

**PROPOSED AMENDMENTS TO THE
UNIFORM RULES FOR SUPERIOR COURT,
APPROVED FOR FIRST READING, JULY 27, 2016**

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**PROPOSED AMENDMENTS TO THE
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Rule 7.3 Interpreters

- a) In all civil and criminal cases, the party or party's attorney shall inform the court in the form of a notice of the need for a qualified interpreter, if known, within a reasonable time -- at least 5 days-- before any court proceeding, hearing or trial. Such notice, which may be filed or sent electronically, shall designate the participants in the legal proceeding who will need the services of an interpreter, shall estimate the length of the proceeding for which the interpreter is required, shall state whether the interpreter will be needed for all proceedings in the case, and shall indicate the language(s), including sign language for the Deaf/Hard of Hearing, for which the interpreter is required.
- b) Upon receipt of such notice, the court shall make a diligent effort to locate and appoint a licensed interpreter, at the court's expense, in accordance with the Supreme Court of Georgia 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 Commission on Interpreters' Instructions for Use of a Non-Licensed Interpreter. Despite its use of a non-licensed interpreter, the court shall make a diligent effort to ensure that a licensed interpreter is appointed for all subsequently scheduled proceedings, if one is available.
- c) If a party or case participant 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 Supreme Court of Georgia Commission on Interpreters (COI), the Registry for Interpreters of the Deaf (RID) or other industry- recognized credentialing entity such as telephonic language service or a less qualified interpreter), courts 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 or RID.
- d) Notwithstanding any failure of a party or other participant 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 case participant is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to meaningfully participate in the proceeding.
- e) If the time and/or date of a legal 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 twenty-four (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 interpreter costs it may have incurred upon that party unless the party can show good cause for its failure to provide a timely notification.

~~Any proposed pre-trial order submitted by any party shall designate any witnesses whose testimony will need the services of an interpreter and the language, including sign language for the deaf, for which the interpreter is required. If known, the name, address, and telephone number of the interpreter or interpreting service intended to be used shall be listed. If this information is not known at the time the pre-trial order is signed, it shall be promptly provided to court and opposing counsel once known. Where notice is not provided, the Court may, among other sanctions, refuse the use of any non-certified interpreter and then exclude the use of the witness's testimony if the witness cannot readily communicate in English.~~

**RULE 31 MOTIONS, DEMURRERS, SPECIAL PLEAS, AND SIMILAR ITEMS IN
CRIMINAL MATTERS**

Rule 31.1. Time for Filing; Requirements

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

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

(A) If, in any criminal proceeding, the defense intends to raise the issue that the defendant or accused was insane, mentally ill or mentally retarded at the time of the act or acts charged against the accused, by using expert or non-expert evidence, such intention must be stated, in writing, in a pleading denominated as "Notice of Intent of Defense to Raise Issue of Insanity, Mental Illness or 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 issue. Upon defense motion, the judge may enter an order requiring a mental evaluation of the defendant for the purposes of evaluating the degree of criminal responsibility or insanity at the time of the act in question. The judge may direct the Department of Behavioral Health ~~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 forwarded to the department accompanied by a copy of the indictment, accusation or specification of charges, a copy of the police arrest report, where available, a copy of the defendant's Notice of Intent to Raise Issue of Insanity if filed, and a brief summary of any known or alleged previous mental health treatment or hospitalization involving this particular person. Any other background information available to the court shall also be forwarded to the evaluating department to assist in performing adequately the requested services. Unless otherwise ordered by the court the department shall submit its report to the requesting judge and the defendant's attorney. Contemporaneous with filing the Notice of Intent of Defense to Raise Issue of Insanity, defendant's attorney shall provide a copy of the Report to the prosecuting attorney and shall so certify in writing attached to the Notice of Intent of Defense to Raise Issue of Insanity.

(B) Except for good cause shown, the issue of insanity shall not be raised in the trial on the merits unless notice has been filed and served ahead of trial as provided in these rules.

(C) A copy of a suggested order is attached as Specimen Order for Mental Evaluation re: Degree of Criminal Responsibility or Insanity at the Time of the Act.

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
INSANITY AT THE TIME OF THE ACT

WHEREAS, the defendant’s sanity at the time of the act 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 at public expense;

IT IS HEREBY ORDERED that the Department of ~~Behavioral Health Human Resources~~ conduct an evaluation of the 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 Insanity at the Time of the Act. Whether or not the accused had the mental capacity to distinguish right from wrong in relation to the alleged act; whether or not the presence of a delusional compulsion overmastered the accused’s will to resist committing the alleged act.

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

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

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

So ordered, this the _____ day of _____, 20__ . _____ JUDGE,
SUPERIOR COURT _____

JUDICIAL CIRCUIT, GEORGIA

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