UNIFORM PROBATE COURT RULES

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Rule 1. Preliminary Provisions

Pursuant to the inherent powers of the Court and Article VI, Section IX, Paragraph I of the Georgia Constitution of 1983, and in order to provide for the speedy, efficient and inexpensive resolution of disputes and prosecutions, these rules are promulgated. 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All local rules of the probate courts in effect as of the effective date of this rule are hereby repealed.

1.2 Matters of statewide concern.

These rules, to be known as "Uniform Probate Court Rules," are to be given statewide application.

1.3 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 A specific rule may be superseded in a specific action or case by an order of the court entered in such case explaining the necessity for deviation and served upon the attorneys in the case.

No person shall be denied access to the court nor be prejudiced in any way for failure to comply with a standing order of which the person does not have actual notice.

"Actual notice" shall be deemed to have been satisfied by providing copies of such order to attorneys and pro se litigants, service by a party upon opposing parties and publicized dissemination in such locations as the offices of the clerks of court, law libraries, legal aid societies and public libraries. Mere filing of standing orders and posting in prominent places in the courthouse shall not suffice as actual notice.

1.4 Amendments.

The Council of Probate Court Judges of Georgia 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.

1.5 Publication of rules and amendments.

These rules and any amendments to these rules shall be published in the official Advance Sheets of the Supreme Court of Georgia. 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.

Rule 2. Definitions

2.1 Non-sexist pronouns.

For the sake of brevity only, the pronoun "he" shall include "she" and vice versa, unless the context clearly indicates otherwise; the pronoun "her" shall include "him" and vice versa, unless the context clearly indicates otherwise.

2.2 Judge.

The word "judge" as used in these rules refers to any of the several active judges of the probate courts of Georgia, and to any other person who may at the time be performing a judicial function of the probate court of this state in accordance with law.

2.3 Clerk.

The word "clerk" as used in these rules refers to any clerk or deputy clerk of any of the several probate courts in this state.

2.4 Attorney.

The word "attorney" as used in these rules refers to any person who is an active member in good standing of the State Bar of Georgia, and to any person who is permitted, as provided below in Rule 3.3.3, to represent a party in an action pending in a probate court of the State of Georgia, and to any person representing himself pro se in an action pending in a probate court of this state. The word "attorney" is synonymous with "counsel" in these rules.

2.5 Plaintiff/Defendant/Petition.

The term "plaintiff" includes petitioner, applicant or propounder, and the term "defendant" includes caveator or respondent. "Petition" includes any application to the court for an order.

2.6 Abbreviation of the Code.

The letters "OCGA" shall mean, and refer to, the Official Code of Georgia Annotated.

2.7 Article 6 Probate Courts.

(A) "Article 6 Probate Courts" refers to a probate court with expanded jurisdiction according to Article 6 of Chapter 9 of Title 15 of the Code, OCGA §§ 15-9-120 through 15-9-127, which are probate courts in counties with a population of more than 96,000 persons according to the U. S. Decennial Census of 1990 or any future such census in which the judge thereof has been admitted to the practice of law for at least seven (7) years.

(B) The general laws and rules of pleadings, defenses, amendments, counter or cross claims, third-party practice, joinder of parties and causes, parties, discovery and depositions, interpleader, intervention, evidence, motions, summary judgment, relief from judgments, and the effect of judgments which are applicable in the superior courts shall be applicable to and govern in civil cases before Article 6 Probate Courts.

2.8 Article 6 Probate Courts -- concurrent jurisdiction with superior courts.

In accordance with OCGA § 15-9-127, Article 6 Probate Courts have concurrent jurisdiction with superior courts in proceedings regarding:

(A) Declaratory judgments;
(B) Tax-motivated estate planning dispositions of wards' property;
(C) Approval of settlement agreements;
(D) Appointment of new trustees;
(E) Acceptance of resignation of a trustee at beneficiaries' written request;
(F) Acceptance of resignation of trustee upon petition of trustee;
(G) Motions for DNA testing;
(H) Conversion to a unitrust; and
(I) Adjudication of petition for direction or construction of a will.

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.

3.2 Appointment of attorney to act in judge's absence.

(A) Whenever a judge appoints an attorney to act in his stead pursuant to OCGA § 15-9-13 (a), said appointment shall be by written order which shall specify the cases or time period covered and shall be recorded in the minutes of the court. Whenever the attorney so appointed signs an order while acting as judge, there shall appear following such signature: "Exercising the jurisdiction of the probate court pursuant to order of Judge _____, dated _____, as provided by OCGA § 15-9-13 (a)." It shall not be necessary for the judge to confirm any such order when the judge resumes his jurisdiction. However, if the appointment was for an indefinite period, the judge shall enter and record an order terminating the appointment when he resumes jurisdiction. The foregoing is not intended to imply that OCGA § 15-9-13 (a) is the only allowable method of providing a substitute, but only to establish a uniform procedure when OCGA § 15-9-13 (a) is used.

(B) In Article 6 Probate Courts only with respect to contested matters, any attorney appointed to act instead of a judge pursuant to OCGA § 15-9-13 (a), and any hearing officer appointed under any applicable law to hold a hearing in lieu of the judge, shall have been admitted to the practice of law for at least seven (7) years. Such substitute need not be a resident of the same county as the judge making such appointment.

3.3 Attorneys.

3.3.1 Entry of appearance.

No attorney shall appear in that capacity before a probate court until he 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 case 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. The filing of any pleading, unless otherwise specified by the probate court, shall constitute an appearance by the person(s) signing such pleading.

Any attorney who has been admitted to practice in this state but who fails to maintain active membership in good standing in the State Bar of Georgia and who makes or files any appearance or pleading in a probate court of this state while not in good standing shall be subject to the contempt powers of the probate court.

3.3.2 Withdrawal.

An attorney appearing of record in any action pending in any probate court, who wishes to withdraw as counsel for any party therein, shall submit a written request to the judge of said court for an order of court permitting such withdrawal. Such request shall state that the attorney has given due written notice to his client respecting such intention to withdraw ten (10) days (or such lesser time as the court may permit in any specific instance) prior to submitting the request to the court or that such withdrawal is with the client's consent. Such request will be granted unless in the judge's discretion to do so would delay the trial of the action or otherwise interrupt the orderly operation of the court or be manifestly unfair to the client. The attorney requesting an order permitting withdrawal shall give notice to opposing counsel and shall file with the clerk in each such action and serve upon his client, personally or at his last known address, a notice which shall contain at least the following information:

(1) That the attorney wishes to withdraw;

(2) That the court retains jurisdiction of the action;

(3) That the client has the burden of keeping the court informed respecting where notices, pleadings or other papers may be served;

(4) That the client has the obligation to prepare for trial or hire other counsel to prepare for trial when the trial date has been set;

(5) That if the client fails or refuses to meet these burdens, the client may suffer adverse consequences;

(6) The dates of any scheduled proceedings, including trial, and that holding of such proceedings will not be affected by the withdrawal of counsel;

(7) That service of notices may be made upon the client at his last known address; and

(8) Unless the withdrawal is with the client's consent, the client's right to object within ten (10) days of the date of the notice.

The attorney seeking to withdraw shall prepare a written notification certificate stating that the above notification requirements have been met, the manner by which such notification was given to the client and the client's last known address and telephone number. The notification certificate shall be filed with the court and a copy mailed to the client and all other parties. The client shall have ten (10) days prior to entry of an order permitting withdrawal or such lesser time as the court may permit within which to file objections to the withdrawal. After the entry of an order permitting withdrawal, the client shall be notified by the withdrawing attorney of the effective date of the withdrawal; thereafter all notices or other papers may be served on the party directly by mail at the last known address of the party until new counsel enters an appearance.

3.3.3 Special admission of attorneys from other states.

(A) When permitted by law or rules, any attorney admitted to practice in the courts of record of another state who desires to be specially admitted to practice in a specific action pending in a probate court of Georgia shall make application for such special admission to the judge in which the action is pending or is to be brought. Such application shall contain the following information:

1. The name, current address and telephone number of the attorney making such application;

2. A listing of the state or states in which such attorney is duly licensed to practice;

3. A statement that the out-of-state attorney has associated in the action an attorney who is a resident of Georgia, and who is an active member in good standing of the State Bar of Georgia, or that he requests a waiver of this requirement; and

4. The name and current office address and telephone number maintained by the associated attorney, if applicable.

The requirements of 3. and 4. above may be waived in writing by the judge.

(B) Service may be had upon the associated attorney in all matters connected with said action with the same effect as though personally made upon the out-of-state attorney specially admitted to practice in the action. The out-of-state attorney so admitted to practice in such action shall be subject to the orders of the court of this state and amenable to disciplinary action as though he were regularly admitted to practice in the State of Georgia.

3.3.4 Entries of appearance and withdrawals by members or employees of law firms or professional corporations.

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.

3.3.5 Notification of representation.

No attorney shall appear in his representative capacity before a probate court until he 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 case number; (2) the identity of the party for whom the appearance is made; and (3) the name and current office address, telephone number and bar number of the attorney.

3.3.6 Timeliness of notice.

Within forty-eight (48) hours after being retained, an attorney shall mail to the court and opposing counsel or file with the court the entry of appearance in the pending matter. Failure to timely file shall not prohibit the appearance and representation by said counsel.

3.3.7 Notice of settlements or dismissals.

Immediately upon the settlement or dismissal of any civil action the involved attorneys shall notify the judge in writing of such event.

3.3.8 Duty to attend and remain in court.

Subject to the provisions of Rule 6.11, attorneys having matters on calendars, or who are otherwise directed to do so, unless excused by the court, are required to be in court at the call of the matter and to remain until otherwise directed by the court. Should the judge temporarily excuse counsel from the courtroom before the matter is concluded such attorney(s) shall return as directed. Failure of any attorney in this respect shall subject him to the contempt powers of the court.

3.3.9 Binding authority.

An attorney of record has apparent authority to enter into agreements on behalf of his client(s). Oral agreements, if established, are enforceable.

3.3.10 Number of arguments.

Not more than two attorneys shall be permitted to argue any case for any party except by leave of court; in no event shall more than one attorney for each party be heard in concluding argument.

3.3.11 Notice of substitution of counsel.

When an attorney has already filed an entry of appearance and the client wishes to substitute counsel, it will not be necessary for the former attorney to comply with Rule 3.3.2. Instead, the former attorney may file with the clerk a notice of substitution of counsel signed by the party and the former attorney. The notice shall contain the style of the case and the name, address, telephone number and bar number of the substitute counsel. A copy of the notice shall be served on the substitute counsel, opposing counsel or party if unrepresented, and the assigned judge. No other or further action shall be required by the former attorney to withdraw from representing the party. The substitution shall not delay any proceeding or hearing in the case.

3.3.12 Duty to utilize assigned judge; notification of previous presentation to another judge.

Attorneys shall not present to any judge any matter or issue in any case which has been assigned to or a ruling made by another judge, except under the most compelling circumstances. In that event, any attorney doing so shall first advise the judge to whom the matter is presented that the action is assigned to or a ruling has been made by another judge. Counsel shall also inform the assigned or previous ruling judge as soon as possible that the matter was presented to another judge. Attorneys shall not present to a judge any matter which has been previously presented to another judge without first advising the former of the fact and the result of such previous presentation.

Rule 4. Court Records

4.1 Access to court files.

All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below.

4.2 Integrity of original court records.

No original papers may be withdrawn from the probate court.

4.3 Copies of records.

Copies of records may be obtained for a reasonable cost.

4.4 Limitation of access -- motions and orders.

Upon motion by any party to any action, the court may limit access to court files respecting that action which would otherwise be public. 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 limitation.

4.5 Limitation of access -- finding of harm.

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.

4.6 Limitation of access -- review.

A copy of an order limiting access shall be transmitted to and subject to review by the Supreme Court.

4.7 Limitation of access -- amendments.

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 Supreme Court at any time on its own motion or upon the motion of any person for good cause.

Rule 5. Court Procedure

5.1 Ex parte communications.

Except as authorized by law, rule, or canon, judges shall neither initiate nor consider ex parte communications by interested parties or their attorneys concerning a pending or impending proceeding.

5.2 Ex parte orders.

Under compelling circumstances, a motion for temporary limitation of access, not to exceed thirty (30) days, may be granted, ex parte, upon motion accompanied by supporting affidavit.

5.3 Pleadings and filing.

5.3.1 Preparation of documents.

To the extent practical, all materials presented for filing in any probate court shall be typed, legibly written or printed in black ink suitable for reproduction, on opaque white paper measuring 81/2" x 11" of a good quality, grade and weight, on only one side of the paper. Manuscript covers and backings shall be omitted wherever practical. Preparation of wills on 81/2" x 11" paper is encouraged but not mandatory.

5.3.2 Time of docketing.

Actions shall be entered by the clerk in the proper docket immediately or within a reasonable period after being received in the clerk's office, provided the filing requirements pursuant to Rule 5.3.12 have been complied with by the filing party.

5.3.3 Caption.

Every document or pleading presented for filing in a probate court shall bear a caption which sets out the exact nature of the pleading or the type of petition.

5.3.4 Signatures.

All judgments, orders, pleadings and other documents shall bear the signature of the responsible attorney or party who prepared the document, and his name, proper address and telephone number shall be typed or printed underneath. If a party is represented in the matter by an attorney of record, that attorney must sign the document to be filed for the document to be eligible for filing.

5.3.5 Location of original.

All original documents, petitions and pleadings shall remain in the custody of the court except as provided by the judge, these rules, or as otherwise provided by law.

5.3.6 When documents considered filed.

The filing of pleadings and other papers with the court shall be made by filing them with the clerk, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

5.3.7 Effective date of orders.

An order is effective on the date and at the time it is filed. An order may reflect an effective date prior to the time of filing if the order is signed nunc pro tunc.

5.3.8 Minutes and final record.

There shall be one or more books, digital records, or microfilm records kept in accordance with OCGA § 15-9-37. After recording, the original may be destroyed according to the state retention schedule or stored off premises as provided by law.

5.3.9 Filing of transcripts.

Any transcript requested by the judge shall be filed as directed by him, but the clerk shall not be required to record or preserve these in a bound book, electronic file, or on microfilm. See also Rule 12.1 concerning appeals.

5.3.10 File categories.

The categories of files to be established by the clerk shall be such that documents are reasonably accessible either on paper or in digital format.

5.3.11 File identification.

Each matter shall be identified by year of filing, type of case and estate number.

5.3.12 Filing requirements.

Pleadings or petitions presented to the clerk for filing shall be filed only when accompanied by the proper filing fee, fee for sheriff service or a pauper's affidavit, and, when applicable, any forms required by law or rule to be completed by the parties. The attorney or party filing the petition shall furnish the necessary service copies.

5.3.13 Return of service.

Entry of return of service shall be made by the sheriff or other authorized person on a form provided by the clerk and filed with the clerk.

5.3.14 Advance costs.

Statutory filing and associated costs shall be paid at the time of filing.

5.4 Guardians ad litem.

Guardians ad litem may be nominated by parties to the case, but it remains the responsibility of the court, in its discretion, to choose an appropriate party to serve as a guardian ad litem. A guardian ad litem must either be disinterested or have an interest identical or similar to the person for whom he is appointed, but may not have an interest which could possibly conflict with the person for whom he is appointed.

5.5 Investigation of fiduciaries; criminal background information of certain nominated temporary administrators, personal representatives, conservators, or guardians.

5.5.1 Limited background check.

Any person requesting appointment by a probate court in this State as temporary administrator or personal representative of an estate of a decedent or as guardian or conservator of an incapacitated adult or a minor may be required to submit to a criminal background check by allowing the probate court in which the petition seeking such appointment is pending to access the criminal records information maintained by the Georgia Crime Information Center (GCIC) with reference to such person. The actual performance of a background check shall be in the discretion of the judge before whom the proceedings are pending, and there shall be no requirement that a criminal history be obtained for every such person. In order to allow access to the GCIC records, any person requesting such appointment shall, upon request by the probate court, sign a form consenting to the release of such information by the GCIC to the probate court.

5.5.2 National background check.

If the person requesting appointment, or nominated for appointment, is being considered for appointment as a guardian or conservator, the probate court may require the expanded background check as authorized by O.C.G.A § 29-9-19. The use and disposition of the report shall be governed by the provisions of this Rule.

5.5.3 Use of information. Other household members.

All information received by a probate court pursuant to this Rule shall be considered confidential and shall be disclosed by the probate court or its staff only as authorized by GCIC rules and regulations. Any records so obtained by a probate court shall be destroyed within thirty (30) days after the expiration of the time for filing of an appeal of the order of the probate court granting or denying such appointment; if an appeal is filed, such records shall be destroyed within thirty (30) days after the appeal is dismissed, withdrawn, or the remittitur is returned to the probate court. If deemed necessary by the probate court, all adult persons living in the household of the proposed ward may be required to undergo a criminal background check under Rule 5.5.1.

5.6 Citations.

(A) Unless the court specifically assumes the responsibility, it is the responsibility of the petitioner to prepare a proper citation.

(B) Every citation shall include a statement that all objections to the petition must be in writing, setting forth the grounds of any such objections, and must be filed with the court at or before the time stated in the citation.

(C) Unless the court specifically assumes the responsibility, it is the responsibility of the petitioner to see that all citations which must be personally served are delivered to the proper sheriff's office or special agent for service of process.

(D) Unless the court specifically assumes the responsibility, it is the responsibility of the moving party, in connection with any citation which must be served by mail, including without limitation a citation concerning an application for year's support, to provide to the court a properly stamped envelope, addressed to each interested party, with the return address of the probate court appearing thereon.

(E) Unless the court directs otherwise, the court will deliver all citations which are to be published in the county where the petition is filed to the legal newspaper of that county.

(F) If a citation is to be published only one time, then it shall be published at least ten (10) days in advance of the date established as the deadline for filing objections.

(G) The court may set a deadline by which service documents must be delivered to the court.

5.7 Settlement agreements altering terms of will.

Only Article 6 Probate Courts shall have the power to approve settlement agreements pursuant to OCGA § 53-5-25.

5.8 Transfer/change of venue.

(A) Subject to the provisions of OCGA § 9-11-12 and paragraph (C) of this rule, a timely motion in any pending civil action or proceeding (1) by any party, that jurisdiction is lacking or that venue is improper, or (2) by the court, sua sponte, that subject matter jurisdiction is lacking, shall be treated as a motion to transfer the action to another court, whether in the same or another county of this state.

(B) The moving party shall specify the court(s) having jurisdiction and in which venue properly would lie.

(C) If the basis of the motion is that a party necessary to the court's jurisdiction has been dismissed during or at the conclusion of the trial, the motion shall be made immediately and orally; any opposition shall be made orally. Should the motion to transfer be granted as to the remaining parties the claim against the party dismissed shall be severed, so that the order of dismissal will be final for purposes of appeal.

(D) Unless otherwise ordered by the court, notice of a written motion to transfer shall be served upon all parties, including any who failed to file pleadings in the matter at least ten (10) days before the motion is heard. A party opposing a written motion to transfer shall notify the court and all other parties in writing within ten (10) days after service upon that party of the motion to transfer; such notice shall designate the basis upon which it is claimed that the court in which the action pends has jurisdiction and upon which venue is claimed to be proper.

(E) When a motion to transfer is filed, the court may stay all other proceedings in the pending action until determination of the motion.

(F) No action or proceeding may be transferred except upon written order of the court in which the action pends (transferor court), reasonable notice of which shall be given to all parties. This order shall specify the court to which the matter is to be transferred (transferee court), and shall state that unless plaintiff pays all accrued court costs within twenty (20) days of mailing or delivery of the cost bill to plaintiff, the action shall automatically stand dismissed without prejudice.

The court ruling upon a motion to transfer may award reasonable attorney's fees to the prevailing party; if the court grants the motion, transfer costs of $50 shall be taxed, unless the court expressly determines otherwise, in its discretion.

(G) When an order transferring an action is filed with the clerk of the court entering such order, the clerk shall promptly compute the court costs, including the costs incident to preparing and transferring the record as provided in paragraph (H) of this rule, and shall notify counsel for plaintiff (or, the plaintiff, if there is no counsel of record) in writing of the amount of the court costs. Plaintiff shall pay the costs within twenty (20) days of mailing or delivery of the cost bill; if costs are not paid within that time, the action shall automatically stand dismissed, without prejudice.

(H) Upon timely payment of costs, the clerk of the transferor court shall make and retain copies of (1) the complaint or initial pleading, (2) the motion to transfer, if in writing, and (3) the order of transfer. The originals of all pleadings, orders, depositions and other papers on file shall be indexed and certified by the clerk of the transferor court and transmitted, with the transfer cost (if applicable), to the clerk of the transferee court in the manner provided by law for transmittal of records to appellate courts.

(I) Upon receipt of the items specified in paragraph (H) of this rule, the clerk of the transferee court shall assign the action an appropriate number and notify all parties and their respective counsel of record thereof. The action thereafter shall continue in the transferee court as though initially commenced there; all items specified in paragraph (H) of this rule shall be deemed amended accordingly. It shall not be necessary that service of process be perfected a second time upon parties defendant, except that any publication required to be made in a newspaper in the proper venue shall be republished. Any interlocutory or other order theretofore entered in the action, upon the motion of any party, shall be reviewed, and thereafter reissued or vacated by the court to which the action was transferred.

5.9 Standard forms.

(A) A form, including any instructions, shall be considered adopted when it has been approved by a majority of a quorum of probate judges present at a meeting of the Council of Probate Court Judges of Georgia. The forms committee members may approve changes to forms and instructions.

(B) The effective date of any such standard form shall be immediately following the date approved by the Supreme Court. Each newly-adopted form will either be published in full in an issue of such Advance Sheets or be available in each probate court of this state, at least one month prior to its effective date. Dissemination to each probate court may be accomplished electronically. A paper copy may be sent to any probate court upon request.

(C) These rules shall be construed to allow and facilitate the use of technology in electronic document preparation. No standard forms or these rules shall require the filing party to mark or identify any changes in such forms unless they are material. Changes in such forms which are grammatical, changes in gender, changes in singular and plural, omission of optional or alternative language and the inclusion of variable information such as names and addresses shall not be deemed material; however, the format and sequence of the forms shall be preserved as far as practical.

(D) Each court will have a supply of printed copies of adopted standard forms. Each standard form will have a title and will contain numbered paragraphs. When an available standard form is not used for a probate court procedure, then the content of the substituted pleading or other document must conform to the standard form, indicating all material information added to or deleted from the standard form. Each material addition must be underlined, placed in bold or all capital letters, or otherwise clearly indicated, and material deletions must be shown with a single strike through or otherwise clearly indicated. At the end of any such document, the attorney must sign the following statement: "I certify that the content of the foregoing is identical in all material respects with Georgia probate court standard form entitled, _____, except for additions or deletions indicated as required by the Uniform Probate Court Rules." For purposes of this paragraph, instructions shall not be deemed to be a part of any standard form.

(E) With respect to any procedure for which a standard form has been adopted, the court may, in its discretion, process or decline to process any document not on an available standard form and which does not contain the certificate described above.

(F) Any document prepared in accordance with this rule and any other applicable rules shall be acceptable in any probate court in this state.

(G) For the purposes of this rule, any change or modification of a standard form which changes only the format in which dates are set forth shall not be considered to be the adoption of a new form, and any existing standard form may be modified or amended solely for the purpose of changing the format in which dates are set forth without affecting the effective date or otherwise changing the standard form. In the event such changes are made to a standard form, newly printed or created forms may be distributed to and by probate courts in lieu of older forms without such changes; however, older versions of standard forms not containing such changes shall be acceptable for filing in all probate courts until existing supplies are depleted. Any change or modification of a standard form which changes only the format in which dates are set forth shall not be considered to be a substituted document such as to require the certificate required under paragraph (D) of this rule.

(H) Minor changes in spelling, grammar, syntax, or punctuation which does not effect a procedural or substantive change to a form may be made by the standing Forms and Rules Committee of the Council of Probate Court Judges of Georgia and may be submitted to the Supreme Court for approval without action by a quorum of the full council.

Rule 6. Motions and Applications

6.1 Filing.

Every motion made prior to trial, except those consented to by all parties, when filed shall include or be accompanied by citations of supporting authorities and, where allegations of unstipulated fact are relied upon, supporting affidavits, or citations to evidentiary materials of record. The clerk shall promptly upon filing furnish a copy provided by the attorney of such motions and related materials to the judge.

6.2 Reply.

Unless otherwise ordered by the judge, each party opposing a motion shall serve and file a response, reply memorandum, affidavits, or other responsive material not later than thirty (30) days after service of the motion.

6.3 Hearing.

Unless otherwise ordered by the court, all motions in civil actions, including those for summary judgment, may be decided by the court without oral hearing, except motions for new trial and motions for judgment notwithstanding the verdict.

Provided, however, oral argument on a motion for summary judgment shall be permitted upon written request made in a separate pleading bearing the caption of the case and entitled "Request for Oral Hearing", and provided that such pleading is filed with the motion for summary judgment or filed not later than five (5) days after the time for response.

6.4 Motions for summary judgment.

Upon any motion for summary judgment pursuant to the Georgia Civil Practice Act, there shall be annexed to the notice of motion a separate, short and concise statement of each theory of recovery and of each of the material facts as to which the moving party contends there is no genuine issue to be tried. The response shall include a separate, short and concise statement of each of the material facts as to which it is contended there exists a genuine issue to be tried.

6.5 Time for filing summary judgment motions.

Motions for summary judgment shall be filed sufficiently early so as not to delay the trial. No trial shall be continued by reason of the delayed filing of a motion for summary judgment.

6.6 Motions in emergencies.

Upon written notice and good cause shown, the judge may shorten or waive the time requirement applicable to emergency motions, except motions for summary judgment, or grant

an immediate hearing on any matter requiring such expedited procedure. The motion shall set forth in detail the necessity for such expedited procedure.

6.7 Motions for new trial (applies to Article 6 Probate Courts only).

(A) Time for Hearing. In order to reduce delay between the conclusion of the trial and the filing of the notice of appeal, the trial court may hear motions for new trial immediately after filing and prior to the preparation of the transcript of proceedings. In any event, the motion for new trial shall be heard and decided as promptly as possible.

(B) Transcript Costs. Except where leave to proceed in forma pauperis has been granted, an attorney or party who files a motion for new trial, or a notice of appeal which specifies that the transcript of evidence or hearing shall be included in the record, shall be personally responsible for compensating the court reporter for the cost of transcription. The filing of such motion or notice shall constitute a certificate by the attorney or party that the transcript has been ordered from the court reporter. The filing of such motion or notice prior to ordering the transcript from the reporter shall subject the attorney or party to disciplinary action by the court.

6.8 Default judgments pursuant to OCGA § 15-9-47.

Default judgments may be entered in any case pending before the court in which an answer, caveat, or other responsive pleading has not been filed within the time required by law or by order of the court. If required by the court, the party seeking entry of a default judgment in any action shall certify to the court the date and type of service effected as shown by court records and that there has been no defensive pleading from any party against whom the default judgment is sought. When required, any such certificate shall be in writing and must be attached to the proposed default judgment when presented to the judge for signature.

Any party seeking to open a default must make the required showing in writing under oath. The court may then enter an order, without notice or hearing, granting or denying the request to open the default.

6.9 Leaves of absence.

(A) Leaves for thirty (30) calendar days or less

An attorney of record shall be entitled to a leave of absence for thirty (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 at least thirty (30) calendar days prior to the effective date for the proposed leave, a written notice containing:

1. A list of the actions to be protected, including the action numbers;
2. The reason for the leave of absence; and
3. 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 (10) days with the clerk, with a copy to the court and all counsel of record, or 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 shall retain leave of absence notices in a chronological file sixty (60) days after the leave period; thereafter, the notices may be discarded.

(B) Leaves for more than thirty (30) calendar days or those either on a published calendar, noticed for a hearing, or not meeting the time requirements of Rule 6.9 (A).

Application for leaves of absence for more than thirty (30) days, or those either on a published calendar, noticed for a hearing, or not submitted within the time limits contained in Rule 6.9 (A) above, must be in writing, filed with the clerk, and served upon opposing counsel at least ten (10) days prior to submission to the appropriate judge of the court in which an action pends. 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:

1. A list of the actions to be protected, including the action numbers;
2. The reason for the leave of absence;
3. The duration of the requested leave of absence; and
4. Whether any hearings or trials have been scheduled and, if so, the date of said hearing or trial.

(C) Excusal from court appearances.

A leave when granted shall relieve any attorney from all trials, hearings, depositions, and other legal appearances in that matter.

This rule shall not extend any deadline set by law or the court.

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.

6.11 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 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 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. 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 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 7. Civil Discovery

7.1 Time for discovery.

(A) In non-Article 6 Probate Courts, in order for a party to utilize the court's compulsory process to compel discovery, any desired discovery procedures must first be commenced promptly, pursued diligently and completed without unnecessary delay, and within two (2) months after the filing of the answer, unless for cause shown the time has been extended or shortened by court order.

(B) In Article 6 Probate Courts as defined in Rule 2.7, in order for a party to utilize the court's compulsory process to compel discovery, any desired discovery procedures must first be commenced promptly, pursued diligently and completed without unnecessary delay, and within six (6) months after the filing of the answer, objection, or other response. At any time, the court, in its discretion, may extend, reopen or shorten the time for discovery.

7.2 Filing requirements.

(A) Depositions and other original discovery material shall not be filed with the court unless or until required by the provisions of OCGA § 9-11-29.1 (a) (1)-(5).

(B) A party serving interrogatories, requests for production of documents, requests for admission, and answers or responses thereto upon counsel, a party or a non-party may file with the court a certificate indicating the pleading which was served, the date of service (or that the same has been delivered for service with the summons), and the persons served.

7.3 Depositions upon oral examination.

Unless otherwise authorized by the court or stipulated by the parties, the duration of a deposition is limited to one (1) day of seven (7) hours. The court must allow additional time if needed for a fair examination of the deponent or if the deponent or another person or other circumstance impedes or delays the examination.

7.4 Failure to make discovery and motion to compel discovery.

(A) Prior to filing a motion to compel discovery, counsel for the moving party shall confer with counsel for the opposing party in a good faith effort to resolve the matters involved. At the time of filing the motion, counsel shall also file a statement certifying that such conference has occurred, and that the effort to resolve by agreement the issues raised failed. If some of the issues have been resolved by agreement, the statement shall specify the issues remaining unresolved.

(B) Motions to compel discovery in accordance with OCGA § 9-11-37 shall:

1. Quote verbatim or attach a copy as an exhibit of each interrogatory, request for admission, or request for production to which objection is taken;

2. Include the specific objection or response said to be insufficient;

3. Include the grounds assigned for the objection (if not apparent from the objection); and

4. Include the reasons assigned as supporting the motion. Such objections and grounds shall be addressed to the specific interrogatory, request for admission, or request for production and may not be made generally.

Rule 8. Pre-trial Proceedings

8.1 Procedures.

The judge may set pre-trial conferences sua sponte or upon motion. In scheduling actions for pre-trial conferences the court shall give consideration to the nature of the action, its complexity and the reasonable time requirements for preparation for pre-trial. In the event a pre-trial conference is ordered, the following shall apply.

A calendar will be published or a written order issued specifying the time and place for the pre-trial conference. The court will consider the issues stated in OCGA § 9-11-16. The pre-trial hearing shall be attended by the attorneys who will actually try the action. With the consent of the court, another attorney of record in the action may attend if authorized to define the issues and enter into stipulations. At the commencement of the pre-trial conference, or prior thereto upon written order of the court, counsel for each party shall present to the court a written proposed pre-trial order in substantially the form required by the rules. Failure of counsel to appear at the pre-trial conference without legal excuse or to present a proposed pre-trial order shall authorize the court to remove the action from any trial calendar, enter such pre-trial order as the court shall deem appropriate, or impose any other appropriate sanction, except dismissal of the action with prejudice.

8.2 Pre-trial order.

At the pre-trial conference, or prior to that day as specified in the pre-trial calendar, counsel for each party shall have prepared and shall file with the court a proposed pre-trial order in substantially the following form. The words “plaintiff” and “defendant” may be changed if other words are more appropriate.

IN THE PROBATE COURT OF _____ COUNTY

STATE OF GEORGIA

(STYLE OF CASE) ESTATE NO. ___

PRE-TRIAL ORDER

The following constitutes a Pre-Trial Order entered in the above-styled case after conference with counsel for the parties:

(1) The names, addresses and telephone numbers of the attorneys who will conduct the trial are as follows:

Plaintiff

_____

Defendant

_____

Other

_____

(2) The estimated time required for trial is _____

(3) There are no motions or other matters pending for consideration by the court except as follows: _____

(4) If applicable, the jury will be qualified as to relationship with the following: _____

(5) a. All discovery has been completed, unless otherwise noted, and the court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.

b. Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or nonjoinder of any parties.

(6) The following is the Plaintiff's brief and succinct outline of the case and contentions: (USE SPACE AS NEEDED)

(7) The following is the Defendant's brief and succinct outline of the case and contentions: (USE SPACE AS NEEDED)

(8) The issues for determination are as follows: _____

_____

(9) The following facts are stipulated: _____
_____

(10) The following is a list of all documentary and physical evidence that will be tendered at the trial by the Plaintiff or Defendant. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial.

a. By the Plaintiff: _____
_____

b. By the Defendant: _____
_____

(11) Special authorities relied upon by Plaintiff relating to peculiar evidentiary or other legal questions are as follows: _____
_____

(12) Special authorities relied upon by Defendant relating to peculiar evidentiary or other legal questions are as follows: _____
_____

(13) If applicable, requests and exceptions to charge

All requests to charge shall be numbered consecutively on separate sheets of paper and submitted to the court in duplicate by counsel for all parties at the commencement of trial, unless otherwise provided by pre-trial order; provided, however, that additional requests may be submitted to cover unanticipated points that arise thereafter.

(14) The testimony of the following persons may be introduced by depositions: _____
_____

Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of the court prior to trial.

(15) The following are lists of witnesses the
a. Plaintiff *will* have present at trial: _____
_____

b. Plaintiff *may* have present at trial: _____
_____

c. Defendant *will* have present at trial: _____
_____

d. Defendant may have present at trial: _____
_____

Opposing counsel may rely on representation by the designated party that he *will* have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

(16) If applicable, the forms of all possible verdicts to be considered by the jury are as follows: _____
_____

(17) a. The possibilities of settling the case are: _____
_____

b. The parties do/do not want the case reported. If they do, _____ will arrange for the reporter.

c. The cost of take-down will be paid by: _____

d. Other matters:

Submitted by:
_____
_____

It is hereby ordered that the foregoing, including the attachments thereto, constitutes the PRE-TRIAL ORDER in the above case and supersedes the pleadings which may not be further amended except by order of the court to prevent manifest injustice.

This _____ day of _____, 20___.

_____

Judge, Probate Court
_____ County

Rule 9. Custody of Evidence -- Civil Cases

9.1 Prior to and during the trial or hearing.

A clerk or 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 as evidence in a civil case shall, if such items are separated from the original case file, maintain a log or inventory of all such items with the case number, party names, descriptions of the items, 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 a clerk and be maintained in the courthouse or other such location as allowed by law and be available during court proceedings and accessible to the court reporter. Unless retained in the original case file, all such items admitted as evidence shall be identified or tagged by a clerk or court reporter with the case number and the exhibit number and be recorded in the log or inventory. Within thirty (30) days after disposition of the case, the court reporter, if in possession of items admitted into evidence, shall transfer such items of evidence along with the evidence log or inventory to a clerk of the originating court. A clerk shall update the log or inventory to show the current custodian and the location of the evidence.

9.2 Once the trial is concluded.

Evidence in the possession of a clerk or court reporter shall be maintained in accordance with the law. The designated custodian shall be responsible for the recording on the evidence log or inventory the name of the counsel or party, the date, and the purpose for the release of any such items of evidence. Subsequent to admission of any item into evidence by the court, no substitution for the item admitted into evidence shall be made except by leave of the court. Any counsel or party seeking to make a substitution for admitted evidence after the close of evidence shall file a motion for an order authorizing such substitution. Upon granting of an order for substitution, the order shall be entered into the log or inventory. Dangerous or contraband items shall be transferred to the sheriff or other appropriate law enforcement agency along with a copy of the log or inventory. The sheriff or other law enforcement agency shall acknowledge the transfer with a signed receipt and the receipt shall be retained with the log or inventory created and maintained by a clerk. A clerk and the sheriff or other law enforcement agency 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. In any case in which no court reporter was retained, a clerk shall keep and store the evidence or ensure that it is maintained in an appropriate location.

The log or inventory of any evidence separated from the original case file shall be maintained in the original case file. Upon the expiration of the time for the filing of an appeal during which no motion for new trial or appeal has been filed by any party, a clerk, court reporter, sheriff or other law enforcement agency may, and shall upon written request, return any item of admitted evidence to the counsel or party who tendered the same; provided, however, that no item which is contraband or illegal to possess in the state of Georgia shall be returned to any counsel or party, and all such items shall, upon the expiration of the time for the filing of an appeal during which no motion for new trial or appeal has been filed by any party, be delivered over to the sheriff of the county for appropriate disposition. Upon the expiration of the time for

the filing of an appeal during which no motion for new trial or appeal has been filed by any party, a clerk, court reporter, sheriff or other law enforcement agency may notify in writing the counsel or party who tendered any admitted evidence in the possession of such clerk, court reporter, sheriff or law enforcement agency, to retrieve such item(s) within thirty (30) days of the written notice, and, upon the failure of the counsel or party to retrieve same within such thirty (30) days, the clerk, court reporter, sheriff or law enforcement agency may dispose of the item(s).

Suggested Minimum Requirements for an Evidence
Maintenance Log

EXH. #	DESCRIPTION	RELINQUISHED BY	DATE/TIME OF TRANSFER	RECEIVING AGENCY	RECEIVING AGENT	PHYSICAL LOCATION TRANSFERRED TO
		Signature of Relinquishing Clerk			Signature of' Receiving Clerk	
		Type or Print Name			Type or Print Name	
		Signature of Relinquishing Clerk			Signature of Receiving Clerk	
		Type or Print Name			Type or Print Name	

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.

10.3 Cell phones.

Cell phones shall not be audible in the courtroom, and their use may be further restricted by the judge.

10.4 Court reporters.

Unless otherwise notified by the court, if any party desires that a hearing or trial be reported by a court reporter, then it shall be the duty of such party to arrange, at his own expense, for a court reporter to be present at the hearing or trial. Such party shall immediately notify the court and opposing counsel in writing when such arrangements have been made. No delay or continuance of any hearing or trial shall be granted in order to allow any party to make such arrangements, except for good cause shown. If the court will arrange for a court reporter to be present at a particular hearing or trial, then the court will so inform the parties in the notice of hearing, pre-trial order, or other appropriate notice.

10.5 Setting contested hearings.

Hearings on contested matters shall be set by the court upon the request of any interested party, at the next available hearing date, and notice shall be given by first class mail at least ten (10) days in advance to all interested parties. An interested party represented by an attorney shall be notified by giving notice to his attorney.

10.6 Continuances.

Any request for continuance shall be made in conformance with OCGA § 9-10-150 et seq.

10.7 Excusals from courtroom.

During the course of a proceeding no one except the judge may excuse a party, a witness (including one who has testified), or counsel from the courtroom.

10.8 Arguments.

(A) Sequence. When the burden of proof rests with the petitioner, the petitioner is entitled to the opening and concluding arguments except that if the respondent introduces no evidence or admits a prima facie case, he shall be entitled to open and conclude.

(B) Length. In all misdemeanor cases, closing argument shall be limited to one-half hour per side without obtaining special leave of the court before the argument is opened.

(C) Participants. Not more than two attorneys shall be permitted to argue any case for any party except by leave of court; in no event shall more than one attorney for each party be heard in concluding argument.

10.9 Dismissal for failure to appear.

On its own motion or upon motion of the opposite party, the court may dismiss without prejudice any action, or where appropriate, any pleading filed on behalf of any party upon the failure to properly respond to the call of the action for trial or other proceeding. The court may adjudge any attorney in contempt for failure to appear without legal excuse upon the call of any proceeding.

10.10 Electronic and photographic news coverage of judicial proceedings.

Unless otherwise provided by rule of the Supreme Court or otherwise ordered by the 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 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:

Persons desiring to broadcast/record/photograph official court proceedings must file a timely written request (form attached as Exhibit "A") with the judge involved prior to the hearing or trial, specifying the particular 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.

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.

The judge, in his discretion, may 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 judge may, in his discretion, designate the schedule and arrangements for pooled coverage.

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.

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.

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.

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.

Still cameras, movie and television cameras and broadcasting and recording devices must operate quietly. 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.

Photographs and televising of the public and the courtroom are allowed, if done without disruption to the court proceedings.

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

Court proceedings shall not be interrupted by a reporter or technician with a technical or an equipment problem.

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.

Other than as permitted by these rules and guidelines, there will be no photographing or radio or television broadcasting, including video taping pertaining to any judicial proceedings on the courthouse floor where the trial, hearing or proceeding is being held or any other courthouse floor whereon is located a probate court courtroom, whether or not the court is actually in session.

No interviews pertaining to a particular judicial proceeding will be conducted in the courtroom except with the permission of the judge.

All media plans heretofore approved by the Supreme Court for probate courts are hereby repealed.

EXHIBIT "A"

IN THE PROBATE COURT OF _____ COUNTY

STATE OF GEORGIA

(STYLE OF CASE) ESTATE OR FILE NO. ___

REQUEST TO INSTALL RECORDING AND/OR PHOTOGRAPHING EQUIPMENT PURSUANT TO RULES AND GUIDELINES FOR ELECTRONIC AND PHOTOGRAPHIC NEWS COVERAGE OF JUDICIAL PROCEEDINGS.

Pursuant to Rule 10.10 of the Uniform Probate Court Rules, the undersigned hereby requests permission to install equipment in courtroom in order to record, photograph or televise all or portions of the proceedings in the above-captioned case.

Consistent with the provisions of the rules and guidelines, the undersigned desires to install the following described equipment: _____ in the following locations: _____. The proceedings that the undersigned desires to record, photograph or televise commence on ___(DATE)___. Subject to direction from the court regarding possible pooled coverage, the undersigned wishes to install this equipment in the courtroom on ___(DATE)___. The personnel who will be responsible for the installation and operation of this equipment during its use are: ___(IDENTIFY APPROPRIATE PERSONNEL)___.

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.

This _____ day of _____, 20__.

_____
(Individual Signature)

_____
(Representing/Firm)

_____
(Position)

_____
(Address)

_____
(Telephone Number)

APPROVED:

_____
Judge, Probate Court
_____ County

10.11 Jury trials (Article 6 Probate Courts).

(A) Demand and procedure

Right to Jury Trial. The right to a jury trial must be asserted by a written demand within thirty (30) days after the filing of the first pleading of the party or within fifteen (15) days after the filing of the first pleading of an opposing party, whichever is later, except that with respect to a petition pursuant to OCGA §§ 29-4-10 and 29-5-10, relating to guardianship or conservatorship of an incapacitated adult, if any interested party desires a trial by jury, such party must make such request for a jury trial within ten (10) days after the date of mailing of the notice provided for by OCGA §§ 29-4-12 (c) and 29-5-12 (c). If a party fails to assert the right to a jury trial, the right shall be deemed waived and may not thereafter be asserted.

All laws with reference to the number, composition, qualifications, impaneling, challenging, and compensation of jurors in superior courts shall apply to, and be observed by, the Article 6 Probate Courts in civil cases.

(B) Voir dire.

The court may propound, or cause to be propounded by counsel, such questions of the jurors as provided in OCGA § 15-12-133; however, the form, time required, and number of such questions is within the discretion of the court. The court may require that questions be asked once only to the full array of the jurors, rather than to every juror one at a time, provided that the question be framed and the response given in a manner that will provide the propounder with an individual response prior to the interposition of challenge. Hypothetical questions are discouraged, but may be allowed in the discretion of the court. It is improper to ask how a juror would act in certain contingencies or on a certain hypothetical state of facts. No question shall be framed so as to require a response from a juror which might amount to a prejudgment of the action. Questions calling for an opinion by a juror on matters of law are improper. The court will exclude questions which have been answered in substance previously by the same juror. It is discretionary with the court to permit examination of each juror without the presence of the remainder of the panel. Objections to the mode and conduct of voir dire must be raised promptly or they will be regarded as waived.

(C) Selection of juries.

After completion of the examination of jurors upon their voir dire, the parties and their counsel shall be entitled, upon request, to fifteen (15) minutes to prepare for jury selection; thereafter, during the selection of jurors, the court in its discretion, upon first warning counsel, may restrict to not less than one minute the time within which each party may exercise a peremptory challenge; a party shall forfeit a challenge by failing to exercise it within the time allowed.

(D) Requests and exceptions to charge.

All requests to charge shall be numbered consecutively on separate sheets of paper and submitted to the court in duplicate by counsel for all parties at the commencement of trial, unless otherwise provided by pre-trial order; provided, however, that additional requests may be submitted to cover unanticipated points which arise thereafter.

Rule 11. Telephone and Video-Conferencing*

* See Supreme Court Order (March 31, 2020) temporarily amending Probate Court Rules 11.1, 11.2 (C) and 11.2 (E) (4).

11.1 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.

11.2 Video-conferencing.

(A) Matters which 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;
4. Probable cause hearings;
5. Applications for arrest warrants;
6. Applications for search warrants;
7. Arraignment or waiver of arraignment;
8. Pre-trial 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;
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;
15. Testimony of youthful witnesses;
16. Appearances of interpreters; and
17. All mental health, alcohol and drug hearings held by the probate court pursuant to OCGA Title 37 provided that the confidentiality prescribed by OCGA Title 37 be preserved. Notwithstanding any other provisions of this rule, a judge may order a person'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 videoconference. Any party desiring to call a witness by video-conference shall file a notice of intention to present testimony by videoconference 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 videoconference 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.

Rule 12. Appeals

12.1 Appeals -- preparation of record.

(A) Non-Article 6 Probate Courts

The record which is transmitted to the superior court in connection with any de novo appeal from the probate court shall include certified copies of all documents which will be recorded in the official record books of the probate court. In addition, a certified copy of any alleged will which is denied probate will be transmitted even though it will not be recorded on the probate court records. No exhibits, transcripts of hearings, depositions, interrogatories, notices to produce documents, or any other materials which reflect the evidence presented in the probate court shall be transmitted to the superior court in connection with a de novo appeal. Instead, any such materials in the possession of the court (other than documents required by law to be kept on file with the probate court) shall be returned to the attorney who presented them, if the probate court is requested to do so or does so on its own motion, and the attorney may then present them at the superior court hearing if he desires.

(B) Article 6 Probate Courts

The record which is transmitted to the appropriate appellate court on appeal shall be prepared in the same manner as appeals from the superior court are prepared, as nearly as practicable.

(C) Fees for Article 6 Probate Courts

The judge shall be entitled to the same fee as the clerk of the superior court as provided by law for services rendered in jury trials and in appeals to the Supreme Court or Court of Appeals if said fee is not prescribed by OCGA § 15-9-60.

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.

15.2 Maintenance of criminal evidence.

A clerk 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 as evidence in a criminal case shall, if such items are separated from the original case file, maintain a log or inventory of all such items with the case number, party names, descriptions of the items, the name and official position of the custodian, and the location of the storage of the items. Unless retained in the original case file, all such items admitted as evidence shall be identified or tagged by a clerk or court reporter with the case number and the exhibit number and be recorded in the log or inventory. Within thirty (30) days after disposition of the

case, the court reporter, if in possession of items admitted into evidence, shall transfer such items of evidence along with the evidence log or inventory to a clerk of the originating court. A clerk shall update the log or inventory to show the current custodian and the location of the evidence. Dangerous or contraband items shall be transferred to the sheriff or other appropriate law enforcement agency along with a copy of the log or inventory. The sheriff or other law enforcement agency shall acknowledge the transfer with a signed receipt and the receipt shall be retained with the log or inventory created and maintained by a clerk. A clerk and the sheriff or other law enforcement agency 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. In any case in which no court reporter was retained, a clerk shall keep and store the evidence or ensure that it is maintained in an appropriate location.

Evidence in the possession of a clerk or court reporter, during court proceeding, shall be maintained in accordance with the provisions of OCGA § 17-5-55 and other applicable law. The designated custodian shall be responsible for recording on the evidence log or inventory the name of the counsel or party, the date, and the purpose for the release of any such items of evidence. Subsequent to admission of any item into evidence by the court, no substitution for the item admitted into evidence shall be made except by leave of the court. Any counsel or party seeking to make a substitution for admitted evidence after the close of evidence shall file a motion for an order authorizing such substitution. Upon granting of an order for substitution, the order shall be entered into the log or inventory.

The log or inventory of any evidence separated from the original case file shall be maintained in the original case file. Upon the expiration of the time for the filing of an appeal during which no motion for new trial or appeal has been filed by any party, a clerk, court reporter, sheriff or other law enforcement agency may, and shall upon written request, return any item of admitted evidence to the counsel or party who tendered the same; provided, however, that no item which is contraband or illegal to possess in the state of Georgia shall be returned to any counsel or party, and all such items shall, upon the expiration of the time for the filing of an appeal during which no motion for new trial or appeal has been filed by any party, be delivered over to the sheriff of the county for appropriate disposition. Upon the expiration of the time for the filing of an appeal during which no motion for new trial or appeal has been filed by any party, a clerk, court reporter, sheriff or other law enforcement agency may notify in writing the counsel or party who tendered any admitted evidence in the possession of such clerk, court reporter, sheriff or law enforcement agency, to retrieve such item(s) within thirty (30) days of the written notice, and, upon the failure of the counsel or party to retrieve same within such thirty (30) days, a clerk, court reporter, sheriff or law enforcement agency may dispose of the item(s).

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.

15.5 Criminal trial calendar.

(A) Calendar preparation.

All cases shall be set for trial within a reasonable time after arraignment. The judge or the judge's designee shall prepare a trial calendar, shall deliver a copy thereof to the clerk, 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 seven (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.

(B) Removal from calendar.

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

15.6 Pleas.

15.6.1 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 counsel or 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.

15.6.2 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 Rule 15.6.8.

15.6.3 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 Rule 15.6.6) 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.

15.6.4 Attorney-client relationship.

(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.

15.6.5 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 pre-sentence 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 pre-sentence 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 Rule 15.6.6.

15.6.6 Consideration of plea in final disposition.

(A) It is proper for the judge to grant charge or 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.

15.6.7 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.

15.6.8 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 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.

15.6.9 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.

15.6.10 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 guilty plea as a matter of right. If the plea is not then withdrawn, sentence may be pronounced.

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.

15.6.12 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.

15.7 Dockets.

(A) Docket categories. Each probate court shall keep a docket for criminal cases and arrests, and a separate docket for all other actions.

(B) Time of docketing.

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

15.8 Initial appearance/commitment hearings.

(A) Initial appearance hearing.

As soon as is reasonably practicable following any arrest but not later than forty-eight (48) hours if the arrest was without a warrant, or seventy-two (72) hours following an arrest with a warrant, unless the accused has made bond in the meantime, the arresting officer or other law enforcement officer having custody of the accused shall present the accused in person before a judge or other judicial officer for first appearance.

At the first appearance, the judge or judicial officer shall:

1. Inform the accused of the charges;

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

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 his right to a commitment hearing, unless the first appearance covers the commitment hearing issues, and inform the accused that giving a bond shall be a waiver of the right to a commitment hearing;

5. In the case of a warrantless arrest, make a fair and reliable determination of the probable cause for the arrest unless a warrant has been issued before the first appearance;

6. Inform the accused of the right to a trial by jury;

7. Inform the accused that if he desires to waive these rights and plead guilty, then the accused shall so notify the judge or the law officer having custody, who shall in turn notify the judge;

8. Set the amount of bail.

(B) Commitment hearing.

1. A judge, in his or her discretion, may hold a commitment hearing even though the defendant has posted a bail bond.

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

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

(b) Repeat to the accused the rights explained at the first appearance as listed in Rule 15.8 (A) above;

(c) Determine whether the accused intends to plead guilty, nolo contendere, or not guilty, or waives the commitment hearing;

(d) If the accused intends to plead guilty or waives the hearing, if applicable, the court shall immediately bind the entire case over to the court having jurisdiction of the most serious offense charged;

(e) If the accused pleads "not guilty," the court shall immediately proceed to conduct the commitment evidentiary hearing unless, for good cause, the hearing is continued to a later scheduled date;

(f) Cause an accurate record to be made of the testimony and proceeding by a reliable method;

(g) The judicial officer, if applicable, 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;

(h) On each case which is bound over, a memorandum of the commitment shall be entered on the warrant or accusation by the judicial officer. The warrant, accusation, 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. Each bail bond shall contain the full name, telephone number, residence, business and mailing address(es) of the accused and any surety;

(i) A copy of the record of any testimony and the proceedings of the first appearance and the commitment hearing shall be provided to the proper prosecuting officer and to the accused upon payment of the reasonable cost for preparation of the record;

(j) 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.

3. At the commitment hearing, the following procedures shall be utilized:

(a) The rules of evidence shall apply except that hearsay may be allowed;

(b) 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, or otherwise as is customary in that court;

(c) The accused may be represented by an attorney or may appear pro se; and

(d) The accused shall be permitted to introduce evidence.

15.9 Appointment of counsel for indigent defendants.

The probate court shall have a procedure and forms consistent with applicable law in order to determine indigence and to appoint counsel to defendants who apply and qualify for appointed counsel. The applications shall be available through the clerk.