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Appendix B1: Uniform Rules of the Magistrate Court

APPENDIX B1 - UNIFORM RULES FOR THE MAGISTRATE COURTS

B1. UNIFORM RULES FOR THE MAGISTRATE COURTS

PART I. GENERAL AND ADMINISTRATIVE PROVISIONS

Rule 1. Preamble.

1.1. Repeal of local rules

All local rules of the magistrate courts shall expire effective January 1, 1996. If any magistrate court by action of its chief magistrate proposes to prevent any local rule from expiring pursuant to Rule 1.1 then a proposal to prevent the local rule from expiring must be presented to the Supreme Court for approval 30 days prior to the expiration date as stated in Rule 1.1. Only those rules reapproved by the Supreme Court on or after January 1, 1996, shall remain in effect after that date. Rules timely resubmitted shall remain in effect until action by the Supreme Court.

Editor's notes. - This rule was amended effective November 9, 1995.

1.2. Authority to enact local rules which deviate from the Uniform Magistrate Court Rules

(A) The term "local rules" will no longer be used in the context of the Uniform Magistrate Court Rules.

(B) Each magistrate court by action of its chief magistrate, from time to time, may propose to make and amend rules which deviate from the Uniform Magistrate Court Rules, provided such proposals are not inconsistent with general laws, these Uniform Magistrate Court Rules, or any directive of the Supreme Court of Georgia. Any such proposals shall be filed with the clerk of the Supreme Court; proposals so submitted shall take effect 30 days after approval by the Supreme Court. It is the intendment of these rules that rules which deviate from the Uniform Magistrate Court Rules be restricted in scope.

(C) Notwithstanding the expiration of previously approved local rules January 1, 1996, courts may continue to promulgate rules which relate only to internal procedure and do not affect the rights of any party substantially or materially, either to unreasonably delay or deny such rights. These rules, which will be designated "internal operating procedures," do not require the approval of the Supreme Court. "Internal operating procedures," as used in these Uniform Magistrate Court Rules, are defined as rules which relate to case management, administration, and operation of the court or govern programs which relate to filing costs in civil actions, costs in criminal matters, case management, administration, and operation of the court.

(D) Notwithstanding these uniform rules, a chief magistrate may promulgate experimental rules applicable to pilot projects, upon approval of the Supreme Court, adequately advertised to the local bar, with copies to the State Bar of Georgia, not to exceed a period of one year, subject to extension for one additional year upon approval of the Supreme Court. At the end of the second year, any such pilot projects will either be approved by the Supreme Court or will be allowed to sunset. Programs developed under the Alternative Dispute Resolution Rules of the Supreme Court will be approved by the Georgia Commission on Dispute Resolution before attaining permanent status under these rules.

(E) Rules which are approved as deviations from the Uniform Magistrate Court Rules and internal operating procedures of courts shall be published by the judicial circuit in which the rules are effective. Copies must be made available through the clerk of the magistrate court for the county where the rules are effective. Any amendments to deviations from the Uniform Magistrate Court Rules or to internal operating procedures must be published and made available through each magistrate court clerk's office within 15 days of the effective date of the amendment or change.

(F) Internal operating procedures effective in any court must be filed with the Supreme Court even though Supreme Court approval is not needed for these rules.

Editor's notes. - This rule was amended effective November 9, 1995.

1.3. Matters of statewide concern

The following rules, to be known as "Uniform Magistrate Court Rules," are to be given statewide application.

Editor's notes. - This rule was amended effective November 9, 1995.

1.4. 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 or by an order of the court entered in such case explaining the necessity for deviation and served upon the attorneys in the case.

Editor's notes. - This rule was amended effective November 9, 1995.

1.5. Amendments

The Council of Magistrate Court Judges 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.

Editor's notes. - This rule was amended effective November 9, 1995.

1.6. Publication of rules and amendments

These rules and any amendments to these rules shall be published in the advance sheets to the Georgia Reports. 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.

Editor's notes. - This rule was amended effective November 9, 1995.

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Rule 2. Definitions.

2.1. Judge

The word "judge" as used in these rules refers to any person serving or acting as either a chief magistrate or magistrate in the Magistrate Courts of Georgia.

2.2. Clerk

The word "clerk" as used in these rules refers to the person designated as the clerk and to other members of the staff serving as deputy clerks. The chief magistrate may designate deputy clerks who shall have the same authority as the clerk.

2.3. Party(ies)

The word "party" or "parties" as used in these rules shall include law enforcement officers participating in criminal proceedings and attorney(s) of record unless the context clearly indicates otherwise.

2.4. Pronouns

Repealed October 28, 1993.

Rule 3. Hours of court operation.

The hours of court operation shall be set by the chief magistrate of each court and shall be recorded with the clerk of the magistrate court. Such information shall include the following:

(1) Normal hours and location of court.

(2) Emergency after-hours availability of judges and the names of such judges.

(3) Holidays during which the court will be closed and a plan for the availability of judges on such days.

(4) Days on which the court holds civil and criminal hearings (if not handled on the same day), and the times and locations of such hearing.

Editor's notes. - This rule was amended effective November 9, 1995.

Rule 4. Assignment of Cases.

4.1. Case assignment

If the caseload is such, the chief magistrate shall assign cases among the magistrates.

4.2. Disqualification of judge

If any judge is disqualified by law or judicial requirements from the hearing of any case or other matter, such case or matter shall be referred to the chief magistrate for assignment or disposition.

4.3. Disqualification of chief magistrate

If the chief magistrate is the judge disqualified, such case(s) shall be referred in rotation among the other magistrates in the county. The chief magistrate may provide by general order for the method of rotation and for selection of a court from which to request judicial assistance when all magistrates in a county are disqualified. Such general order shall apply only to cases where the disqualification arises after the date of the general order.

Rule 5. Dockets.

5.1. Docket categories

Each magistrate court shall keep a docket for criminal and search warrants, and a separate docket for all civil actions.

5.2. Time of docketing

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

Rule 6. Withdrawal of papers from magistrate court.

No original papers may be withdrawn from the magistrate court. However, copies of any documents may be obtained by any party or attorney for any party upon payment of copy cost to the clerk.

Rule 7. Duties of attorneys and all parties.

7.1. Notification of representation

No attorney shall appear in that capacity before a magistrate 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 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; and in criminal cases, the home telephone number of the attorney.

In criminal cases, immediately upon agreeing to represent the defendant in a criminal matter pending in magistrate court, each attorney shall notify the magistrate court orally, followed by written confirmation in conformity with the preceding paragraph.

7.2. Withdrawal of counsel

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.

7.3. Notification of previous presentation to another judge

Attorneys and parties shall not present to a judge any matter which has been previously presented to another judge without first advising the second judge of said fact and results of the previous presentation.

7.4 Prohibition on *Ex Parte* Communications.

Except as authorized by law or by rule, judges shall not initiate, permit or consider *ex parte* communications by interested parties or their attorneys concerning a pending or impending proceeding. Where circumstances require, *ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or the merits of the case are authorized, provided:

1. the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and

2. the judge takes reasonable steps to promptly notify all parties of the substance of the *ex parte* communication and allows an opportunity to respond.

Editor's notes. - 7.4 was adopted effective December 19, 2002.

Rule 8. Resolution of 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 compliance with this rule and has nevertheless been unable to resolve the 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;

(2) Jury trials shall prevail over non-jury matters, including trials and administrative proceedings;

(3) Trials shall prevail over 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 9. Leaves of absence.

Requests for leaves of absence shall be submitted in writing to the presiding magistrate or his or her designee accompanied by a listing of cases by case number, name, and hearing date for which protection is required.

Such request shall be accompanied by an appropriate order for signature if the petition is granted.

The request must be filed at least seven (7) business days prior to the date the requested leave is to commence.

Leave will not be granted merely by stipulation or agreement of parties.

Rule 10. Terms of court.

Where statutes or case law of general application in this state require action within term of court, in the magistrate court this shall signify within thirty (30) days; where readiness is required by the next term of court, this shall signify after thirty (30) days.

Rule 11. Electronic and photographic news coverage of magistrate court proceedings

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

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

(B) 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.

(C) The judge may exercise discretion and 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 schedule and arrangements for pooled coverage may be designated at the judge's discretion.

(D) 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.

(E) 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.

(F) 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.

(G) 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.

(H) Still cameras must have quiet functioning shutters and advancers. Movie and television cameras and broadcasting and recording devices must be quiet running. 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.

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

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

(K) 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.

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

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

(N) A request for installation and use of electronic recording, transmission, videotaping or motion picture or still photography of any judicial proceeding shall be evaluated pursuant to the standards set forth in OCGA § 15-1-10.1.

(O) A request for media access to a court proceeding shall be in substantially the following form:

IN THE MAGISTRATE COURT OF ___________________ COUNTY
STATE OF GEORGIA

CASE NAME___________________________ CASE NO.___________________

REQUEST FOR ELECTRONIC AND PHOTOGRAPHIC
MEDIA ACCESS TO COURT PROCEEDINGS

Pursuant to Uniform Magistrate Court Rule 11, the undersigned hereby requests permission to record, photograph or televise all or portions of the proceedings in the above-captioned case.

This request is for the following scheduled hearing (provide date, time, etc.):
____.

The following equipment will be installed in the courtroom:
____

The person who will be responsible for the installation and operation of this equipment is:
____

The undersigned requests courtroom access prior to the scheduled event for the purpose of setting up equipment, as follows:
____

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.

____
Signature and date

____
Print name, title, and organization/company name

Organization/company address and contact telephone number

APPROVED:

Judge, Magistrate Court of ___________________ County

Editor's notes. - A revised Rule 11 was substituted effective December 19, 2002.

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Rule 12. Completion of quarterly caseload reports.

In order to compile accurate data on the operation of the magistrate courts, each chief magistrate shall insure the accurate completion and timely submission of the Quarterly Caseload Reports sent to them by the Administrative Office of the Courts.

Rule 13. Notice of selection of magistrates, constables and clerks of magistrate court.

Whenever a magistrate, constable, or clerk (but not deputy clerks) of the magistrate court shall take the oath required for office in O.C.G.A. § 15-10-3, the chief magistrate shall forward to the Administrative Office of the Courts the name and title of the person taking the oath; the name of the person being succeeded; the term of office, if appropriate; the date assuming duties; and the address and telephone number the official wishes to use for business correspondence.

Rule 14. AT&T Language Line Service.

The AT&T Language Line Service is authorized for use in the magistrate courts whenever interpreting is needed in criminal and civil proceedings.

Editor's notes. - This rule was adopted effective November 30, 1995.

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VOLUME II

PART II. CRIMINAL RULES

Rule 21. Administration of oaths.

A clerk of the magistrate court may administer the oath and sign the jurat for affidavits, including those in support of arrest and search warrants and bad check citations. This rule shall not be interpreted as otherwise affecting the responsibilities of a judge in hearing applications for arrest and search warrants.

Rule 22. Hearings on issuance of search warrants.

Whenever the hearing on the issuance of a search warrant is not recorded, the magistrate should make a written notation or memorandum of any oral testimony which is not included in the affidavit.

Rule 23. Bail in criminal cases.

23.1. Misdemeanor cases

Bail in misdemeanor cases shall be set as provided in O.C.G.A. §§ 17-6-1 and 17-6-2.

23.2. Felony cases

Bail in felony cases shall be set by the magistrate court except for those offenses as to which O.C.G.A. § 17-6-1 or 17-10-1 provides that bail shall be set by the superior court or shall not be available. All defendants in custody must be transported and presented to this court for initial appearance within the time requirements of O.C.G.A. § 17-4-26 and § 17-4-62 for further consideration of bail.

23.3. Categories of bail

The court may set bail which may be secured by:

(1) Cash by a deposit with the sheriff 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, valued at double the amount of bail set in the bond; or

(3) Recognizance in the discretion of the court;

(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.

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 sheriff shall determine what sureties are acceptable when surety bond is permitted.

23.4. Amendment of bail

The magistrate court has the authority to amend any bail previously authorized by the magistrate court under the provisions of O.C.G.A. § 17-6-18.

Rule 24. Dismissal and return of warrants.

24.1. Dismissal of warrant

Any dismissal of a warrant of the magistrate court prior to the committal hearing and subsequent transfer to other courts shall be made exclusively by the magistrate court.

24.2. Return of warrant to magistrate court

Once arrest of the defendant is effectuated, the original warrant shall be returned to the magistrate court or its designee for transfer to the appropriate prosecuting agency.

24.3. Assessment of costs - Criminal

When, in a criminal action, costs are assessed by the Court upon the dismissal of a warrant the minimum amounts shall be $100.00 in felony cases and $50.00 in misdemeanor cases. Pursuant to O.C.G.A. § 17-11-4(a)(3), where prosecution of a criminal action is abandoned before trial, the prosecuting attorney of the trial court or his or her designee shall promptly notify the judge who issued the warrant of the fact of abandonment and of the amount of accrued costs. The judge shall enter a judgment for said costs against the prosecuting party.

Rule 25. Initial appearance/committal hearings.

25.1. Initial appearance hearing

Immediately following any arrest but no later than 48 hours if the arrest was without a warrant, or 72 hours following an arrest with a warrant, unless the accused has made bond in the meantime, the arresting officer or the law officer having custody of the accused shall present the accused in person before a magistrate or other judicial officer for first appearance.

At the first appearance, the judicial officer shall:

(1) Inform the accused of the charges;

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

(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 the right to a pre-indictment commitment hearing, that the hearing will be postponed if the accused requests additional time to prepare its case, and inform the accused that giving a bond returnable to arraignment or trial shall be a waiver of the right to a commitment hearing although a magistrate may in his or her discretion hold a commitment hearing pursuant to Rule 13.2(A); [*Editor's note - This appears to be a reference to what is now Rule 25.2(A) which was not corrected during the general revision and reorganization of the rules in November 1995.*]

(5) Schedule a commitment hearing if authorized and if requested by the defendant and so notify the prosecuting attorney and the law officer having custody of the accused;

(6) In cases of warrantless arrest, unless a subsequent determination of probable cause has been made, make a fair and independent determination of probable cause for the arrest;

(7) Inform the accused of the right to grand jury indictment in felony cases, to accusation in misdemeanor cases, to uniform traffic citation in traffic cases, and the right to trial by jury, and, in felony cases, when the next grand jury will convene; in felony cases subject to O.C.G.A. § 17-7-70.1 (involving violations of O.C.G.A. § 16-8-2, 16-8-14, 16-8-18, 16-9-1, 16-9-2, 16-9-20, 16-9-31, 16-9-33, 16-9-37, 16-10-52, or 40-5-58), inform the accused that if the commitment hearing is expressly waived or the accused is bound over after the commitment hearing, the district attorney may prepare an accusation or seek an indictment;

(8) Inform the accused that the accused or his or her attorney may waive the right to a commitment hearing; and

(9) Set the amount of bail if the offense is not one bailable only by a superior court judge, or so inform the accused if it is.

JUDICIAL DECISIONS

Defendant's first-appearance hearing was not a critical stage of prosecution within the context of his sixth amendment right to counsel, and he was therefore not entitled to the presence of counsel at the hearing. State v. Simmons, 260 Ga. 92, 390 S.E.2d 43 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Authority to set and amend bonds. - Once the clerk of the superior court properly files an indictment or once a valid accusation is entered, the superior court has exclusive jurisdiction over the case, including all bond issues, unless the court invokes its authority to delegate jurisdiction to the magistrate court under OCGA 17-16-1(h) or 15-1-9.1(e). 1997 Op. Att'y Gen. No. 97-19.

25.2. Probable cause hearing

A. A magistrate, in his or her discretion, may hold a commitment hearing even though the defendant has posted a bail bond as provided in Rule 11.3. [*Editor's note - This appears to be a reference to what is now Rule 23.3 which was not corrected during the general revision and reorganization of the rules in November 1995.*]

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

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

(2) Repeat to the accused the rights explained at the first appearance;

(3) Determine whether the accused waives the commitment hearing;

(4) If the accused waives the hearing, the court shall immediately bind the entire case over to the court having jurisdiction of the most serious offense charged;

(5) If the accused does not waive the hearing, the court shall immediately proceed to conduct the commitment hearing unless, for good cause shown, the hearing is continued to a later scheduled date;

(6) The judicial officer 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;

(7) On each case which is bound over, a memorandum of the commitment shall be entered on the warrant by the judicial officer. The warrant, 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 for delivery to the prosecuting attorney.

Each bail bond shall contain the full name, residence, business and mailing address and telephone number of the accused and any surety;

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

(9) 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, except where the only charge arising out of the transaction at issue is the violation of a county or state authority ordinance.

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

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

(2) 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, a private attorney or otherwise as is customary in that court;

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

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

25.3 Private citizen warrant application hearings.

A. Upon the filing of an application for an arrest warrant by a person other than a peace officer or law enforcement officer, and if the court determines that a hearing is appropriate pursuant to OCGA §17-4-40, the court shall give notice of the date, time and location of the hearing to the applicant and to the person whose arrest is sought by personal service or by first class mail to the person's last known address or by any other means which is reasonably calculated to notify the person of the date, time and location of the hearing.

B. At the warrant application hearing the court shall:

a. Explain the probable cause purpose of the hearing;
b. Inform the accused of the charges;
c. Inform the accused of the right to hire and have the advise of an attorney, of the right to remain silent, and that any statement made may be used against him or her.

C. The warrant application hearing shall be conducted in accordance with OCGA §17-4-40(4) and (5) and Rule 25.2(C) of these rules.

D. A copy of the record of any testimony and the proceedings of the warrant application hearing, if available, shall be provided to the proper prosecuting officer and to the accused upon payment of the reasonable cost for preparation of the record.

E. The judge conducting a warrant application hearing is without jurisdiction to make final disposition of the case or cases at the hearing by imposing any fine or punishment.

Editor's notes. - 25.3 was adopted effective December 19, 2002.

Rule 26. Appointment of Counsel for Indigent Defendants

26.1 Authority and Purpose.

This rule is promulgated pursuant to OCGA.§17-12-4 in order to provide indigent persons with competent legal counsel in criminal proceedings.

26.2 Application For and Appointment of Counsel.

When an accused person, contending to be financially unable to employ an attorney to defend against pending criminal charges or to appeal a conviction, desires to have an attorney appointed, the accused shall make a request in the form of an application for appointment of counsel and certificate of financial resources, made under oath and signed by the accused. This form shall contain information as to the accused's assets, liabilities, employment, earnings, other income, number and ages of dependents, the charges against the accused and such other information as shall be required by the court. The purpose of the application and certification is to provide the court or its designee with sufficient information from which to determine the financial ability of the accused to employ counsel.

Upon a determination of indigency the court shall, in writing, authorize the appointment of counsel for the indigent accused. The original authorization of appointment shall be filed with the clerk of court; a copy of the authorization shall be forwarded to the clerk, court administrator, public defender or such other person designated by the court to assign an attorney to an indigent defendant. Such person shall notify the accused, the appointed attorney, the sheriff and the prosecuting attorney of the appointment. The application for an attorney and certificate of financial resources shall be in substantially the following form:

IN THE MAGISTRATE COURT OF ______ COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

CASE NO.
CHARGE(S):

v.

____

APPLICATION FOR APPOINTMENT OF COUNSEL
AND
CERTIFICATE OF FINANCIAL RESOURCES

I am the defendant in the above-styled action. I cannot afford to hire a lawyer to assist me. I want the court to provide me with a lawyer. I understand that I am providing the following information in order for the court to determine my eligibility for a court-appointed lawyer to defend me on the above charges.

In jail ____ Out on bond ____ Arrest Date ___________

1. Name ____ Telephone No. ______________________

Mailing address ____

Birth date ______ Age ____ Soc. Sec. No. ________________________________

Highest grade in school completed _______________________________________

2. If employed, employer is _______________________________. My take home pay is ____________

3. If unemployed, how long? ________ List other sources of income such as unemployment compensation, welfare or disability income and the amounts received per week or month:
____

4. Are you married ______ Is spouse employed? ___________________________

If yes, by whom ____________ Spouse's net income ____________ (week)

5. Number of children living in home: ______ Ages ______________________

6. Dependents (other than spouse or children) in home, names, relationship, amount contributed to their support ____________________________

7. Do you own a motor vehicle? _____ Year and model _________________________

How much do you owe on it? ____

8. Do you own a home? ____ Value ______ How much do you owe on it?__________________

9. Amount of house payment or rent payment each month __________________

10. List checking or savings accounts or other deposits with any bank or financial institution andthe amount of deposits:____

11. List other assets or property, including real estate, jewelry, notes, bonds or stocks ____

12. List indebtedness and amount of payments ______________________________

13. List any extraordinary living expenses and amount (such as regularly occurring medical expenses) ____

14. Child support payable under any court order __________________________

15. Do you understand that whether you are convicted or acquitted ______________ County may seek reimbursement of attorney's fees paid for you if you become financially able to pay or reimburse the county but refuse to do so?______________

I have read (had read to me) the above questions and answers and they are correct and true.

The undersigned swears that the information given herein is true and correct and understands thata false answer to any item may result in a charge of perjury.

The ______ day of _____________, 20_.

____
Defendant's Signature

Sworn to and subscribed before
me this ______ day of _____________, 20_.
____
Notary Public
My Commission Expires ______

ORDER

Having considered the above matter, it is the finding of this court that the above-named defendant is/is not indigent under criteria of the Georgia Criminal Justice Act and appropriate court rules and is/is not entitled to have appointed counsel.

It is ordered that the clerk, panel administrator, or court administrator assign an attorney practicing in this county to represent the defendant in the above case.

Let the defendant and the assigned attorney be notified hereof and furnished a copy of this application and order.

This ______ day of _____________, 20_.

____
Magistrate Court Judge___________ County

26.3 Responsibility for Determination of Eligibility.

The financial eligibility of a person for publicly provided counsel should be determined by the court . The court may appoint counsel in cases where the defendant does not qualify and cannot be provided counsel under provisions of the above.

26.4 Uniform Eligibility Guidelines.

Income eligibility - Eligible accused persons include all applicants for an attorney with net income below a level set by the court as revised periodically.

The following special needs of a family unit may be deducted from net income in determining eligibility:

(1) Child care expenses for working custodial parents; and,
(2) Legally required support payments to dependents, including alimony for the support of a child/children.

"Net income" shall include only a client's take-home pay, which is the gross income earned by a client minus those deductions required by law or as a condition of employment.

"Family unit" includes the defendant, a spouse, if the couple lives together, any minors who are unemployed and unmarried, and any infirm or permanently disabled person living with the defendant and for whom the defendant has assumed financial responsibility. The income of a minor who is attending school full time, but has after-school employment or does odd jobs, shall not be attributed to that of the family unit. No other persons, even if living within the same household, will be deemed members of the family unit.

In the event an accused person is discovered to have been ineligible at the time of the appointment of an attorney, the court shall be notified. The court may discharge the appointed attorney and refer the matter to the private bar. The attorney should be paid for the time spent on the case and recoupment sought from the ineligible person.

Regardless of the prima facie eligibility on the basis of income, a person who has sufficient assets that are easily converted to cash by sale or mortgage may not be qualified for representation.

The court may appoint counsel for representation for any accused person who is unable to obtain counsel due to special circumstances such as emergency, hardship, or documented refusal of the case by members of the private bar because of financial inability to pay for counsel.

If the accused is determined to be eligible for defense services in accordance with approved financial eligibility criteria and procedures, and if, at the time that the determination is made, the accused is able to provide a cash contribution to offset defense costs without imposing a substantial financial hardship either personally or upon dependents, such contribution may be required as a condition of continued representation at public expense. The court should determine the amount to be contributed. The contribution shall be paid directly to the fund for indigent defense of the affected county.

26.5 County Selected Methods of Providing Counsel.

The court shall, whenever practicable, use an available public defender system, legal aid and defender society, agency for indigent defense, a panel of private attorneys, a combination of the above, or other existing means, to provide adequate legal defense for indigents as required by these rules and the laws of this State.

26.6 Assignment of Cases to Private Attorneys.

(A) Appointments of private attorneys shall be made on an impartial and equitable basis;

(B) The cases shall be distributed among the attorneys to ensure balanced workloads through a rotation system;

(C) More difficult or complex cases shall be assigned to attorneys with sufficient levels of experience and competence to afford adequate representation;

(D) Less experienced attorneys should be assigned cases which are within their capabilities, but should be given the opportunity to expand their experience under supervision; and,

(E) Cases in which the death penalty is sought shall be assigned only to attorneys of sufficient experience, skill and competence to render effective assistance of counsel to defendants in such cases.

Rule 27. Arraignment

27.1 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 of the court and sent to attorneys of record, defendants and bondsmen.

27.2 Call for arraignment.

Before arraignment the court shall inquire whether the accused 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, unless continued for good cause, the accused, or the attorney for the accused, shall answer whether the accused pleads "guilty," "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.

Upon arraignment, the attorney, if any, who announces for or on behalf of an accused, or who is entered as counsel of record, shall represent the accused in that case throughout the trial, unless other counsel and the defendant notify the judge prior to trial that such other counsel represents the accused and is ready to proceed, or counsel is otherwise relieved by the judge.

Rule 28. Motions, Demurrers, Special Pleas, and Similar Items in Criminal Matters

28.1 Time for Filing.

All motions, demurrers, and special pleas shall be made and filed at or before time of arraignment, 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 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.

*Editor's notes - OCGA § 7-7-110 now provides that demurrers, motions to suppress, pleas in abatement, and pleas in bar must be filed within **10 days after** the date of arraignment unless the court extends the time.*

28.2 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.

28.3 Notice of Prosecution's Intent to Present Evidence of Similar Transactions.

(A) The prosecution may, upon notice filed in accordance with section 28.1 of these rules, request of the court in which the charging instrument is pending leave to present during the trial of the pending case evidence of similar transactions or occurrences.

(B) The notice shall be in writing, served upon the defendant's counsel, and shall state the transaction, date, county, and the name(s) of the victim(s) for each similar transaction or occurrence sought to be introduced. Copies of accusations or indictments, if any, and guilty pleas or verdicts, if any, shall be attached to the notice. The judge shall hold a hearing at such time as may be appropriate, and may receive evidence on any issue of fact necessary to determine the request. The burden of proving that the evidence of similar transactions or occurrences should be admitted shall be upon the prosecution. The state may present during the trial evidence of only those similar transactions or occurrences specifically approved by the judge.

(C) Evidence of similar transactions or occurrences not approved shall be inadmissible. In every case, the prosecuting attorney and defense attorney shall instruct their witnesses not to refer to similar crimes, transactions or occurrences, or otherwise place the defendant's character in issue, unless specifically authorized by the judge.

(D) If upon the trial of the case the defense places the defendant's character in issue, evidence of similar transactions or occurrences, as shall be admissible according to the rules of evidence, shall be admissible, the above provisions notwithstanding.

(E) Nothing in this rule is intended to prohibit the state from introducing evidence of similar transactions or occurrences which are lesser included alleged offenses of the charge being tried, or are immediately related in time and place to the charge being tried, as part of a single, continuous transaction. Nothing in this rule is intended to alter the rules of evidence relating to impeachment of witnesses.

(F) This rule shall not apply to sentencing hearings.

28.4 Notice of Intention of Defense to Raise Issue of Insanity, Mental Illness or Mental Competency.

(A) If, in any criminal proceeding, the defense intends to raise the issue that the defendant or accused was or is insane, mentally incompetent, or mentally ill at the time of 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 or Mental Incompetence." This notice shall be filed and served upon the prosecuting attorney in accordance with section 28.1. 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 ahead of trial of the case on the merits.

(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.

28.5 Motions and Orders for Mental Examination at Public Expense.

In pending cases where the mental competency of an accused is brought into question, the judge may, upon proper showing, exercise discretion and require a mental examination and evaluation at public expense. For a defendant who is represented by counsel, a motion for mental examination 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 evaluation of the defendant for the purposes of 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 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 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 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.

Copies of suggested orders requesting psychiatric examination are attached as Specimen Psychiatric Evaluation Order #1 and Specimen Psychiatric Evaluation Order #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.

SPECIMEN COMMITTAL ORDER AFTER SPECIAL PLEA OF MENTAL INCOMPETENCE TO STAND TRIAL

IN THE MAGISTRATE COURT OF __________________ COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA	CASE NO.
v.	CHARGE(S):
______________________________	

JUDGMENT AND ORDER OF THE COURT ON THE DEFENDANT'S SPECIAL PLEA OF MENTAL INCOMPETENCE TO STAND TRIAL

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 and due consideration, the plea of Mental Incompetence to Stand Trial is sustained.

IT IS, THEREFORE, THE ORDER of this court that the defendant be now delivered to the sheriff of ______ 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 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 the light of present day medical knowledge that recovery of the defendant's legal mental competence 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 ____________, 20______.

____
JUDGE,MAGISTRATE COURT OF
_____________ COUNTY, GEORGIA

SPECIMEN PSYCHIATRIC EVALUATION ORDER NO. 1

IN THE MAGISTRATE COURT OF _______________ COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA   CASE NO.
v.
___________________________   CHARGE(S):

ORDER FOR MENTAL EVALUATION REGARDING 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 comprehends his or her own condition in reference to such proceedings; and, whether the accused is capable of rendering counsel assistance in providing a proper defense.

IT IS FURTHER ORDERED that the department (or service) arrange with the county sheriff, or the sheriff's 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.

Copies of documents supporting this request are attached hereto, as follows:
( ) Accusation
( ) Summary of previous mental health treatment
( ) Copy of arrest report
( ) Other ____

____
JUDGE,MAGISTRATE COURT OF
_____________ COUNTY, GEORGIA

SPECIMEN PSYCHIATRIC EVALUATION ORDER NO. 2

IN THE MAGISTRATE COURT OF ______ COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA
v. ____________________________

CASE NO.
CHARGE(S):

ORDER FOR MENTAL EVALUATION REGARDING COMPETENCY
AT THE TIME OF THE ACT

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 an evaluation to be conducted at public expense;

IT IS HEREBY ORDERED that the Department of Human Resources (or Forensic Psychiatry Service) conduct an evaluative examination 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:

1. Competency to Stand Trial. Whether the accused is capable of understanding the nature and object of the proceedings; whether the accused comprehends his or her own condition in reference to the proceedings, and, whether the accused is capable of rendering to counsel assistance in providing a proper defense.
2. Degree of Criminal Responsibility or Mental Competence 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.
3. Any recommendations for disposition.

IT IS FURTHER ORDERED that the department or service arrange with the county sheriff, or the sheriff's lawful deputies, for the prompt examination 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 examination, the examining facility shall notify the sheriff, who shall promptly reassume custody of the accused.

Copies of documents supporting this request are attached hereto, as follows:
( ) Accusation
( ) Summary of previous mental health treatment
( ) Copy of arrest report
( ) Other

So ordered, this the ______ day of ________, 20_.

____
JUDGE,MAGISTRATE COURT OF
____________ COUNTY, GEORGIA

VOLUME II

Rule 29. Criminal Trial Calendar

29.1 Calendar Preparation.

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

29.2 Removal From Calendar.

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

Rule 30 Pleading by Defendant

30.1 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 counselor 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.

30.2 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 section 30.8.

30.3 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 section 30.6) 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.

30.4 Relationship Between Defense Counsel and Client.

(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.

30.5 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 presentence 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 presentence 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 section 30.6 of these rules.

30.6 Consideration of Plea in Final Disposition.

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

30.7 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.

30.8 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 or her 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.

30.9 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.

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

30.11 Record of Proceedings.

A verbatim record of the proceedings at which a defendant enters a plea of guilty or nolo contendere shall be made and preserved. The record should include:

(A) the inquiry into the voluntariness of the plea (as required in section 30.7);

(B) the advice to the defendant (as required in section 30.8);

(C) the inquiry into the accuracy of the plea (as required in section 30.9), and, if applicable;

(D) 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.

30.12 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.

Editor's notes. - Rules 26 through 30 were adopted effective December 19, 2002.

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VOLUME II

PART III. CIVIL RULES

Rule 31. Designated agent for civil actions.

Any full-time officer or employee of a corporation, sole proprietorship, partnership or unincorporated association may be designated by such entity as agent for purposes of representing it in civil actions to which it is a party in magistrate court.

An action on behalf of a corporation, sole proprietorship, partnership, or unincorporated association, except affidavits in attachment, may be filed and presented by such designated agent.

Rule 32. Filing of civil actions by mail.

Civil actions may be filed in magistrate court by mail providing such an action is properly verified by a notary or other attesting official. No magistrate court shall refuse to accept such mail filings.

Rule 33. Computing answer dates in civil actions.

Except as otherwise provided by time period computations prescribed by statute, to compute the date an answer is due in civil actions, begin counting on the day following the day of service and count the number of days. If the last day falls on a Saturday, Sunday, or legal holiday, then the next regular business day becomes the day the answer is due. When the period of time is less than seven [7] days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Rule 34. Answer to civil actions.

34.1. Oral answers and counterclaims to civil actions.

Oral answers and counterclaims, if any, to civil actions must be given in person to a clerk or judge of the magistrate court. The clerk or judge shall reduce such answer to writing, have the defendant sign it and then file it with other papers in the case.

34.2. Setting hearing date in dispossessory proceedings.

If a defendant in a dispossessory proceeding files an answer and/or counterclaim, a trial on the issues may be held within 7 days from the date the answer is filed.

Rule 35. Objections to process, jurisdiction or venue.

Objections to sufficiency of process, service of process, personal jurisdiction or venue must be raised at the time of filing the answer or are waived. Where a valid objection to personal jurisdiction or venue was not raised when the answer was filed and thus is waived, the court may nevertheless in the interest of justice transfer the case to another Georgia court having jurisdiction if the present court is an inconvenient forum and the transfer would not unduly prejudice the opposing party. Objections to subject matter jurisdiction are never waived.

No special formula shall be required to raise an issue of jurisdiction or venue. In addition to answers explicitly raising the issue of lack of jurisdiction or venue, any motion to transfer or answer stating that the action was filed in the wrong court or asking that the case be transferred to another court, or words to that effect, shall be sufficient to raise an objection to jurisdiction or venue.

Rule 36. Transfer/change of venue.

In all cases where it is determined by the court that the court in which a case is pending lacks jurisdiction, or venue, or both, that court shall transfer the case in accordance with Article VI, Sec. 1, Paragraph 8, of the 1983 Constitution of the State of Georgia, or where this rule is not applicable, dismiss said case without prejudice.

36.1. Lack of jurisdiction over counterclaim

Where the defendant asserts a legally sufficient counterclaim in good faith which is beyond the jurisdiction of the magistrate court but the entire case is within the jurisdiction of another Georgia court, the court shall transfer the case to a court with jurisdiction over the counterclaim. Where the parties agree on a transferee court with jurisdiction over the counterclaim, the court shall transfer the case to that court. Otherwise, the court shall select a proper court to which to transfer the case.

36.2. Transfer between magistrate courts

Upon a judicial determination that the court lacks venue, the court shall transfer the case by written order to a magistrate court of proper venue. No court shall refuse to accept a transfer accompanied by the fees provided by paragraph 36.3. If it is later determined that the transferee court has no jurisdiction or venue to hear the case, it may in turn transfer the action pursuant to this rule.

36.3. Costs for transfers between magistrate courts

A. The case shall be transferred with the initial filing fee, and the transferred filing fee shall be the filing fee in the transferee court. All surcharges, such as for local law library funds, retirement funds, and the like shall be retained and reported in the court of initial filing. No additional filing costs shall be required by the transferee court, no surcharges will be collected from the parties or be required to be paid by the transferee court, nor shall any refund be made to the parties if the filing fee is less in the transferee court.

B. If service upon the defendant has not been perfected, a service fee in the amount provided for in O.C.G.A. § 15-16-21(b)(1) for the transferee court shall be paid by the plaintiff prior to the transfer. If a service attempt (beyond a check of map, data base or index of addresses) has been made in the court where the action was originally filed, the original service fee shall be considered as expended and the entire service fee shall be billed to the plaintiff. If no service has been attempted, the plaintiff shall only be billed for the difference between the service fee originally paid and that required by this rule. A bill for the required service fee shall be sent to the plaintiff by regular mail and the case may be dismissed without prejudice for want of prosecution if the bill is not paid within thirty (30) days.

The service fee provided in O.C.G.A. § 15-16-21(b)(1) shall be the service fee in all transferred cases irrespective of whether the transferee court uses sheriff, marshal, or constable as the office for service of process in that county. The parties shall not be entitled to any refund of a portion of the fee.

36.4. Hearing transfer requests

A. Where the defendant has not been served, the court may entertain a motion to transfer ex parte, either orally or upon written request and need not require a hearing.

B. Where the opposing party consents to a transfer, the court need not require a hearing. No transfer shall be made upon consent of the parties where no authorized factual grounds for transfer are asserted; however, the court may accept without further proof the factual assertions where the request is made by consent.

C. Where the defendant has been served and there is no consent to the request for transfer, the court may decide the request at the hearing regularly set in that case. Alternately, the court may, after reviewing the legal sufficiency of the request, notify the opposing party that the request will be granted unless a hearing is requested within ten days. Such notice shall be sent by regular mail to the address shown on the pleadings.

D. The transfer order shall not be entered until any required service fee is paid. The court shall transfer the case within 10 days of the entry of the order.

E. If an order allowing the plaintiff to proceed in forma pauperis has been entered in the court where the action was originally filed, it shall be honored in the transferee court unless and until successfully challenged by an opposing party.

Rule 37. Amendments.

Amendments to pleadings in the magistrate court may be filed without leave of court. If the court finds that the opposite party is surprised and not prepared to go forward due to the lateness of notice of the amendment despite due diligence, the court shall continue the case. When the amending party has been negligent or dilatory in filing an amendment, the court may condition consideration of the amendment upon the payment of all or part of the costs to the opposing party attributable to the continuance of the case. The amending party may then elect to proceed immediately to trial in the magistrate court without consideration of the amendment or agree to pay the costs assessed by the court. Upon failure to pay those costs, the court may impose a default judgment or may hear the case on the merits and assess those costs as part of the final judgment.

Amendments filed at or prior to the hearing in the magistrate court shall be part of the pleadings upon de novo appeal even where such amendment was not considered in the magistrate court.

Rule 38. Motions and request for relief under the Civil Practice Act.

No party or attorney shall be required to respond to a motion, including a request for relief under the Civil Practice Act (O.C.G.A. § 9-11-1 et. seq.) prior to a scheduled hearing unless otherwise directed by the court. Unless otherwise provided by the court, pre-judgment motions shall be ruled on at the first scheduled hearing for the case. Where a party contends that the grant or denial of the motion may require postponement of the hearing on the merits, the motion should so state. Post-judgment motions may be placed on a calendar for hearing. Motions may be denied without a hearing based upon the record of the court. Motions shall not be granted without a hearing unless hearing is waived by the respondent.

Parties and attorneys are reminded that the Georgia Civil Practice Act does not govern proceedings in Magistrate Court. Except as otherwise provided in these rules, any request for relief under that act will be considered under the standards of Howe v. Roberts, 259 Ga. 617<A> (1989).

No leave of court is required to file a suggestion, on the record, of death of a party.

Rule 39. Third-party practice.

A defendant may file with the answer a statement of claim against a person who is not a party to the action who is or may be liable for all or part of the plaintiff's claim. All claims arising out of the same transaction or occurrence as the plaintiff's claim may be asserted. After the answer is filed, third-party claims may only be filed with permission of the court. A plaintiff defending a counterclaim may also file such a third-party claim with permission of the court. The procedures applicable to any other action shall apply to a statement of claim filed against a third party defendant and the hearing on the entire case shall be set pursuant to O.C.G.A. § 15-10-43 calculating time limits from the day of the third-party defendant's answer.

The third party defendant may assert a claim arising out of the same transaction or occurrence at the time of filing the answer against any other party to the action and may assert such related claims against non-parties with permission of the court. Existing parties other than the third-party plaintiff may file claims against the third party defendant arising out of the same transaction or occurrence as the original action any time before the third-party defendant's answer is due.

Rule 40. Pre-trial discovery.

Use of O.C.G.A. §§ 9-11-26 through 9-11-37 for purposes of pre-trial discovery in the magistrate court is not favored; however, requests for such discovery may be entertained when made by joint request of all parties. Requests for use of these provisions may also be allowed for preservation of testimony, obtaining evidence from out-of-state, minimizing expense and similar purposes in order to do substantial justice or lessen the expense to the parties.

No party or attorney may file any discovery request pursuant to O.C.G.A. §§ 9-11-26 through 9-11-37 without permission of the court; any such filing shall be a nullity.

Where discovery is permitted by the magistrate court, the magistrate may nevertheless decline to rule on a motion pursuant to O.C.G.A. § 9-11-37 in which case such motion may be renewed upon de novo appeal.

Rule 41. Summary judgment.

Summary judgment motions in the magistrate court shall not be permitted and their filing shall be a nullity.

Rule 42. Bankruptcy stay.

A party or attorney may file a signed notice of bankruptcy proceedings containing the bankruptcy case number; where the debtor in the bankruptcy case is the same as a party in the magistrate court, such a notice will stay proceedings in the magistrate court until further order of the court. Parties are encouraged to attach a copy of the first page of their bankruptcy filing to the notice. On the court's own motion, a judge or clerk may attempt to verify the filing with the U.S. Bankruptcy Court (which may be by telephone inquiry) and notify the parties to proceed with the case upon lack of verification.

Parties desiring to challenge the authenticity, scope, or continued duration of a bankruptcy stay shall file a written motion or request which shall be set for hearing before a magistrate.

Rule 43. Consent judgments in civil actions.

Consent judgments must be reduced to writing, signed by the defendant and his or her attorney, if any, and filed with other papers in the case. If the consent judgment is for less than the amount of the claim as filed, then the plaintiff and his or her attorney, if any, shall also sign such consent judgment.

Rule 44. Deferred partial payments of judgments by defendants.

44.1. Clerical and accounting costs due

Where plaintiff does not request partial payments be made to the court but the defendant requests to make such partial payments to the court rather than to the plaintiff, the judge may do so at the expense of the defendant and for the clerical and accounting costs incurred thereby, may charge 10%, but not less than $1.00 and not to exceed $10.00 for each payment.

44.2. Clerical and accounting costs withheld

No clerical and accounting costs shall be deducted from monies received in the magistrate court in answer to a summons of garnishment, levy on property where such property is redeemed prior to public sale, when a defendant pays a claim in full, or when a defendant pays rent into court on a dispossessory action.

Rule 45. Satisfaction of fi. fa.

Upon sufficient showing, the judge or clerk shall indicate on the face of the fi. fa. that it has been satisfied, if such payment is made prior to public sale.

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