complete an attendance record of such training issued by the Institute of Continuing Judicial Education of Georgia and file it with the Probate Judges Training Council.

Qualifying additional training shall include:

1. State-wide programs sponsored by the Probate Judges Training Council and the Institute of Continuing Judicial Education of Georgia;

2. District, regional, or distance learning training programs offered through the Probate Judges Training Council; provided, however, that such district programs may not account for more than three hours per year;

3. For Article 6 Probate Court judges with expanded jurisdiction, programs of continuing legal education accredited by the State Bar of Georgia's Commission on Continuing Lawyer Competency, such as all relevant programs offered by the Institute of Continuing Legal Education of Georgia; provided, however, that such programs may not account for more than six hours per year;

4. Teaching any of the above programs, or related programs, shall include the following credits:

(a) Three additional hours for each hour of instructional responsibility as a lecturer when no handout paper is prepared, and six hours for each hour of lecture when a handout paper is required.

(b) Two hours for each hour as a panelist.

(c) Three hours as a mock trial coach, two hours as a mock trial judge, and one hour as a mock trial evaluator.

(d) When the same lecture or other instructional activity is repeated in a single calendar year, additional credit shall be given equivalent to the actual time spent.

(C) Any judge who fails to successfully complete the required new judges training as required by subsection (a) of OCGA § 15-9-1.1 or who fails to earn the required cumulative annual minimum credit hours of training during any one-year period after the new judge orientation may be given a six month administrative extension by the Probate Judges Training Council to fulfill this requirement. Individual requests for extensions beyond the initial six-month extension for reasons of disability, hardship, or extenuating circumstance may be approved on a case by case basis by the Probate Judges Training Council. Upon failure to earn the required hours within the extension period, the Probate Judges Training Council shall promptly notify the Judicial Qualifications Commission, which will recommend the removal of the judge from office to the Supreme Court of Georgia unless the Judicial Qualifications Commission finds that the failure was caused by circumstances beyond the control of the probate judge.

(D) All expenses of mandatory training authorized or required by the Probate Judges Training Council including tuition shall be paid by the probate judge or judge-elect participating in the training. The probate judge or judge-elect shall be reimbursed by the Institute of Continuing Judicial Education of Georgia to the extent that funds are available for such purpose. If such funds are not available, each probate judge or judge-elect shall be reimbursed from county funds by action of the county governing authority.

(E) Judges who serve concurrently as a judge of another class of court may be eligible to receive cross-training credit. The Probate Judges Training Council shall prescribe guidelines for cross-training credit.

### **14.3. Administration of the program.**

Administrative implementation of the mandatory continuing judicial education shall be conducted solely by the Probate Judges Training Council.

## **Rule 15. Criminal Proceedings**

### **15.1 Bail in criminal cases.**

(A) Misdemeanor cases.

Bail in misdemeanor cases shall be set as provided in OCGA §§ 17-6-1; 17-6-1.1; and 17-6-2.

(B) Categories of bail.

The court may set bail which may be secured by:

1. Cash – by a deposit with the clerk, or by internal procedure 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, as approved

by the Sheriff of the county where the property is located; or

3. Recognizance – in the discretion of the court; or

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.

(C) Conditions and restrictions by court.

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 local governing body shall determine what sureties are acceptable when a surety bond is permitted.

(D) Amendment of bail.

The probate court has the authority to amend any bail previously authorized.

(E) Bail on bind over or jury demand.

Whenever a probate court has set bail on cases that are bound over to another court for any reason, the bond shall be transferred as required by law.

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### **15.3 Arraignment.**

(A) 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 and sent to attorneys of record, defendants, and bondsmen.

(B) Call for arraignment.

Before arraignment, the court shall inquire whether the defendant 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, the defendant or the attorney for the defendant shall answer whether the defendant pleads guilty or 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.

### **15.4 Motions, demurrers, special pleas, etc.**

(A) 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.

(B) 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.

(C) Notice of intention of defense to raise issue of insanity, mental illness, or intellectual disability.

Uniform Superior Court Rules 31.4 and 31.5, as amended from time to time, and as applicable to probate courts, are hereby adopted verbatim.

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#### **15.6.11 Record of proceedings.**

(A) A verbatim record, consisting of a mechanical recording and a contemporaneous paper record of the proceedings at which a defendant enters a plea of guilty or nolo contendere shall be made and preserved for a minimum of two years.

(B) A record of proceedings should include:

1. The inquiry into the voluntariness of the plea (as required in Rule 15.6.7);
2. The advice to the defendant (as required in Rule 15.6.8);
3. The inquiry into the accuracy of the plea (as required in Rule 15.6.9); and
4. 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.

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