

Proposed Amendments to the Uniform Superior Court Rules January 20, 2005

(proposed additions are underlined, proposed language for deletion is stricken)

Rule 4.4: Admission *Pro Hac Vice* (First Reading)

Rule 4.11: Attorneys: Appearance, withdrawal and duties; to attend and remain (first reading)

Rule 31.4 and 31.5: Motions, demurrers, special pleas, and similar items in criminal matters; Motions and orders for mental examination at public expense. (First reading)

Rule 36.1: Filing and processing; Preparation of documents (First reading)



A Georgia Courthouse

By Mary Stoddard.

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Proposed Amendment to Uniform Superior Court Rule 4.4: Admission *Pro Hac Vice* (first reading 1/20/05)

Rule 4.4 Admission *Pro Hac Vice*

Definitions

1. A “Domestic Lawyer” is a person not admitted to practice law in this state but who is admitted in another state or territory of the United States or of the District of Columbia and not disbarred or suspended from practice in any jurisdiction.
2. A Domestic Lawyer is “eligible” for admission *pro hac vice* if that lawyer:
 - a. lawfully practices solely on behalf of the lawyer’s employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work; or
 - b. neither resides nor is regularly employed at an office in this state; or
 - c. resides in this state but (i) lawfully practices

from offices in one or more other states and (ii) practices no more than temporarily in this state, whether pursuant to admission *pro hac vice* or in other lawful ways.

3. A “client” is a person or entity for whom the Domestic Lawyer has rendered services or by whom the lawyer has been retained prior to the lawyer’s performance of services in this state.

4. “This state” refers to Georgia. This Rule does not govern proceedings before a federal court or federal agency located in this state unless that body adopts or incorporates this Rule.

B. Authority of Court To Permit Appearance By Domestic Lawyer

1. Court Proceeding. A court of this state may, in its discretion, admit an eligible Domestic Lawyer retained to appear in a particular proceeding pending before such court to appear *pro hac vice* as counsel in that proceeding.

C. In-State Lawyer’s Duties. When a Domestic Lawyer appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the in-state lawyer, or in an advisory or consultative role, the in-state lawyer who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the in-state lawyer to advise the client of the in-state lawyer’s independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Domestic Lawyer.

D. Application Procedure

1. Verified Application. An eligible Domestic Lawyer seeking to appear in a proceeding pending in this state as counsel *pro hac vice* shall file a verified application with the court where the litigation is filed. The application shall be served on all parties who have appeared in the case and the Office of General Counsel of the State Bar of Georgia. The application shall include proof of service. The court has the discretion to grant or deny the application summarily if there is no opposition.

2. Objection to Application. The Office of General Counsel of the State Bar of Georgia or a party to the proceeding may file an objection to the application or seek the court’s imposition of conditions to its being granted.

The Office of General Counsel or objecting party must file with its objection a verified affidavit containing or describing information establishing a factual basis for the objection. The Office of General Counsel or objecting party may seek denial of the application or modification of it. If the application has already been granted, the Office of General Counsel or objecting party may move that the *pro hac vice* admission be withdrawn.

3. Standard for Admission and Revocation of Admission. The court has discretion as to whether to grant applications for admission *pro hac vice* and to set the terms and conditions of such admission. An application ordinarily

should be granted unless the court or agency finds reason to believe that such admission:

- a. may be detrimental to the prompt, fair and efficient administration of justice,
 - b. may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent,
 - c. one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk,
 - d. the applicant has engaged in such frequent appearances as to constitute regular practice in this state, or
 - e. should be denied, if that applicant had, prior to the application, filed or appeared in an action in the courts of this State without having secured approval pursuant to the Uniform Superior Court Rules.

4. Revocation of Admission. Admission to appear as counsel *pro hac vice* in a proceeding may be revoked for any of the reasons listed in Section D.3 above.

E. Application

1. Required Information. An application shall state the information listed on Appendix A to this rule. The applicant may also include any other matters supporting admission *pro hac vice*.
2. Application Fee. An applicant for permission to appear as counsel *pro hac vice* under this Rule shall pay a non-refundable fee as set by the Investigative Panel of the State Bar of Georgia at the time of filing the application.
3. Exemption for *Pro Bono* Representation. An applicant shall not be required to pay the fee established by E.2 above if the applicant will not charge an attorney fee to the client(s) and is:
 - a. employed or associated with a *pro bono* project or nonprofit legal services organization in a civil case involving the client(s) of such programs; or
 - b. involved in a criminal case or a *habeas* proceeding for an indigent defendant.

F. Authority of the Office of General Counsel of the State Bar of Georgia and Court: Application of Ethical Rules, Discipline, Contempt, and Sanctions

1. Authority over Domestic Lawyer and Applicant.
 - a. During pendency of an application for admission *pro hac vice* and upon the granting of such application, a Domestic Lawyer submits to the authority of the courts and the Office of General Counsel of the State Bar of Georgia of this state for all conduct relating in any way to the proceeding in which the Domestic Lawyer seeks to appear. The applicant or Domestic Lawyer who has obtained *pro hac vice* admission in a proceeding submits to this authority for all that lawyer's conduct (i) within the state while the proceeding is pending or (ii) arising out of or relating to the application or the proceeding. An applicant or Domestic Lawyer who

has *pro hac vice* authority for a proceeding may be disciplined in the same manner as an in-state lawyer.

b. The court's and Office General Counsel's authority includes, without limitation, the court's and State Bar of Georgia's rules of professional conduct, contempt and sanctions orders, local court rules, and court policies and procedures.

2. Familiarity With Rules. An applicant shall become familiar with the Georgia Rules of Professional Conduct, local court rules, and policies and procedures of the court before which the applicant seeks to practice.

- G. No Solicitation. An out of state lawyer rendering services in this state in compliance with this Rule or here for other reasons is not authorized by anything in this Rule to hold out to the public or otherwise represent that the lawyer is admitted to practice in this jurisdiction. Nothing in this rule authorizes out-of-state lawyers to solicit, advertise, or otherwise hold themselves out in publications as available to assist in litigation in this State.

H. Temporary Practice. An out-of-state lawyer will only be eligible for admission *pro hac vice*, or to practice in another lawful way only on a temporary basis.

I. The conflicts of the domestic lawyer shall not delay any deadlines, depositions, mediation, hearings, or trials in connection with the case for which admission has been granted.

APPENDIX A

The Domestic Lawyer's application shall include:

1. the applicant's residence and business address;
2. the name, address and phone number of each client sought to be represented;
3. the courts before which applicant has been admitted to practice and the respective period(s) of admission;
4. whether the applicant (a) has been denied admission *pro hac vice* in this state, (b) had admission *pro hac vice* revoked in this state, or (c) has otherwise formally been disciplined or sanctioned by any court in this state. If so, specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;
5. whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary authority in any other jurisdiction within the last five (5) years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;
6. whether the applicant has been held formally in contempt or otherwise sanctioned by any court in a written order in the last five (5) years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the

written order or transcript of the oral rulings shall be attached to the application);

7. the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear *pro hac vice* in this state within the preceding two years; the date of each application; and the outcome of the application;

8. an averment as to the applicant's familiarity with the Georgia Rules of Professional Conduct, local rules and court procedures of the court before which the applicant seeks to practice; and

9. the name, address, telephone number and bar number of an active member in good standing of the bar of this state who will sponsor the applicant's *pro hac vice* request. The bar member shall appear of record together with the Domestic Lawyer.

The Domestic Lawyer's application may provide the following optional information

10. the applicant's prior or continuing representation in other matters of one or more of the clients the applicant proposes to represent and any relationship between such other matter(s) and the proceeding for which applicant seeks admission.

11. any special experience, expertise, or other factor deemed to make it particularly desirable that the applicant be permitted to represent the client(s) the applicant proposes to represent in the particular cause.

Proposed Amendment to the Uniform Superior Court Rules

Rule 4.11: Attorneys; Appearance and withdrawal; to attend and remain (First reading 1/20/2005)

Rule 4.11

Subject to the provisions of Rule 17, 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 excuse counsel from the courtroom before the matter is concluded such attorney(s) shall return as directed. So that the court can provide timely direction, counsel shall contact the trial court daily during the remainder of any ongoing calendar. Failure of any attorney in this respect shall subject that attorney to the contempt powers of the court.

Proposed Amendment to the Uniform Superior Court Rules

Rule 31. Motions, demurrers, special pleas, and similar items in criminal matters.
(First reading 1/20/2005)

31.1 Time for Filing; requirements

All motions, demurrers, and special pleas shall be made at or before the time set by law, unless time therefor is extended by the judge in writing prior to trial. Notices of the state's intention to present evidence of similar transactions or occurrences and notices of the intention of the defense to raise the issue of insanity or mental illness, or the intention of the defense to introduce evidence of specific acts of violence by the victim against third persons, shall be given and filed at least ten (10) days before trial unless the time is shortened or lengthened by the judge. Such filing shall be in accordance with the following procedures. Mental incompetency to stand trial may be raised at any time.

31.54 ~~Motions and Orders for Mental Examination~~ Evaluation of Regarding Mental Incompetency to Stand Trial at Public Expense

(A) In pending superior court cases, except in proceedings for involuntary treatment under OCGA Title 37, or proceedings for the appointment of a guardian under Title 29, where the mental competency of an accused is brought into question, the judge may, upon a proper showing, exercise discretion and require a mental ~~examination and~~ evaluation at public expense. **The court, the prosecuting attorney and the defense attorney each have an ongoing responsibility to raise the issue of mental incompetency to stand trial at any stage of the proceeding if there is a good faith doubt as to the defendant's competency.** For a defendant who is represented by counsel, a ~~A~~ motion for mental examination evaluation may be filed in writing by ~~counsel,~~ setting out allegations and grounds for such motion, praying for a court-ordered evaluation. The judge may enter an order requiring ~~psychiatric~~ a mental evaluation of the defendant for the purposes of evaluating competency to stand trial, ~~degree of criminal responsibility at the time of the act in question and necessity of treatment.~~ The judge may direct the Department of Human Resources ~~(or any other forensic psychiatric service as may be necessary and available)~~ to perform the examination evaluation at a time and place to be set by the department ~~or service~~ in cooperation with the county sheriff. A copy of the order shall be forwarded to the department ~~or service~~ accompanied by a copy of the indictment, accusation or specification of charges, a copy of the police arrest report, where available, and a brief summary of any known or alleged previous ~~psychiatric~~ mental health treatment or hospitalization involving this particular person. Any other background information available to the court shall also be forwarded to the evaluating department ~~or service~~ to assist in performing adequately the requested services. **Unless otherwise ordered by the court the department shall submit its report to the requesting judge, the defendant's attorney and the prosecuting attorney.**

(B) Upon the filing of a Plea of Mental Incompetency to Stand Trial, the judge shall determine from the prosecuting attorney and the defense attorney whether a specially empaneled jury is required to determine the issue of mental incompetency to stand trial ahead of the trial of the case on the merits.

(C) Copies of suggested orders ~~requesting psychiatric examination~~ are attached as Specimen ~~Psychiatric Evaluation Order~~ for Mental Evaluation Re: Competency to Stand Trial #1, and Specimen ~~Psychiatric Evaluation~~ Judgment and Order of the Court on the Defendant's Plea of Mental Incompetency to Stand Trial #2. The department ~~or service~~ shall submit its report to the requesting judge, who shall provide copies of the report to the defendant's attorney and the prosecuting attorney.

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

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

IT IS, THEREFORE, THE ORDER of this court that the defendant be now delivered to the sheriff of this County and that the defendant be delivered by the sheriff, or the sheriff's lawful deputy, to the Department of Human Resources, as provided by OCGA § 17-7-130.

IT IS FURTHER ORDERED that at such time as it is determined that the defendant is capable of understanding the nature and object of the proceedings, comprehends his or her own condition in reference to such proceedings, and is capable of rendering *to* counsel assistance in providing a proper defense, the defendant be delivered by the Department of Human Resources to the sheriff of this county, or the sheriff's lawful deputy, with transportation costs to be borne by the county.

IT IS FURTHER ORDERED that, should it be determined in light of present day medical knowledge that recovery of the defendant's legal mental ~~competence~~ **competency** to stand trial is not expected at any time in the foreseeable future, the defendant shall be dealt with by the Department of Human Resources as provided in OCGA § 17-7-130.

SO ORDERED, this the _____ day of _____, 19 20__.

JUDGE, SUPERIOR COURT

JUDICIAL CIRCUIT, GEORGIA

SPECIMEN ~~COMMITTAL ORDER AFTER SPECIAL~~ ON THE DEFENDANT'S PLEA OF MENTAL ~~INCOMPETENCE~~ INCOMPETENCY TO STAND TRIAL

31.45 Notice of Intention of Defense to Raise Issue of Insanity, Mental Illness or Mental Retardation ~~or Mental Competency~~ at the Time of the Act

(A) If, in any criminal proceeding, the defense intends to raise the issue that the defendant or accused was ~~or is~~ insane, ~~mentally incompetent, mentally retarded, or~~ mentally ill **or mentally retarded** at the time of ~~acts~~ **the act** or acts charged against the accused, ~~or at the time of trial~~, such intention must be stated, in writing, in a pleading denominated as "Notice of Intent of Defense to Raise Issue of Insanity, Mental ~~Incompetence~~ **Illness** or Mental Retardation." This notice shall be filed and served upon the prosecuting attorney in accordance with section 31.1 of these rules. Upon the filing of such notice, the judge shall determine from the prosecuting attorney and the defense attorney whether such issue requires any further mental examination of the accused *or* any further non-jury hearing relative to this special issue, ~~or any specially empaneled jury to determine the issue on the special plea of insanity ahead of trial of the case on the merits~~ **The judge may enter an order requiring a mental evaluation of the defendant for the purposes of evaluating the degree of criminal responsibility or insanity at the time of the act in question. The judge may direct the Department of Human Resources to perform the evaluation at a time and place to be set by the department in cooperation with the county sheriff. A copy of the order shall be**

- Summary of previous mental health treatment **and prior mental health records**
- Copy of arrest report
- Other _____

So ordered, this the _____ day of _____, 19 **20** .

JUDGE, SUPERIOR COURT

JUDICIAL CIRCUIT, GEORGIA

SPECIMEN PSYCHIATRIC EVALUATION ORDER NO. 2 FOR MENTAL EVALUATION
RE: DEGREE OF CRIMINAL RESPONSIBILITY OR INSANITY AT THE TIME OF
THE ACT

Proposed Amendment to Uniform Superior Court

Rule 36.1: Filing and preparation; Preparation of documents
(First reading 1/20/2005)

Rule 36.1 Preparation of documents

To the extent practical, all materials presented for filing in any superior court shall be typed, legibly written or printed on one side only in blue or black ink suitable for reproduction, on opaque white paper measuring 8 1/2" x 11", of a good quality; grade and weight. Manuscript covers and backings shall be omitted wherever practical.

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