

Uniform Superior Court Rule Amendment Proposals of July 14, 2003

These proposals will be voted on by the Superior Court Judges in January 2004 and if passed will be submitted to the Georgia Supreme Court for adoption.



A Georgia Courthouse By Mary Stoddard. © CSCJ Used with permission.

Rule 9. Telephone and Video Conferencing

Rule 24.2 Financial data required.

Rule 31.1: Motions, demurrers, special pleas, and similar items in criminal matters; Time for filing

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

PROPOSED AMENDMENT TO UNIFORM SUPERIOR COURT Rule 9: Telephone Conferencing (First Reading July 14, 2003)

Rule 9. Telephone and Video Conferencing

9.1 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.

9.2 Videoconferencing.

(A) The following matters may be conducted by videoconference:

- 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. Pretrial 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 in felony cases in which the probationer admits the violation and in all misdemeanor cases;
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; and
15. Testimony of youthful witnesses;
16. Ex-parte applications for Temporary Protective Orders under the Family Violence Act and the Stalking Statute;
17. Appearances of interpreters;

18. All mental health, alcohol and drug hearings held by the Probate Court pursuant to Title 37 of the Official Code of Georgia provided that the confidentiality prescribed by Title 37 be preserved. (requested by Probate Court)

Notwithstanding any other provisions of this rule, a judge may order a defendant'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 video conference. Any party desiring to call a witness by video conference shall file a notice of intention to present testimony by video conference 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 a 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 video conference 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 videoconferencing 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.
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PROPOSED AMENDMENT TO UNIFORM SUPERIOR COURT

Rule 24.2. Financial data required.

(First Reading July 14, 2003)

Rule 24.2. Financial data required.

Every action for temporary or permanent child support, alimony, equitable division of property, modification of child support or alimony or attorneys fees shall be accompanied by an affidavit specifying the party's financial circumstances. The affidavit shall be served at the same time that the notice of interlocutory hearing is served. The opposing party shall make an affidavit regarding his or her financial circumstances and shall serve it upon opposing counsel at least five days prior to the interlocutory hearing. If the parties are ordered to participate in mediation at any time prior to trial, each shall serve the affidavit upon the other at least five days prior to the mediation. Each shall furnish the mediator with a copy at the time of the mediation.

If no application for a temporary award is made and the parties do not participate in mediation prior to trial, then the parties shall make and serve the affidavits at least ten days before trial. If a party is not represented by an attorney, sufficient time will be allowed the party to prepare the required affidavit at hearing or trial. On the request of either party, and good cause shown to the court, the affidavits and any other financial information may be sealed, upon order of the court.

Failure of any party to furnish the above affidavit, in the discretion of the court, may subject the offending party to the penalties of contempt and result in continuance of the hearing until such time as the required affidavit is furnished.

The affidavit shall be under oath and in substantially the following form:

IN THE SUPERIOR COURT OF _____ COUNTY, GEORGIA

_____, PLAINTIFF
vs _____ CIVIL ACTION NO. _____
_____, DEFENDANT

DOMESTIC RELATIONS FINANCIAL AFFIDAVIT

1. AFFIANT'S NAME _____ Age _____

~~Affiant's Social Security No. _____~~

Spouses Name _____ Age _____

Date of Marriage _____ Date of Separation _____

Names and birth dates of children of this marriage:

Name	Date of Birth	Resides with
_____	_____	_____
_____	_____	_____
_____	_____	_____

PROPOSED AMENDMENT TO UNIFORM SUPERIOR COURT

**Rule 31.1: Motions, demurrers, special pleas, and similar items
in criminal matters; Time for filing**

(First Reading July 14, 2003)

Rule 31.1. Time for filing; requirements.

All motions, demurrers, and special pleas shall be made and filed at or before the time set by law of arraignment, unless time therefor is extended by the judge in writing prior to trial. Notices of the states 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.

**PROPOSED AMENDMENT TO UNIFORM SUPERIOR COURT
Rule 31.5: Motions, demurrers, special pleas, and similar items in criminal matters;
Motions and orders for mental examination at public expense.**

(First Reading July 14, 2003)

**IN THE SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA**

THE STATE OF GEORGIA

INDICTMENT NO.

v. _____

CHARGE(S):

**ORDER FOR MENTAL EVALUATION re COMPETENCY
TO STAND TRIAL**

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

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

Competency to stand trial. Whether the accused is capable of understanding the nature and object of the proceedings; whether ~~he~~ the defendant comprehends his ~~or~~ her own condition in reference to ~~such~~ the proceedings against him/her; and, whether the accused is capable of rendering to counsel assistance in providing a proper defense.

IT IS FURTHER ORDERED that the department (or service) arrange with the county sheriff, or ~~the sheriff~~ his/her lawful deputies, for the prompt examination of said defendant, either at the county jail or at a designated hospital, with transportation of the defendant to be provided by the sheriff, where necessary, with transportation costs to be borne by the county. Upon completion of the examination, the examining facility shall notify the sheriff; who shall promptly reassume custody of the defendant. The evaluation report is to be sent to this court, with copies sent to the attorney for the defendant and the prosecuting attorney.

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

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

So ordered, this the _____ day of _____, 19__.

JUDGE, SUPERIOR COURT

JUDICIAL CIRCUIT,

GEORGIA

SPECIMEN PSYCHIATRIC EVALUATION ORDER NO. 1
IN THE SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA

INDICTMENT NO.

v. _____

CHARGE(S):

ORDER FOR MENTAL EVALUATION

RE: DEGREE OF CRIMINAL RESPONSIBILITY or SANITY AT THE TIME OF THE ACT

WHEREAS the sanity of the above defendant at the time at which he/she is alleged to have committed the offense(s) charged in the above indictment(s) has been called into question, and evidence presented in the matter, and this court has found that it is appropriate for an evaluation to be conducted by public expense;

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

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

IT IS FURTHER ORDERED that the department (or service) arrange with the county sheriff, or ~~the sheriff~~ his/her lawful deputies, for the prompt examination of said defendant, either at the county jail or at a designated hospital, with transportation of the defendant to be provided by the sheriff, where necessary, with transportation costs to be borne by the county. Upon completion of the examination, the examining facility shall notify the sheriff; who shall promptly reassume custody of the defendant. The evaluation report is to be sent to this court, with copies sent to the attorney for the defendant and the prosecuting attorney.

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

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

So ordered, this the _____ day of _____, 19__.

JUDGE, SUPERIOR COURT

JUDICIAL CIRCUIT,

GEORGIA

SPECIMEN PSYCHIATRIC EVALUATION ORDER NO. 1

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18 Capitol Square, Suite 108
Atlanta, Georgia 30316