Judicial Council of Georgia
Board of Court Reporting

CODE SECTIONS

GEORGIA CODE SECTIONS

1. Licensing

1. a. COURT REPORTING ACT

15-14-20. Short title.

This article shall be known and may be cited as "The Georgia Court Reporting Act." (Ga. L. 1974, p. 345, ' 1; Ga. L. 1993, p. 1315, ' 7.)

15-14-21. Purpose.

It is declared by the General Assembly that the practice of court reporting carries important responsibilities in connection with the administration of justice, both in and out of the courts; that court reporters are officers of the courts; and that the right to define and regulate the practice of court reporting belongs naturally and logically to the judicial branch of the state government. Therefore, in recognition of these principles, the purpose of this article is to act in aid of the judiciary so as to ensure minimum proficiency in the practice of court reporting by recognizing and conferring jurisdiction upon the Judicial Council of Georgia to define and regulate the practice of court reporting. (Ga. L. 1974, p. 345, ' 2; Ga. L. 1993, p. 1315, ' 7.)

15-14-22. Definitions.

As used in this article, the term:

(1) "Board" means the Board of Court Reporting of the Judicial Council.

(2) "Certified court reporter" means any person certified under this article to practice verbatim reporting.

(3) "Court reporter" means any person who is engaged in the practice of court reporting as a profession as defined in this article. The term "court reporter" shall include not only those who actually report judicial proceedings in courts but also those who make verbatim records as defined in paragraph (4) of this Code section.

(4) "Court reporting" means the making of a verbatim record by means of manual shorthand, machine shorthand, closed microphone voice dictation silencer, or by other means of personal verbatim reporting of any testimony given under oath before, or for submission to, any court, referee, or court examiner or any board, commission, or other body created by statute, or by the Constitution of this state or in any other proceeding where a verbatim record is required. The taking of a deposition is the making of a verbatim record as defined in this article. (Ga. L. 1974, p. 345, ' 4; Ga. L. 1993, p. 1315, ' 7.)

15-14-23. Judicial Council of Georgia as agency of judiciary for purposes of article.

The Judicial Council of Georgia, as created by Article 2 of Chapter 5 of this title, is declared to be an agency of the judicial branch of the state government for the purpose of defining and regulating the practice of court reporting in this state. (Ga. L. 1974, p. 345, ' 3; Ga. L. 1993, p. 1315, ' 7.)

15-14-24. Board of Court Reporting of Judicial Council; creation; composition; term; vacancies; removal.

(a) There is established a board which shall be known and designated as the "Board of Court Reporting of the Judicial Council." It shall be composed of nine members, five members to be certified court reporters, two members to be representatives from the State Bar of Georgia, and two members to be from the judiciary, one to be a superior court judge and one to be a state court judge, each of whom shall have not less than five years' experience in their respective professions. The initial board shall be appointed by the Judicial Council. The term of office shall be two years, and the Judicial Council shall

fill vacancies on the board.

(b) Any member of the board may be removed by the Judicial Council after a hearing at which the Judicial Council determines that there is cause for removal. (Ga. L. 1974, p. 345, ' 5; Ga. L. 1993, p. 1315, ' 7; *Ga. L. 1999, p.868, '7*.)

15-14-25. Oath of office; filing; certificate of appointment.

Immediately and before entering upon the duties of their office, the members of the board shall take the oath of office and shall file the same in the office of the Judicial Council. Upon receiving the oath of office, the Judicial Council shall issue to each member a certificate of appointment. (Ga. L. 1974, p. 345, ' 6; Ga. L. 1993, p. 1315, ' 7; Ga. L. 1999, p. 868, ' 1.)

15-14-26. Chairperson; election; term; rules and regulations.

The board shall each year elect from its members a chairperson, whose term shall be for one year, and who shall serve during the period for which elected and until a successor shall be elected. The board shall make all necessary rules and regulations to carry out this article, but the rules and regulations shall be subject to review by the Judicial Council. (Ga. L. 1974, p. 345, ' 7; Ga. L. 1993, p. 1315, ' 7.)

15-14-27. Administrative work as duty of Administrative Office of the Courts; director to serve as secretary of board.

The administrative and staff work of the board shall be among the duties of the Administrative Office of the Courts created by Code Section 15-5-22. The director of the Administrative Office of the Courts or a designee shall serve as secretary of the board and shall perform all duties which may be assigned by either the board or the Judicial Council to implement this article. (Ga. L. 1974, p. 345, ' 18; Ga. L. 1993, p. 1315, ' 7.)

15-14-28. Certificate required.

No person shall engage in the practice of verbatim court reporting in this state unless the person is the holder of a certificate as a certified court reporter or is the holder of a temporary permit issued under this article. (Ga. L. 1974, p. 345, ' 12; Ga. L. 1993, p. 1315, ' 7.)

15-14-29. Qualifications for certification; individuals with disabilities.

(a) Upon receipt of appropriate application and fees, the board shall grant a certificate as a certified court reporter to any person who:

(1) Has attained the age of 18 years;

(2) Is of good moral character;

(3) Is a graduate of a high school or has had an equivalent education; and

(4) Has, except as provided in subsection (b) of this Code section, successfully passed an examination in verbatim court reporting as prescribed in Code Section 15-14-30.

(b) Any person who has attained the age of 18 years and is of good moral character, who submits to the board an affidavit under oath that the court reporter was actively and continuously, for one year preceding March 20, 1974, principally engaged as a court reporter, shall be exempt from taking an examination and shall be granted a certificate as a certified court reporter.

(c) (1) Reasonable accommodation shall be provided to any qualified individual with a disability who applies to take the examination who meets the essential eligibility requirements for the examination and provides acceptable documentation of a disability, unless the provision of such accommodation would impose an undue hardship on the board.

(2) Reasonable accommodation shall be provided to any qualified individual with a disability who applies for certification who meets the essential eligibility requirements for certification and provides acceptable documentation of a disability, unless the provision of such accommodation would impose an undue hardship on the board or the certification of the individual would pose a direct threat to the health, welfare, or safety of residents of this state.

(3) The term "disability," as used in paragraphs (1) and (2) of this subsection, means a physical or mental impairment that substantially limits one or more major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment. (Ga. L. 1974, p. 345, ' ' 9, 11; Ga. L. 1992, p. 6, ' 15; Ga. L. 1993, p. 1315, ' 7.)

15-14-30. Application for testing; fee; time of examinations; conduct and grading.

Every person desiring to commence the practice of court reporting in this state shall file an application for testing with the board upon such form as shall be adopted and prescribed by the board. At the time of making an application the applicant shall deposit with the board an examination fee to be determined by the board. Examinations shall be conducted as often as may be necessary, as determined by the board, provided that examinations must be conducted at least once annually. Applicants shall be notified by mail of the holding of such examinations no later than ten days before the date upon which the examinations are to be given. Examinations shall be conducted and graded according to rules and regulations prescribed by the board. (Ga. L. 1974, p. 345, ' 10; Ga. L. 1993, p. 1315, ' 7.)

15-14-31. Renewal of certificate; fee; automatic revocation of suspended certificate.

Every certified court reporter who continues in the active practice of verbatim court reporting shall annually renew the certificate on or before April 1 following the date of issuance of the certificate under which the court reporter is then entitled to practice, upon the payment of a fee established by the board. Every certificate which has not been renewed on April 1 shall expire on that date of that year and shall result in the suspension of the court reporter's right to practice under this article, which suspension shall not be terminated until all delinquent fees have been paid or the court reporter has re-qualified by testing. After a period to be determined by the board, a suspended certificate will be automatically revoked and may not be reinstated without meeting current certification requirements. (Ga. L. 1974, p. 345, ' 17; Ga. L. 1993, p. 1315, ' 7.)

15-14-32. Use of title or abbreviation.

Any person who has received from the board a certificate as provided for in this article shall be known and styled as a certified court reporter and shall be authorized to practice as such in this state and to use such title or the abbreviation "C.C.R." in so doing. No other person, firm, or corporation, all of the members of which have not received such certificate, shall assume the title of certified court reporter, the abbreviation "C.C.R.," or any other words or abbreviations tending to indicate that the person, firm, or corporation so using the same is a certified court reporter. (Ga. L. 1974, p. 345, ' 8; Ga. L. 1993, p. 1315, ' 7.)

15-14-33. Refusal to grant or revocation of certificate or temporary permit or discipline of person; subpoena of records; disciplinary actions; appeal; reinstatement; investigations; immunity; hearing; voluntary surrender or failure to renew; regulation.

(a) The board shall have the authority to refuse to grant a certificate or temporary permit to an applicant therefore or to revoke the certificate or temporary permit of a person or to discipline a person, upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a certificate or temporary permit contained in this article or under the rules or regulations of the board. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that all the requirements for the issuance of a certificate or temporary permit have been met, and, if the board is not satisfied as to the applicant's qualifications, it may deny a certificate or temporary permit without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if desired;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of court reporting or on any document connected therewith; practiced fraud or deceit or intentionally made any false statements in

obtaining a certificate or temporary permit to practice court reporting; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States. As used in this paragraph and paragraph (4) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony or any crime involving moral turpitude, where:

(A) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(B) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge, except with respect to a plea of nolo contendere.

The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had a certificate or temporary permit to practice as a court reporter revoked, suspended, or annulled by any lawful licensing authority other than the board; or had other disciplinary action taken against the licensee or the applicant by any such lawful licensing authority other than the board; or was denied a certificate by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a certificate or temporary permit by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice as a court reporter, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of court reporting but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of court reporting;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose certificate or temporary permit has been suspended or revoked by the board to practice as a court reporter or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which statute, law, or rule or regulation relates to or in part regulates the practice of court reporting, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule, or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or certificate or temporary permit reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state. Any such adjudication shall automatically suspend the certificate or temporary permit of any such person and shall prevent the re-issuance or renewal of any certificate or temporary permit so suspended for as long as the adjudication of incompetence is in effect; or

(10) Displayed an inability to practice as a court reporter with reasonable skill or has become unable to practice as a court reporter with reasonable skill by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material.

(11) Violated the provisions of subsection (c) or (d) of Code Section 9-11-28; or

(12) Violated the provisions of Code Section 15-14-37.

(b) For purposes of this Code section, the board may obtain through subpoena upon reasonable grounds any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(c) When the board finds that any person is unqualified to be granted a certificate or temporary permit or finds that any person should be disciplined pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to court reporting, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a certificate or temporary permit to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any certificate or temporary permit for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any certificate or temporary permit as the board deems necessary for the protection of the public;

(5) Revoke any certificate or temporary permit;

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;

(7) Impose a requirement to pass the state certification test; or

(8) Require monetary adjustment in a fee dispute involving an official court reporter.

(d) In addition to and in conjunction with the actions described in subsection (c) of this Code section, the board maymake a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(e) Any disciplinary action of the board may be appealed by the aggrieved person to the Judicial Council, which shall have the power to review the determination by the board. Initial judicial review of the final decision of the Judicial Council shall be had solely in the superior courts of the county of domicile of the board.

(f) In its discretion, the board may reinstate a certificate or temporary permit which has been revoked or issue a certificate or temporary permit which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this Code section or any other laws relating to court reporting.

(g) (1) The board is vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations the board may deem necessary or proper for the enforcement of the provisions of this Code section and the laws relating to court reporting. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The board or its appointed representative may issue subpoenas to compel access to any writing, document, or other material upon a determination that reasonable grounds exist for the belief that a violation of this Code section or any other law relating to the practice of court reporting may have taken place.

(2) The results of all investigations initiated by the board shall be reported solely to the board and the records of such investigations shall be kept for the board by the Administrative Office of the Courts, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or lawful licensing authority.

(3) If a licensee is the subject of a board inquiry, all records relating to any person who receives services rendered by that licensee in the capacity as licensee shall be admissible at any hearing held to determine whether a violation of this article has taken place, regardless of any statutory privilege; provided, however, that any documentary evidence relating to a person who received those services shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant**.**

(h) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice as a court reporter or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice as a court reporter shall be immune from civil and criminal liability for so testifying.

(i) If any licensee or applicant after at least 30 days' notice fails to appear at any hearing, the board mayproceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served personally upon the licensee or applicant or served by *certified mail or statutory overnight delivery*, return receipt requested, to the last known address of record with the board. If such material is served by *certified mail or statutory overnight delivery* and is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the director of the Administrative Office of the Courts shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon the director of the Administrative Office of the Courts shall be deemed to be service upon the licensee or applicant.

(j) The voluntary surrender of a certificate or temporary permit or the failure to renew a certificate or temporary permit by the end of an established penalty period shall have the same effect as a revocation of said certificate or temporary permit, subject to reinstatement in the discretion of the board. The board may restore and reissue a certificate or temporary permit to practice under the law relating to that board and, as a condition thereof, may impose any disciplinary sanction provided by this Code section or the law relating to that board.

(k) Regulation by the board shall not exempt court reporting from regulation pursuant to any other applicable law. (Ga. L. 1974, p. 345, ' 13; Ga. L. 1993, p. 1315, ' 7; Ga. L. 1994, p. 1007, ' 2; *Ga. L. 2000, p. 1589*, ' *3.*)

15-14-34. Temporary permits.

Temporary employment of any person may be possible by obtaining a temporary permit from the board or from a judge in compliance with the rules and regulations of the Board of Court Reporting of the Judicial Council. The scope of the activities of the temporary permit holder shall be as provided in the rules of the board. (Ga. L. 1974, p. 345, ' 16; Ga. L. 1980, p. 528, ' 1; Ga. L. 1993, p. 1315, ' 7.)

15-14-35. Injunction against violations; remedy cumulative.

On the verified complaint of any person or by motion of the board that any person, firm, or corporation has violated any provision of this article, the board, with the consent of the Judicial Council, may file a complaint seeking equitable relief in its own name in the superior court of any county in this state having jurisdiction of the parties, alleging the facts and praying for a temporary restraining order and temporary injunction or permanent injunction against such person, firm, or corporation, restraining them from violating this article. Upon proof thereof, the court shall issue the restraining order, temporary injunction, or permanent injunction without requiring allegation or proof that the board has no adequate remedy at law. The right of injunction provided for in this Code section shall be in addition to any other remedy which the board has and shall be in addition to any right of criminal prosecution provided by law. (Ga. L. 1974, p. 345, ' 15; Ga. L. 1993, p. 1315, ' 7.)

15-14-36. Penalties for violations.

Any persons who:

(1) Represents himself or herself as having received a certificate or temporary permit as provided for in this article or practices as a certified court reporter without having received a certificate or temporary permit;

(2) Continue to practice as court reporters in this state or use any title or abbreviation indicating they are certified court reporters after his or her certificate has been revoked; or

(3) Violates any provision of this article or of subsection (c) or (d) of Code Section 9-11-28 shall be guilty of a misdemeanor. Each day of the offense is a separate misdemeanor. (Ga. L. 1974, p. 345, ' 14; Ga. L. 1993, p. 1315, ' 7; Ga. L. 1994, p. 1007, ' 3; *Ga. L. 1999, p. 81, '15*.)

15-14-37. Prohibition against certain contracts for court reporting services; duty of court reporters to make inquiry as to nature of contract for services; applicability; *registration; rules and regulations; fines*.

(a) Contracts for court reporting services not related to a particular case or reporting incident between a certified court reporter or any person with whom a certified court reporter has a principal and agency relationship and any attorney at law, party to an action, party having a financial interest in an action, or agent for an attorney at law, party to an action, or party having a financial interest in an action are prohibited. Attorneys shall not be prohibited from negotiating or bidding reasonable fees for services on a case-by-case basis.

(b) In order to comply with subsection (a) of this Code section, each certified court reporter shall make inquiry regarding the nature of the contract for his or her services directed to the employer or the person or entity engaging said court reporter's services as an independent contractor.

(c) This Code section shall not apply to contracts for court reporting services for the courts, agencies, or instrumentalities of the United States or of the State of Georgia.

(d) A court reporting firm doing business in Georgia shall register with the board by completing an application in the form adopted by the board and paying fees as required by the board.

(e) Each court reporting firm doing business in Georgia shall renew its registration annually on or before April 1 following the date of initial registration, by payment of a fee set by the board.

(f) Court reporting firms doing business in Georgia are governed by this article. The board shall have authority to promulgate rules and regulations not inconsistent with this article for the conduct of court reporting firms.

(g) The Board is authorized to assess a reasonable fine, not to exceed $5,000.00, against any court reporting firm which violates any provision of this article or rules and regulations promulgated in accordance with this Code section. (Ga. L. 1994, p. 1007, ' 4; Ga. L. 1999, p. 848, ' 2.)

1.b. SANCTIONS AGAINST LICENSED PERSONS FOR OFFENSES INVOLVING CONTROLLED SUBSTANCES OR MARIJUANA.

16-13-110. Definitions.

(a) As used in this article, the term:

(1) "Controlled substance" means any drug, substance, or immediate precursor included in the definition of the term "controlled substance" in paragraph (4) of Code Section 16-13-21.

(2) "Convicted" or "conviction" refers to a final conviction in a court of competent jurisdiction, or the acceptance of a plea of guilty or nolo contendere or affording of first offender treatment by a court of competent jurisdiction.

(3) "Licensed individual" means any individual to whom any department, agency, board, bureau, or other entity of state government has issued any license, permit, registration, certification, or other authorization to conduct a licensed occupation.

(4) "Licensed occupation" means any occupation, profession, business, trade, or other commercial activity which requires for its lawful conduct the issuance to an individual of any license, permit, registration, certification, or other authorization by any department, agency, board, bureau, or other entity of state government.

(5) "Licensing authority" means any department, agency, board, bureau, or other entity of state government which issues to individuals any license, permit, registration, certification, or other authorization to conduct a licensed occupation.

(6) "Marijuana" means any substance included in the definition of the term "marijuana" in paragraph (16) of Code Section 16-13-21.

(b) Without limiting the generality of the provisions of subsection (a) of this Code section, the practice of law shall constitute a licensed occupation for purposes of this article and the Supreme Court of Georgia shall be the licensing authority for the practice of law. (Code 1981, ' 16-13-110, enacted by Ga. L. 1990, p. 2009, ' 1.)

16-13-111. Notification of conviction of licensed individual to licensing authority; reinstatement of license; imposition of more stringent sanctions.

(a) Any licensed individual who is convicted under the laws of this state, the United States, or any other state of any criminal offense involving the manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana shall notify the appropriate licensing authority of the conviction within ten days following the conviction.

(b) Upon being notified of a conviction of a licensed individual, the appropriate licensing authority shall suspend or revoke the license, permit, registration, certification, or other authorization to conduct a licensed occupation of such individual as follows:

(1) Upon the first conviction, the licensed individual shall have his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation suspended for a period of not less than three months; provided, however, that in the case of a first conviction for a misdemeanor the licensing authority shall be authorized to impose a lesser sanction or no sanction upon the licensed individual; and

(2) Upon the second or subsequent conviction, the licensed individual shall have his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation revoked.

(c) The failure of a licensed individual to notify the appropriate licensing authority of a conviction as required in subsection (a) of this Code section shall be considered grounds for revocation of his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation.

(d) A licensed individual sanctioned under subsection (b) or (c) of this Code section may be entitled to reinstatement of his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation upon successful completion of a drug abuse treatment and education program approved by the licensing authority.

(e) The suspension and revocation sanctions prescribed in this Code section are intended as minimum sanctions, and nothing in this Code section shall be construed to prohibit any licensing authority from establishing and implementing additional or more stringent sanctions for criminal offenses and other conduct involving the unlawful manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana. (Code 1981, ' 16-13-111, enacted by Ga. L. 1990, p. 2009, ' 1.)

16-13-112. Applicability of administrative procedures.

Administrative procedures for the implementation of this article for each licensed occupation shall be governed by the appropriate provisions applicable to each licensing authority. (Code 1981, ' 16-13-112, enacted by Ga. L. 1990, p. 2009, ' 1.)

16-13-113. Article as supplement to power of licensing authority.

The provisions of this article shall be supplemental to and shall not operate to prohibit any licensing authority from acting pursuant to those provisions of law which may now or hereafter authorize other sanctions and actions for that particular licensing authority. (Code 1981, ' 16-13-113, enacted by Ga. L. 1990, p. 2009, ' 1.)

16-13-114. Period of applicability of article.

This article shall apply only with respect to criminal offenses committed on or after July 1, 1990; provided, however, that nothing in this Code section shall prevent any licensing authority from implementing sanctions additional to or other than those provided for in this article with respect to offenses committed prior to July 1, 1990. (Code 1981, ' 16-13-114, enacted by Ga. L. 1990, p. 2009, ' 1.)

1. c. JUDICIAL COUNCIL OF GEORGIA

15-5-20. Creation of council; powers; duties; composition; expenses.

(a) The Supreme Court shall create a Judicial Council of Georgia, which council shall have such powers, duties, and responsibilities as may be provided by law or as may be provided by rule of the Supreme Court.

(b) Members of the council and their terms shall be as provided by the Supreme Court. The members of the council shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties as members of the council. (Ga. L. 1945, p. 155, '' 1-3; Ga. L. 1973, p. 288, '' 1, 2; Ga. L. 1983, p. 956, ' 6; Ga. L. 1984, p. 22, ' 15.)

15-5-21. Promulgation of rules relating to transcripts and court reporters' fees.

(a) The Judicial Council shall promulgate rules and regulations which shall:

(1) Provide for and set the fees to be charged by all official court reporters in this state for attending court, taking stenographic notes, and recording the evidence;

(2) Provide for and set the fees to be charged by all official court reporters in this state for furnishing transcripts of the evidence and for other proceedings furnished by the official court reporters in all civil and criminal cases in this state;

(3) Provide for a minimum per diem fee for official court reporters, which fee may be supplemented by the various counties within the circuits to which the court reporters are assigned; and

(4) Provide for the form and style of the transcripts, which shall be uniform throughout the state.

(b) The Judicial Council shall amend its rules and regulations providing for and setting the fees to be charged by all official court reporters whenever the council shall deem it necessary and proper.

(c) This Code section shall not apply to those court reporters taking and furnishing transcripts of depositions or taking and furnishing transcripts of non-judicial functions, nor to any independent contracts of any reporters.

(d) A rule or regulation promulgated by the Judicial Council pursuant to this Code section shall not become effective unless that council provides to the chairperson of the Judiciary Committee of the House of Representatives, the chairperson of the Special Judiciary Committee of the House of Representatives, the chairperson of the Judiciary Committee

of the Senate, and the chairperson of the Special Judiciary Committee of the Senate, at least 30 days prior to the date that council intends to adopt such rule or regulation, written notice which includes an exact copy of the proposed rule or regulation and the intended date of its adoption. After July 1, 1986, no rule or regulation adopted by the Judicial Council pursuant to this Code section shall be valid unless adopted in conformity with this subsection. A proceeding to contest any rule or regulation on the grounds of noncompliance with this subsection must be commenced within two years from the effective date of the rule or regulation. (Ga. L. 1975, p. 852, ' ' 1, 2; Ga. L. 1986, p. 956, ' 1; Ga. L. 1988, p. 13, ' 15.)

2. Official Reporters

2. a. SUPERIOR AND CITY COURTS

15-14-1. Power of superior court judges to appoint and remove; oath; duties.

The judges of the superior courts shall have power to appoint and, at their pleasure, to remove a court reporter, as defined in Article 2 of this chapter, for the courts of their respective circuits. The court reporter, before entering on the duties of the court reporter's office, shall be duly sworn in open court to perform faithfully all the duties required of the court reporter by law. It shall be the court reporter's duty to attend all courts in the circuit for which such court reporter is appointed and, when directed by the judge, to record exactly and truly or take stenographic notes of the testimony and proceedings in the case tried, except the arguments of counsel. (Ga. L. 1876, p. 133, ' 1; Code 1882, ' 4696(a); Penal Code 1895, ' 810; Penal Code 1910, ' 810; Code 1933, ' 24-3101; Ga. L. 1993, p. 1315, ' 6.)

15-14-2. Power of city court judges to appoint; compensation.

(a) The judges of the city courts of this state having concurrent jurisdiction with the superior courts of this state to try misdemeanor cases and to try civil cases where the amount involved exceeds $500.00, where not otherwise specifically provided for by law, may appoint an official court reporter, as defined in Article 2 of this chapter, whose compensation for reporting criminal and civil cases and for attendance upon court shall be the same as provided by the Judicial Council pursuant to Code Section 15-5-21. The court reporter reporting and transcribing civil cases shall be paid by the party or parties requesting the reporting or transcribing.

(b) This Code section shall not apply to the city courts of this state where provision has been made by law prior to February 13, 1950, for the appointment of the official reporters of city courts. (Ga. L. 1950, p. 149, ' ' 1-3; Ga. L. 1993, p. 1315, ' 6.)

15-14-3. Power of division judges to appoint and remove; oath; duties.

Each of the judges of the superior and city courts in all circuits where there may be more than one division, whether the same is civil or criminal, shall appoint and at such judge's pleasure remove a court reporter, as defined in Article 2 of this chapter, for such judge's respective division. The court reporter, before entering on the duties of the court reporter's office, shall be duly sworn in open court to perform faithfully all the duties required. It shall be the court reporter's duty to attend all sessions of the court for which such court reporter is appointed and, when directed by the judge, to record exactly and truly or take stenographic notes of the testimony and proceedings in the case tried, except the argument of counsel. (Ga. L. 1876, p. 133, ' 1; Code 1882, ' 4696a; Ga. L. 1894, p. 53, ' 1; Civil Code 1895, ' 4446; Civil Code 1910, ' 4984; Ga. L. 1914, p. 59, ' 1; Code 1933, ' 24-3102; Ga. L. 1993, p. 1315, ' 6.)

15-14-4. Additional court reporters; typists; equipment.

(a) In all judicial circuits of this state in which nine or more superior court judges are provided by law, the judges of such circuits shall have the power to appoint, in addition to those court reporters already authorized by law, such additional court reporters as each judge deems necessary or proper to report and transcribe the proceedings of the court over which he presides, such court reporters to have the same qualifications and to be paid in the same manner as is provided by law.

(b) In addition thereto, each of the judges of such circuits shall have the power, with the approval of the county commissioners, to employ such typists as he may deem necessary or proper to aid in the recording or transcribing of the proceedings of the court; the compensation of the typists is declared to be an expense of court and payable out of the county treasury as such.

(c) In the aforesaid circuits each of the judges shall have the power to purchase such recording machines and equipment as he may deem necessary or proper to aid in the transaction of the business of the court and to order payment therefore out of the county treasury as an expense of court. (Ga. L. 1957, p. 373, ' 1.)

15-14-5. Duty to transcribe; certificate.

It shall be the duty of each court reporter to transcribe the evidence and other proceedings of which he has taken notes as provided by law whenever requested so to do by counsel for any party to such case and upon being paid the legal fees for such transcripts. The reporter, upon delivering the transcript to such counsel, shall affix thereto a certificate signed by him reciting that the transcript is true, complete, and correct. Subject only to the right of the trial judge to change or require the correction of the transcript, the transcript so certified shall be presumed to be true, complete, and correct. (Ga. L. 1957, p. 224, ' 9.)

15-14-6. Contingent expense and travel allowance; notification of appointments and removals.

(a) The Department of Administrative Services is authorized and directed to pay from the state treasury the sums specified in subsection (b) of this Code section as contingent expense and travel allowance to each duly appointed reporter for the superior courts in all judicial circuits of this state, such sum being in addition to the compensation of the superior court reporters provided by law.

(b) The amounts payable per month under this Code section to superior court reporters as contingent expense and travel allowance shall be as follows:

(1) For reporters of judicial circuits consisting of only one county $80.00

(2) For reporters of judicial circuits consisting of two counties..... 140.00

(3) For reporters of judicial circuits consisting of three counties..... 200.00

(4) For reporters of judicial circuits consisting of four counties 260.00

(5) For reporters of judicial circuits consisting of five counties..... 320.00

(6) For reporters of judicial circuits consisting of six or more counties..... 380.00

Any person who is a duly appointed reporter for the superior courts in more than one judicial circuit shall receive only one contingent expense and travel allowance, in the amount provided for the circuit consisting of the largest number of counties in which he or she is so appointed.

(c) The contingent expense and travel allowance provided by this Code section shall be paid from the appropriations made by the General Assembly for the cost of operating the superior courts. The duly appointed reporters are declared to be officers of the superior courts.

(d) Annually during the month of January the judge or chief judge of each judicial circuit shall certify to the Department of Administrative Services the names and addresses of all persons duly appointed as reporters for the superior courts in the judicial circuit and shall thereafter notify the department of the removal of such persons from office or the appointment of additional persons as superior court reporters, together with the effective date of such removal or appointment.

(e) All laws enacted before April 5, 1961, applicable to any circuit or counties of this state and governing the compensation of court reporters therein shall remain in full force and effect. (Ga. L. 1961, p. 354, ' ' 1-5; Ga. L. 1962, p. 60, ' 1; Ga. L. 1971, p. 417, ' 1; Ga. L. 1981, p. 619, ' 1; Ga. L. 1993, p. 1402, ' 10.)

2.b. STATE COURTS

15-7-47. Providing of court reporters; waiver; compensation.

(a) Court reporting personnel shall be made available for the reporting of civil and criminal trials in state courts, subject to the laws governing same in the superior courts of this state.

(b) Reporting of any trial may be waived by consent of the parties.

(c) Appointment of a court reporter or reporters, as defined in Article 2 of Chapter 14 of this title, for court proceedings in each court shall be made by the judge thereof; the compensation and allowances of reporters for the courts shall be paid by the county governing authority and shall be the same as that for reporters of the superior courts of this state. (Code 1981, ' 15-7-47, enacted by Ga. L. 1983, p. 1419, ' 2; Ga. L. 1993, p. 1315, ' 5.)

2. c. JUVENILE PROCEEDINGS

15-11-41. Conduct of hearings generally; recordation; conduct of delinquency proceedings by district attorney; victim impact statement; findings as to deprivation.

(a) All hearings shall be conducted by the court without a jury. Any hearing may be adjourned from time to time within the discretion of the court as set forth in subsection (*b*) of Code Section 15-11-56.

(b) The proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means, unless such recording is waived by the child, the child's parent, guardian, or attorney.

(c) In any proceeding before the juvenile court, the judge, upon the court=s own motion, may request the assistance of the district attorney=s staff to conduct the proceedings on behalf of the petitioner. If for any reason the district attorney is unable to assist, the judge may appoint legal counsel for such purpose.

2. d. REPORT OF TESTIMONY IN FELONY PROSECUTIONS

17-8-5. Recordation of testimony in felony cases; entering testimony on minutes of court where a guilty verdict found; preparation of transcript where death sentence imposed; preparation of a transcript where mistrial results in felony case.

(a) On the trial of all felonies the presiding judge shall have the testimony taken down and, when directed bythe judge, the court reporter shall exactly and truly record or take stenographic notes of the testimony and proceedings in the case, except the argument of counsel. In the event of a verdict of guilty, the testimony shall be entered on the minutes of the court or in a book to be kept for that purpose. In the event that a sentence of death is imposed, the transcript of the case shall be prepared within 90 days after the sentence is imposed by the trial court. Upon petition by the court reporter, the Chief Justice of the Supreme Court of Georgia may grant an additional period of time for preparation of the transcript, such period not to exceed 60 days. The requirement that a transcript be prepared within a certain period in cases in which a sentence of death is imposed shall not inure to the benefit of a defendant.

(b) In the event that a mistrial results from any cause in the trial of a defendant charged with the commission of a felony, the presiding judge may, in his discretion, either with or without any application of the defendant or state's counsel, order that a brief or transcript of the testimony in the case be duly filed by the court reporter in the office of the clerk of the superior court in which the mistrial occurred. If the brief or transcript is ordered, it shall be the duty of the judge, in the order, to provide for the compensation of the reporter and for the transcript to be paid for as is provided by law for payment of transcripts in cases in which the law requires the testimony to be transcribed, at a rate not to exceed that provided in felony cases. (Laws 1833, Cobb's 1851 Digest, p. 841; Code 1863, ' 4578; Code 1868, ' 4599; Code 1873, ' 4696; Ga. L. 1876, p. 133, ' 1; Code 1882, ' 4696; Penal Code 1895, ' 981; Penal Code 1910, ' 1007; Ga. L. 1925, p. 101, ' 1; Code 1933, ' 27-2401; Ga. L. 1973, p. 159, ' 6; Ga. L. 1976, p. 991, ' 1.)

2. e. CORONER'S INQUEST

45-16-48. Authorization of coroner's employment of court reporter.

A coroner may be authorized to employ, at his discretion, a court reporter who is certified under Article 2 of Chapter 14 of Title 15, "The Georgia Court Reporting Act," to record the proceedings of any inquest. The cost of acquiring the services of a certified court reporter shall be paid from the funds of the county where the inquest is held. (Code 1981, ' 45-16-48, enacted by Ga. L. 1984, p. 812, ' 8; Ga. L. 1990, p. 1735, ' 3.)

2. f. MEDICAL MALPRACTICE ARBITRATION PROCEEDINGS

9-9-64. Appointment of reporter; duties; compensation.

The judge of the superior court of the county in which was issued the order authorizing arbitration shall appoint a reporter to attend the proceedings of the medical malpractice arbitration panel and to record exactly and truly the testimony and proceedings in the case being arbitrated, except the arguments of counsel. All provisions relating to court reporter fees, compensation, contingent expenses, and travel allowance, as well as those relating to the furnishing of transcripts and the style and form of transcripts, shall be the same for reporters appointed to attend the arbitration panel proceedings as those applicable to reporters of the superior court of the county in which the arbitration was authorized. (Code 1933, ' 7-405, enacted by Ga. L. 1978, p. 2270, ' 2; Code 1981, ' 9-9-114; Code 1981, ' 9-9-64, as re-designated by Ga. L. 1988, p. 903, ' 3.)

2. g. SUPERIOR COURT REPORTERS EMERITUS

47-15-1. Creation of the office of superior court reporter emeritus.

There is created the office of superior court reporter emeritus. (Ga. L. 1952, p. 79, ' 1.)

47-15-2. Eligibility for appointment as superior court reporter emeritus.

(a) As used in this Code section, the term "year" means all or any portion of a calendar year during which a reporter or court stenographer served as official reporter under appointment by the presiding judge of the circuit.

(b) Any reporter or court stenographer in any superior court judicial circuit who has so served for 40 or more consecutive years in the same circuit shall be eligible for appointment as superior court reporter emeritus and shall be appointed to that office by the judge of the superior court of the circuit, upon application by the reporter or court stenographer. (Ga. L. 1952, p. 79, ' 2; Ga. L. 1953, Nov.-Dec. Sess., p. 355.)

47-15-3. Salary payable to superior court reporters emeritus.

Each superior court reporter emeritus shall be paid a salary of $200.00 per month, which salary shall be paid on the first day of each month. (Ga. L. 1952, p. 79, ' 3.)

47-15-4. Term of office as superior court reporter emeritus; duties; additional compensation for performance of duties.

Each superior court reporter emeritus shall hold such office for life. It shall be his duty to serve as a court reporter whenever the judge of the superior court of his circuit shall call upon him to do so, without additional compensation except for civil cases. For reporting and transcribing civil cases he shall be paid the fee provided by law. (Ga. L. 1952, p. 79, ' 4.)

47-15-5. Duty of counties to pay salaries of superior court reporters emeritus; duty to levy taxes sufficient to pay such salaries.

(a) The salary provided for in Code Section 47-15-3 shall be paid pro rata out of the general treasuries of the various counties comprising the circuit of the court reporter emeritus, upon the basis of population. Each of the counties comprising

such circuit shall pay such part or portion of such salary as its population bears to the total population of all counties of such circuit according to the most recent United States decennial census.

(b) It shall be the duty of the county governing authorities of the various counties comprising the circuit of such court reporter emeritus, when levying taxes for expenses of courts, to levy and make collection of sufficient taxes in their respective counties for the purpose of paying the portion of the salary of the court reporter emeritus chargeable against the respective counties. (Ga. L. 1952, p. 79, ' ' 5, 6.)

2. h. BANKRUPTCY COURT - Federal

FRBP Rule 5007: *Record of Proceedings and Transcripts*

(a) *Filing of record or transcript.* The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy.

(b) *Transcript fees*. The fees for copies of transcripts shall be charged at rates prescribed bythe Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk.

(c) *Admissibility of record in evidence*. A certified sound recording of a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.

FRBP 8007. Completion and Transmission of the Record; Docketing of the Appeal.

(a) *Duty of reporter to prepare and file transcript*. On receipt of a request for a transcript, the reporter shall acknowledge on the request the date it was received and the date on which the reporter expects to have the transcript completed and shall transmit the request, so endorsed, to the clerk or the clerk of the bankruptcy appellate panel. On completion of the transcript the reporter shall file it with the clerk and, if appropriate, notify the clerk of the bankruptcy appellate panel. If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.

28 USCS ' 773 - Records of proceedings; reporters

(a) The bankruptcy court shall require a record to be made, whenever practicable, of all proceedings in cases had in open court. The Judicial Conference shall prescribe that the record be taken by electronic sound recording means, by a court reporter appointed or employed by such bankruptcy court to take a verbatim record by shorthand or mechanical means, or by an employee of such court designated by such court to take such a verbatim record.

(b) On the request of a party to a proceeding that has been recorded who has agreed to pay the fee for a transcript, or a judge of the bankruptcy court, a transcript of the original record of the requested parts of such proceeding shall be made and delivered promptly to such party or judge. Any such transcript that is certified shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcript of the proceedings of the bankruptcy court shall be considered as official except those made from certified records.

(c) Fees for transcripts furnished in proceedings to persons permitted to appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question).

28 USCS ' 775 -Salaries of employees

The salary of an individual appointed or employed under section 771(a), 771, or 773(a) of this title shall be the same as the salary of an individual appointed or employed under 751 (a), 752, or 753(a) of this title, as the case may be. The salaries of individuals appointed under section 771 (b) of this title shall be comparable to the salaries of inidividuals appointed under section 751(b) of this title.(Nov. 6, 1978, P.L.95-598, Title II, ' 233(a), 92 Stat. 2665.)

3. Depositions

3. a. TAKING OF DEPOSITION

9-11-27. Depositions before action or pending appeal.

(a) Before action.

(1) Petition. A person who desires to perpetuate such person=s own testimony or that of another person regarding any matter that may be cognizable in any court may file a verified petition in the superior court of the county where the witness resides. The petition shall be entitled in the name of the petitioner and shall show that the petitioner expects to be a party to litigation but is presently unable to bring it or cause it to be brought, the subject matter of the expected action and the petitioner=s interest therein, the facts which the petitioner desires to establish by the proposed testimony and the petitioner=s reasons for desiring to perpetuate it, the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court at a time and place named therein for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or outside the county in the manner provided for service of summons; but, if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise and shall appoint, for persons not served, an attorney who shall represent them and, in case they are not otherwise represented, shall cross-examine the deponent. The court may make such order as is just requiring the petitioner to pay a reasonable fee to an attorney so appointed. If any expected adverse party is a minor or an incompetent person and does not have a general guardian, the court shall appoint a guardian ad litem.

(3) Order and examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delayof justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken by a certified court reporter, or as otherwise provided by the rules of the Board of Court Reporting, in accordance with this chapter, and the court may make orders of the character provided for by Code Sections 9-11-34 and 9-11-35. For the purpose of applying this chapter to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of deposition. If a deposition to perpetuate testimony is taken under this Code section or if, although not so taken, it would be otherwise admissible under the laws of this state, it may be used in any action involving the same parties and the same subject matter subsequently brought.

(b) Pending appeal. If an appeal has been taken from a judgment of a trial court or before the taking of an appeal if the time therefore has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the trial court. In such case the party who desires to perpetuate the testimony may make a motion in the trial court for leave to take the depositions, upon the same notice and service thereof as if the action were pending in the court. The motion shall show the names and addresses of persons to be examined, the substance of the testimony which the movant expects to elicit from each, and the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Code Sections 9-11-34 and 9-11-35; and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in this chapter for depositions taken in actions pending in court.

(c) Perpetuation by action. This Code section does not limit the power of a court to entertain an action to perpetuate testimony. (Ga. L. 1966, p. 609, ' 27; Ga. L. 1993, p. 1315, ' 2.)

9-11-28. Persons before whom depositions may be taken; *disqualification for interest; consent of parties*.

(a) *Within the United States and its possessions*. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or by the laws of the place where the examination is held or before a court reporter appointed bythe court in which the action is pending or, if within this state, before a certified court reporter or as otherwise provided by the rules of the Board of Court Reporting. A person so appointed has power to administer oaths and take testimony.

(b) *In foreign countries*. In a foreign state or country depositions shall be taken on notice before a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the United States, or before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or by descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the country)."

(c) *Disqualification for interest*. No deposition shall be taken before a court reporter who is a relative, employee, attorney, or counsel of any of the parties, or who is a relative or employee of such attorney or counsel, or who is financially interested in the action, excepting that a deposition may be taken before a court reporter who is a relative of a party or of an attorney or counsel of a party if all parties represented at the deposition enter their explicit consent to the same upon the record of the deposition. (Ga. L. 1966, p. 609, ' 28; Ga. L. 1993, p. 1315, ' 3; Ga. L. 1994, p. 1007, ' 1.; Ga. L. 1999, p. 848, ' 1.)

9-11-29. Stipulations regarding discovery procedure.

Unless the court orders otherwise, the parties may, by written stipulation:

(1) Provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and, when so taken, may be used like other depositions; and

(2) Modify the procedures provided by this chapter for other methods of discovery. (Ga. L. 1966, p. 609, ' 29; Ga. L. 1972, p. 510, ' 2.)

Editorial note: see Board opinion, BCR 77-3.

9-11-29.1. When depositions and other discovery material must be filed with court; custodian until filing.

(a) Depositions and other discovery material otherwise required to be filed with the court under this chapter shall not be required to be so filed unless:

(1) Required by local rule of court;

(2) Ordered by the court;

(3) Requested by any party to the action;

(4) Relief relating to discovery material is sought under this chapter and said material has not previously been filed order some other provision of this chapter, in which event copies of the material in dispute shall be filed by the movant contemporaneously with the motion for relief; or

(5) Such material is to be used at trial or is necessary to a pretrial or post-trial motion and said material has not previously been filed under some other provision of this chapter, in which event the portions to be used shall be filed with the clerk of the court at the outset of the trial or at the filing of the motion, insofar as their use can be reasonably anticipated by the parties having custody thereof, but a party attempting to file and use such material which was not filed with the clerk at the outset of the trial or at the filing of the motion shall show to the satisfaction of the court, before the court may authorize such filing and use, that sufficient reasons exist to justify that late filing and use and that the late filing and use will not constitute surprise or manifest injustice to any other party in the proceedings.

(b) Until such time as discovery material is filed under paragraphs (1) through (5) of subsection (a) of this Code section, the original of all depositions shall be retained by the party taking the deposition and the original of all other discovery

material shall be retained by the party requesting such material, and the person thus retaining the deposition or other discovery material shall be the custodian thereof. (Code 1981, ' 9-11-29.1, enacted by Ga. L. 1982, p. 2374, ' 1.)

9-11-30. Depositions upon oral examination.

(a) *When depositions may be taken*. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under subsection (*f*) of Code Section 9-11-4, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery or if special notice is given as provided in paragraph (2) of subsection (b) of this Code section. The attendance of witnesses may be compelled by subpoena as provided in Code Section 9-11-45. The deposition of a person confined in a penal institution may be taken only by leave of court on such terms as the court prescribes.

(b) *Notice of examination.*

(1) General requirements. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition, the means by which the testimony shall be recorded, and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person to be examined or the particular class or group to which he or she belongs. If a subpoena for the production of documentary and tangible evidence is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to, or included in, the notice.

(2) Special notice. Leave of court is not required for the taking of a deposition by plaintiff if the notice:

(A) States that the person to be examined is about to go out of the county where the action is pending and more than 150 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless the deposition is taken before expiration of the 30 day period; and

(B) Sets forth facts to support the statement.

The plaintiff's attorney shall sign the notice, and said attorney=s signature constitutes a certification by him or her that, to the best of his or her knowledge, information, and belief, the statement and supporting facts are true. If a party shows that, when he or she was served with notice under this paragraph, he or she was unable through the exercise of diligence to obtain counsel to represent him or her at the taking of the deposition, the deposition may not be used against such party.

(3) Time requirements. The court may, for cause shown, enlarge or shorten the time for taking the deposition.

(4) Recording of deposition. Unless the court orders otherwise, the testimony at a deposition must be recorded by stenographic means, and may also be recorded by sound or sound and visual means in addition to stenographic means, and the party taking the deposition shall bear the costs of the recording. A deposition shall be conducted before an officer appointed or designated under Code Section 9-11-28. Upon motion of a party or upon its own motion, the court mayissue an order designating the manner of recording, preserving, and filing of a deposition taken by non-stenographic means, which order may include other provisions to assure that the recorded testimony will be accurate and trustworthy. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means. With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the methods specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. Notwithstanding the foregoing provisions of this paragraph, a deposition may be taken by telephone or other remote electronic means only upon the stipulation of the parties or byorder of the court. For purposes of the requirements of this chapter, a deposition taken by telephone or other remote electronic means is taken in the state and at the place where the deponent is to answer questions.

(5) Production of documents and things. The notice to a party deponent may be accompanied by a request made in compliance with Code Section 9-11-34 for the production of documents and tangible things at the taking of the deposition. The procedure of Code Section 9-11-34 shall apply to the request.

(6) Deposition of organization. A party may, in his or her notice, name as the deponent a public or private corporation or a partnership or association or a governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in this chapter.

(c) *Examination and cross-examination; record of examination; oath; objections.*

(1) Examination and cross-examination of witnesses may proceed as permitted at the trial under the rules of evidence. The authorized officer or court reporter before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the direction and in the presence of the authorized officer or court reporter, record the testimony of the witness.

(2) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and said party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(3) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain the record of each deposition until the later of (A) five years after the date on which the deposition was taken, or (B) two years after the date of final disposition of the action for which the deposition was taken and any appeals of such action. The officer may preserve the record through storage of the original paper, notes, or recordings or an electronic copy of the notes, recordings, or the transcript on computer disks, cassettes, backup tape systems, optical or laser disk systems or other retrieval systems.

(d) *Motion to terminate or limit examination*. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as provided in subsection (c) of Code Section 9-11-26. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses incurred in relation to the motion.

(e) *Review by witness; changes; signing*. If requested by the deponent <u>or</u> a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph (1) of subsection (f) of this Code section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the deposition is not reviewed and signed by the witness within 30 days of its submission to him or her, the officer shall sign it and state on the record that the deposition was not reviewed and signed by the deponent within 30 days. The deposition may then be used as fully as though signed unless, on a motion to suppress under paragraph (4) of subsection (d) of Code Section 9-11-32, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) *Certification and filing by officer; inspection and copying of exhibits; copy of deposition.*

(1)(A) The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. The officer shall then securely seal the deposition in an envelope marked with the title of the action, the court reporter certification number, and "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the

action is pending or deliver it to the party taking the deposition, as the case may be, in accordance with code Section 9-11-29.1.

(B) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification, if he or she affords to all parties fair opportunity to verify the copies by comparison with the originals; and, if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any partyor to the deponent.

(g) *Failure to attend or to serve subpoena; expenses.*

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness, because of such failure, does not attend and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(h) *Form of presentation*. Except as otherwise directed by the court, a party offering deposition testimony may offer it in stenographic or non-stenographic form, but if in non-stenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in non-stenographic form, if available, unless the court for good cause orders otherwise. (Ga. L. 1966, p. 609, ' 30; Ga. L. 1967, p. 226, ' 14; Ga. L. 1972, p. 510, ' 3; Ga. L. 1993, p. 1315, ' 4; Ga. L. 1996, p. 266, ' 1; *Ga. L. 2000, p. 1225, ' 3*.)

9-11-31. Depositions upon written questions.

(a) *Serving questions; notice.*

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Code Section 9-11-45. The deposition of a person confined in a penal institution may be taken only by leave of court on such terms as the court prescribes.

(2) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs and the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with paragraph (6) of subsection (b) of Code Section 9-11-30.

(3) Within 30 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within ten days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve recross-questions upon all other parties. The court may, for cause shown, enlarge or shorten the time.

(b) *Officer to take responses and prepare record*. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by subsections (c), (e), and (f) of Code Section 9-11-30, to take the testimony of the witness in response to the

questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him. (Ga. L. 1966, p. 609, ' 31; Ga. L. 1967, p. 226, ' 15; Ga. L. 1972, p. 510, ' 4.)

9-11-32. Use of depositions in court proceedings; effect of errors and irregularities in depositions.

(a) Use of depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness;

(2) The deposition of a party or of anyone who, at the time of taking the deposition, was an officer, director, or managing agent or a person designated under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf of a public or private corporation, a partnership or association, or a governmental agency which is a party may be used by an adverse party for any purpose;

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) That the witness is dead;

(B) That the witness is out of the county, unless it appears that the absence of the witness was procured by a party offering the deposition;

(C) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena;

(E) That because of the nature of the business or occupation of the witness it is not possible to secure his personal attendance without manifest inconvenience to the public or third persons; or

(F) That the witness will be a member of the General Assembly and that the session of the General Assembly will conflict with the session of the court in which the case is to be tried;

(4) The deposition of a witness, whether or not a party, taken upon oral examination, may be used in the discretion of the trial judge, even though the witness is available to testify in person at the trial. The use of the deposition shall not be a ground for excluding the witness from testifying orally in open court; or

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts. Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefore.

(b) Objections to admissibility. Subject to paragraph (3) of subsection (d) of this Code section, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of taking or using depositions. A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition; but this shall not apply to the use by an adverse party of a deposition under paragraph (2) of subsection (a) of this Code section. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) Effect of errors and irregularities in depositions.

(1) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Code Section 9-11-31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(4) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Code Sections 9-11-30 and 9-11-31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. (Ga. L. 1966, p. 609, ' 32; Ga. L. 1972, p. 510, ' 5; Ga. L. 1984, p. 22, ' 9.)

3. b. FOREIGN DEPOSITIONS

24-10-111. How foreign depositions taken.

Whenever any mandate, writ, or commission is issued out of any court of record in any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in this state, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state. (Ga. L. 1959, p. 311, ' 1.)

3. c. DEPOSITIONS TO PRESERVE TESTIMONY IN CRIMINAL PROCEEDINGS

24-10-130. When deposition to preserve testimony in criminal proceedings may be taken; order of court.

(a)(1) At any time after a defendant has been charged with an offense against the laws of this state or an ordinance of any political subdivision or authority thereof, upon motion of the state or the defendant, the court having jurisdiction to try the offense charged may, after notice to the parties, order that the testimony of a prospective material witness of a party be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place.

(2) At any time after a defendant has been charged with an offense of child molestation, aggravated child molestation, or physical or sexual abuse of a child, upon motion of the state or the defendant, the court having jurisdiction to trythe offense charged may, after notice to the parties, order that the testimony of any physician whose testimony is relevant to such charge be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place.

(b) The court shall not order the taking of the witness's testimony, except as provided in paragraph (2) of subsection (a) of this Code section, unless it appears to the satisfaction of the court that the testimony of the witness is material to the case and the witness:

(1) Is in imminent danger of death;

(2) Has been threatened with death or great bodily harm because of the witness's status as a potential witness in a criminal trial or proceeding;

(3) Is about to leave the state and there are reasonable grounds to believe that such witness will be unable to attend the trial;

(4) Is so sick or infirm as to afford reasonable grounds to believe that such witness will be unable to attend the trial; or

(5) Is being detained as a material witness and there are reasonable grounds to believe that the witness will flee if released from detention.

(c) A motion to take a deposition of a material witness, or a physician as provided in paragraph (2) of subsection (a) of this Code section, shall be verified and must state:

(1) The nature of the offense charged;

(2) The status of the criminal proceedings;

(3) The name of the witness and an address in Georgia where the witness may be contacted;

(4) That the testimony of the witness is material to the case or that the witness is a physician as provided in paragraph (2) of subsection (a) of this Code section; and

(5) The basis for taking the deposition as provided in subsection (b) of this Code section.

(d) A motion to take a deposition shall be filed in the court having jurisdiction to try the defendant for the offense charged; provided, however, if the defendant is charged with multiple offenses, only the court having jurisdiction to try the most serious charge against the defendant shall have jurisdiction to hear and decide the motion to take a deposition.

(e) The party moving the court for an order pursuant to this Code section shall give not less than one day's notice of the hearing to the opposite party. A copy of the motion shall be sent to the opposing party or his or her counsel by any means which will reasonably ensure timely delivery including transmission by facsimile or by digital or electronic means. A copy of the notice shall be attached to the motion and filed with the clerk of court.

(f) If the court is satisfied that the examination of the witness is authorized by law and necessary, the court shall enter an order setting a time period of not more than 30 days during which the deposition shall be taken.

(g) On motion of either party, the court may designate a judge who will be available to rule on any objections to the interrogation of the witness or before whom the deposition shall be taken. The judge so designated may be a judge of any court of this state who is otherwise qualified to preside over the trial of criminal cases in the court having jurisdiction over the offense charged. (Code 1933, ' 38-1301a; *Ga.* L. 1980, p. 426, ' 1; Ga. L. 1994, p. 1895, ' 5; Ga. L. 1995, p. 10, ' 24; Ga. L. 1995, p. 1360, ' 1; Ga. L. 1996, p. 795, ' ' 1, 2; Ga. L. 1996, p. 1233, ' ' 5,6.)

24-10-131. Notice of deposition; presence of defendant at examination; effect of defendant's failure to appear; child witness.

(a) The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined.

(b) On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition.

(c) The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce the defendant at the examination and keep the defendant in the presence of the witness during the examination unless, after being warned by the judge that disruptive conduct will cause the defendant's removal from the place where the deposition is being taken, the defendant persists in conduct which would justify exclusion from that place.

(d) A defendant not in custody shall have the right to be present at the examination; but failure of the defendant, absent good cause shown, to appear, after notice and tender of expenses, shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(e) Notwithstanding the provisions of subsections (c) and (d) of this Code section, if the witness is a child, the court may order that the deposition be taken in accordance with Code Section 17-8-55. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1; Ga. L. 1994, p. 1895, ' 6.)

24-10-132. Appointment of counsel; payment of costs and expenses.

(a) If a defendant is financially unable to employ counsel, the court shall appoint counsel as provided in the uniform rules of the courts, unless the defendant elects to proceed without counsel.

(b) Whenever a deposition is taken at the instance of the state, the cost of any such deposition shall be paid by the state in the same manner as is provided by law for the payment of costs in the appellate courts.

(c) Depositions taken at the instance of a defendant shall be paid for by the defendant; provided, however, that, whenever a deposition is taken at the instance of a defendant who is eligible for the appointment of counsel as provided in the uniform rules of the courts, the court shall direct that the reasonable expenses for the taking of the deposition and of travel and subsistence of the defendant and the defendant's attorney, not to exceed the limits established pursuant to Article 2 of Chapter 7 of Title 45, for attendance at the examination be paid for out of the fine and forfeiture fund of the county where venue is laid. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1; Ga. L. 1994, p. 1895, ' 7.)

24-10-133. Manner of taking and filing deposition.

Except as provided in Code Section 24-10-137, a deposition shall be taken and filed in the manner provided in civil actions, provided that (1) in no event shall a deposition be taken of a party defendant without his or her consent and (2) the scope of examination and cross-examination shall be such as would be allowed in the trial itself. On request or waiver by the defendant, the court may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. Such request shall constitute a waiver by the defendant of any objection to the taking and use of the deposition based upon its being so taken. If a judge has been designated to rule on objections or to preside over the deposition, objections to interrogation of the witness shall be made to and ruled on by such judge in the same manner as at the trial of a criminal case. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1; Ga. L. 1994, p. 1895, ' 8.)

24-10-134. Availability to defendant of deponent's previous statements.

The state shall make available to the defendant, for his examination and use at the taking of the deposition, any statement of the witness being deposed which is in the possession of the state and which the state would be required to make available to the defendant if the witness were testifying at the trial. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1.)

24-10-135. Admissibility and use of deposition.

At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if the witness is unavailable. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering of all of it which is relevant to the part offered and any party may offer other parts. A witness is not unavailable if the exemption, refusal to testify, claim of lack of memory, inability, or absence of such witness is due to the procurement or wrongdoing of the party offering the deposition at the hearing or trial for the purpose of preventing the witness from attending or testifying. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1; Ga. L. 1994, p. 1895, ' 9.)

24-10-136. Objections to admission of deposition.

Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1.)

24-10-137. Recordation of deposition.

(a) Any party shall have the right to require that the deposition be recorded and preserved by the use of audio-visual equipment in addition to a stenographic record. The audio-visual recording shall be transmitted to the clerk of the court which ordered the deposition and shall be made available for viewing and copying only to the prosecuting attorney and defendant's attorney prior to trial. An audio-visual recording made pursuant to this Code section shall not be available for inspection or copying by the public until such audio-visual recording has been admitted into evidence during a trial or hearing in the case in which such deposition is made.

(b) An audio-visual recording made pursuant to this Code section may be admissible at trial or hearing as an alternative to the stenographic record of the deposition.

(c) A stenographic record of the deposition contemplated in this Code section shall be made pursuant to Code Section 9-11-28. (Code 1933, ' 38-1301a, enacted by Ga. L. 1980, p. 426, ' 1; Ga. L. 1994, p. 1895, ' 10.)

24-10-138. Agreement of parties to deposition.

Nothing in this article shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition by agreement of the parties with the consent of the court. (Code 1981, ' 24-10-138, enacted by Ga. L. 1994, p. 1895, '11.)

24-10-139. Depositions taken only in exceptional circumstances; misuse of procedures.

It is the intent of the General Assembly that depositions shall be taken in criminal cases only in exceptional circumstances when it is in the interest of justice that the testimony of a prospective witness be taken and preserved for use at trial. If the court finds that any party or counsel for a party is using the procedures set forth in this article for the purpose of harassment or delay, such conduct may be punished as contempt of court. (Code 1981, ' 24-10-139, enacted by Ga. L. 1994, p. 1895, ' 11.)

4. Appellate Records

4. a. PREPARATION OF RECORD FOR APPEAL

5-6-39. Extensions of time for filing notice of appeal, notice of cross appeal, transcript of evidence, *designation of record and other similar motions*.

(a) Any judge of the trial court or any justice or judge of the appellate court to which the appeal is to be taken may, in his discretion, and without motion or notice to the other party, grant extensions of time for the filing of:

(1) Notice of appeal;

(2) Notice of cross appeal;

(3) Transcript of the evidence and proceedings on appeal or in any other instance where filing of the transcript is required or permitted by law;

(4) Designation of record referred to under Code Section 5-6-42; and

(5) Any other similar motion, proceeding, or paper for which a filing time is prescribed.

(b) No extension of time shall be granted for the filing of motions for new trial or for judgment notwithstanding the verdict.

(c) Only one extension of time shall be granted for filing of a notice of appeal and a notice of cross appeal, and the extension shall not exceed the time otherwise allowed for the filing of the notices initially.

(d) Any application to any court, justice, or judge for an extension must be made before expiration of the period for filing as originally prescribed or as extended by a permissible previous order. The order granting an extension of time shall be promptly filed with the clerk of the trial court, and the party securing it shall serve copies thereof on all other parties in the manner prescribed by Code Section 5-6-32. (Ga. L. 1965, p. 18, ' 6.)

5-6-41. Reporting, preparation, and disposition of transcript; correction of omissions or misstatements; preparation of transcript from recollection; filing of disallowed papers; filing of stipulation in lieu of transcript; reporting of case at party's expense.

(a) In all felony cases, the transcript of evidence and proceedings shall be reported and prepared by a court reporter as provided in Code Section 17-8-5 or as otherwise provided by law.

(b) In all misdemeanor cases, the trial judge may, in the judge's discretion, require the reporting and transcribing of the evidence and proceedings by a court reporter on terms prescribed by the trial judge.

(c) In all civil cases tried in the superior and city courts and in any other court, the judgments of which are subject to review by the Supreme Court or the Court of Appeals, the trial judge thereof may require the parties to have the proceedings and evidence reported by a court reporter, the costs thereof to be borne equally between them; and, where an appeal is taken which draws in question the transcript of the evidence and proceedings, it shall be the duty of the appellant to have the transcript prepared at the appellant's expense. Where it is determined that the parties, or either of them, are financially unable to pay the costs of reporting or transcribing, the judge may, in the judge's discretion, authorize trial of the case unreported; and, when it becomes necessary for a transcript of the evidence and proceedings to be prepared, it shall be the duty of the moving party to prepare the transcript from recollection or otherwise.

(d) Where a trial in any civil or criminal case is reported by a court reporter, all motions, colloquies, objections, rulings, evidence, whether admitted or stricken on objection or otherwise, copies or summaries of all documentary evidence, the charge of the court, and all other proceedings which may be called in question on appeal or other posttrial procedure shall be reported; and, where the report is transcribed, all such matters shall be included in the written transcript, it being the intention of this article that all these matters appear in the record. Where matters occur which were not reported, such as objections to

oral argument, misconduct of the jury, or other like instances, the court, upon motion of either party, shall require that a transcript of these matters be made and included as a part of the record. The transcript of proceedings shall not be reduced to narrative form unless by agreement of counsel; but, where the trial is not reported or the transcript of the proceedings for any other reason is not available and the evidence is prepared from recollection, it may be prepared in narrative form.

(e) Where a civil or criminal trial is reported by a court reporter and the evidence and proceedings are transcribed, the reporter shall complete the transcript and file the original and one copy thereof with the clerk of the trial court, together with the court reporter's certificate attesting to the correctness thereof. In criminal cases where the accused was convicted of a capital felony, an additional copy shall be filed for the Attorney General, for which the court reporter shall receive compensation from the Department of Law as provided by law. The original transcript shall be transmitted to the appellate court as a part of the record on appeal; and one copy will be retained in the trial court, both as referred to in Code Section 5-6-43. Upon filing by the reporter, the transcript shall become a part of the record in the case and need not be approved by the trial judge.

(f) Where any party contends that the transcript or record does not truly or fully disclose what transpired in the trial court and the parties are unable to agree thereon, the trial court shall set the matter down for a hearing with notice to both parties and resolve the difference so as to make the record conform to the truth. If anything material to either party is omitted from the record on appeal or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected and, if necessary, that a supplemental record shall be certified and transmitted by the clerk of the trial court. The trial court or the appellate court may at any time order the clerk of the trial court to send up any original papers or exhibits in the case, to be returned after final disposition of the appeal.

(g) Where a trial is not reported as referred to in subsections (b) and (c) of this Code section or where for any other reason the transcript of the proceedings is not obtainable and a transcript of evidence and proceedings is prepared from recollection, the agreement of the parties thereto or their counsel, entered thereon, shall entitle such transcript to be filed as a part of the record in the same manner and with the same binding effect as a transcript filed by the court reporter as referred to in subsection (e) of this Code section. In case of the inability of the parties to agree as to the correctness of such transcript, the decision of the trial judge thereon shall be final and not subject to review; and, if the trial judge is unable to recall what transpired, the judge shall enter an order stating that fact.

(h) Where any amendment or other pleading or paper which requires approval or sanction of the court in any proceeding before being filed of record is disallowed or sanction thereof is refused, the amendment, pleading, or paper may nevertheless be filed, with notation of disallowance thereon, and shall become part of the record for purposes of consideration on appeal or other procedure for review.

(i) In lieu of sending up a transcript of record, the parties may by agreement file a stipulation of the case showing how the questions arose and were decided in the trial court, together with a sufficient statement of facts to enable the appellate court to pass upon the questions presented therein. Before being transmitted to the appellate court, the stipulation shall be approved by the trial judge or the presiding judge of the court where the case is pending.

(j) In all cases, civil or criminal, any party may as a matter of right have the case reported at the party's own expense. (Ga. L. 1965, p. 18, ' 10; Ga. L. 1993, p. 1315, ' 1.)

5-6-42. Procedure for preparation and filing of transcript of evidence and proceedings where appellant designates matter to be omitted from record on appeal generally; granting of extensions of time to court reporter for completion of transcript.

If the appellant designates any matter to be omitted from the record on appeal as provided in Code Section 5-6-37, the appellee may, within 15 days of serving of the notice of appeal by appellant, file a designation of
record designating that all or part of the omitted matters be included in the record on appeal. A copy of the designation shall be served on all other parties in the manner prescribed by Code Section 5-6-32. Where there is a transcript of evidence and proceedings to be included in the record on appeal, the appellant shall cause the transcript to be prepared and filed as provided by Code Section 5-6-41; but, when the appellant has designated that the transcript not be made a part of the record on appeal and its inclusion is by reason of a designation thereof by appellee, the appellee shall cause the transcript to be prepared and filed as referred to in Code Section 5-6-41 at his expense. The party having the responsibility of filing the transcript shall cause it to be filed within 30 days after filing of the notice of appeal or designation by appellee, as the case may be, unless the time is extended as provided in Code Section 5-6-39. In all cases, it shall be the duty of the trial judge to

grant such extensions of time as may be necessary to enable the court reporter to complete his transcript of evidence and proceedings. (Ga. L. 1965, p. 18, ' 11.)

5-6-43. Preparation and transmittal of record on appeal by court clerk; retention of copy by clerk; furnishing to Attorney General in capital cases; notification where defendant confined to jail.

(a) Within five days after the date of filing of the transcript of evidence and proceedings by the appellant or appellee, as the case may be, it shall be the duty of the clerk of the trial court to prepare a complete copy of the entire record of the case, omitting only those things designated for omission by the appellant and which were not designated for inclusion by the appellee, together with a copy of the notice of appeal and copy of any notice of cross appeal, with date of filing thereon, and transmit the same, together with the transcript of evidence and proceedings, to the appellate court, together with his certificate as to the correctness of the record. Where no transcript of evidence and proceedings is to be sent up, the clerk shall prepare and transmit the record within 20 days after the date of filing of the notice of appeal. If for any reason the clerk is unable to transmit the record and transcript within the time required in this subsection or when an extension of time was obtained under Code Section 5-6-39, he shall state in his certificate the cause of the delay and the appeal shall not be dismissed. The clerk need not recopy the transcript of evidence and proceedings to be sent up on appeal but shall send up the reporter's original and retain the copy, as referred to in Code Section 5-6-41; and it shall not be necessary that the transcript be renumbered as a part of the record on appeal. The clerk shall retain an exact duplicate copy of all records and the transcript sent up, with the same pagination, in his office as a permanent record.

(b) Where the accused in a criminal case was convicted of a capital felony, the clerk shall likewise furnish the Attorney General with an exact copy of the record on appeal, for which the clerk shall receive a fee as required by paragraph (6) of subsection (h) of Code Section 15-6-77, to be paid out of funds appropriated to the Department of Law.

(c) Where a defendant in a criminal case is confined in jail pending appeal, it shall be the duty of the clerk to state that fact in his certificate; and it shall be the duty of the appellate court to expedite disposition of the case.

(d) Where a transcript of evidence and proceedings is already on file at the time the notice of appeal is filed, as where the transcript was previously filed in connection with a motion for new trial or for judgment notwithstanding the verdict, the clerk shall cause the record and transcript (where specified for inclusion) to be transmitted as provided in subsection (a) of this Code section within 20 days after the filing of the notice of appeal. (Ga. L. 1965, p. 18, ' 12; Ga. L. 1966, p. 493, ' 5; Ga. L. 1968, p. 1072, ' 6; Ga. L. 1981, p. 1396, ' 15; Ga. L. 1992, p. 6, ' 5.)

5-6-44. Authorization and procedure generally for filing of joint appeals, motions for new trial, and other motions; division of costs between parties.

(a) Whenever two or more persons are defendants or plaintiffs in an action, and a judgment, verdict, or decree has been rendered against each of them, jointly or severally, or where two or more cases are tried together, the plaintiffs or defendants, as the case may be, shall be entitled, but not required, to file joint appeals, motions for new trial, motions in arrest, motions to set aside, and motions for judgment notwithstanding the verdict, without regard to whether the parties have a joint interest, or whether the cases were merely consolidated for purposes of trial, or whether the cases were simply tried together without an order of consolidation.

(b) Where joint appeals are filed, the appealing parties may nevertheless be entitled, but not required, to file separate enumerations of error in the appellate court.

(c) When separate appeals, motions for new trial, or motions for judgment notwithstanding the verdict are filed, only one transcript of evidence and proceedings (where required) and only one record need be prepared, filed, or transmitted to the appellate court (as the case may be).

(d) In such cases, the court shall by order specify the division of costs between parties.

(e) This Code section shall apply to both civil and criminal cases. (Ga. L. 1965, p. 18, ' 15; Ga. L. 1968, p. 1072, ' 4.)

5-6-48. Grounds for dismissal of appeal; amendments, correcting or supplementing record or transcript; effect of dismissal of appeal upon cross appeal; effect of deficiencies upon consideration of appeal.

(a) Failure of any party to perfect service of any notice or other paper hereunder shall not work dismissal; but the trial and appellate courts shall at any stage of the proceeding require that parties be served in such manner as will permit a just and expeditious determination of the appeal and shall, when necessary, grant such continuance as may be required under the circumstances.

(b) No appeal shall be dismissed or its validity affected for any cause nor shall consideration of any enumerated error be refused, except:

(1) For failure to file notice of appeal within the time required as provided in this article or within any extension of time granted hereunder;

(2) Where the decision or judgment is not then appealable; or

(3) Where the questions presented have become moot.

(c) No appeal shall be dismissed by the appellate court nor consideration of any error therein refused because of failure of any party to cause the transcript of evidence and proceedings to be filed within the time allowed by law or order of court; but the trial court may, after notice and opportunity for hearing, order that the appeal be dismissed where there has been an unreasonable delay in the filing of the transcript and it is shown that the delay was inexcusable and was caused by such party. In like manner, the trial court may order the appeal dismissed where there has been an unreasonable delay in the transmission of the record to the appellate court, and it is seen that the delay was inexcusable and was caused bythe failure of a party to pay costs in the trial court or file an affidavit of indigence; provided, however, that no appeal shall be dismissed for failure to pay costs if costs are paid within 20 days (exclusive of Saturdays, Sundays, and legal holidays) of receipt by the appellant of notice, mailed by registered or certified mail *or statutory overnight delivery*, of the amount of costs.

(d) At any stage of the proceedings, either before or after argument, the court shall by order, either with or without motion, provide for all necessary amendments, require the trial court to make corrections in the record or transcript or certify what transpired below which does not appear from the record on appeal, require that additional portions of the record or transcript of proceedings be sent up, or require that a complete transcript of evidence and proceedings be prepared and sent up, or take any other action to perfect the appeal and record so that the appellate court can and will pass upon the appeal and not dismiss it. If an error appears in the notice of appeal, the court shall allow the notice of appeal to be amended at any time prior to judgment to perfect the appeal so that the appellate court can and will pass upon the appeal and not dismiss it.

(e) Dismissal of the appeal shall not affect the validity of the cross appeal where notice therefore has been filed within the time required for cross appeals and where the appellee would still stand to receive benefit or advantage by a decision of his cross appeal.

(f) Where it is apparent from the notice of appeal, the record, the enumeration of errors, or any combination of the foregoing, what judgment or judgments were appealed from or what errors are sought to be asserted upon appeal, the appeal shall be considered in accordance therewith notwithstanding that the notice of appeal fails to specify definitely the judgment appealed from or that the enumeration of errors fails to enumerate clearly the errors sought to be reviewed. An appeal shall not be dismissed nor consideration thereof refused because of failure of the court reporter to file the transcript of evidence and proceedings within the time allowed by law or order of court unless it affirmatively appears from the record that the failure was caused by the appellant. (Ga. L. 1965, p. 18, ' 13; Ga. L. 1965, p. 240, ' 1; Ga. L. 1966, p. 493, ' 10; Ga. L. 1968, p. 1072, '' 2, 3; Ga. L. 1972, p. 624, ' 1; Ga. L. 1978, p. 1986, ' 1*; Ga. L. 200, p. 1589,* '*3*.)

Editorial note: See also Appellate Court Rules, Section F)

5. Clerks & Notaries

5. a. CLERKS OF SUPERIOR COURTS - FILING AND FEES.

15-5-40. Letter-sized paper to be accepted.

Any pleading or other document filed in any court of record may be prepared on letter-sized paper; and no clerk of any court of record shall refuse to accept for filing any pleading or other document for the reason that it is on letter-sized paper. (Code 1981, ' 15-5-40, enacted by Ga. L. 1983, p. 531, ' 1; Ga. L. 1984, p. 22, ' 15.)

15-6-77. Fees; construction of other fee provisions.

(a) The clerks of the superior courts of this state shall be entitled to charge and collect the sums enumerated in this Code section.

(g) Miscellaneous fees:

(2) Uncertified copies of documents, if no assistance is required from the office of the clerk of superior court, per page 25
Uncertified copies, if assistance is required 1.00
Uncertified copies, if transmitted telephonically or electronically, first page 2.50
Each page, after the first 1.00

(9) Issuing certificate of appointment and reappointment to notaries public, as provided by Code Section 45-17-4 ..... 13.00

(12) Preparation of record and transcript to the Supreme Court and Court of Appeals, per page 1.50

Where a transcript of the evidence and proceedings is filed with the clerk and does not require recopying, the clerk shall not receive the fee herein prescribed with respect to such transcript but shall receive, for filing and transmission of such transcript, a fee of 5.00

Editorial note: only those portions of the Clerk's fee schedule which might apply to court reporting have been reprinted here.

5. b. NOTARIES PUBLIC

45-17-1. Definitions.

As used in this article, the term:

(1) "Attesting" and "attestation" are synonymous and mean the notarial act of witnessing or attesting a signature or execution of a deed or other written instrument, where such notarial act does not involve the taking of an acknowledgment, the administering of an oath or affirmation, the taking of a verification, or the certification of a copy.

(2) "Notarial act" means any act that a notary public is authorized by law to perform and includes, without limitation, attestation, the taking of an acknowledgment, the administration of an oath or affirmation, the taking of a verification upon an oath or affirmation, and the certification of a copy.

(3) "Notarial certificate" means the notary's documentation of a notarial act. (Code 1981, ' 45-17-1, enacted by Ga. L. 1986, p. 1446, ' 1; Ga. L. 1990, p. 8, ' 45.)

45-17-1.1. Power to appoint notaries public.

The power to appoint notaries public is vested in the clerks of the superior courts and may be exercised by them at any time. (Orig. Code 1863, ' 1446; Ga. L. 1868, p. 130, ' 1; Code 1868, ' 1503; Code 1873, ' 1497; Code 1882, ' 1497;

Civil Code 1895, ' 498; Civil Code 1910, ' 616; Code 1933, ' 71-101; Ga. L. 1947, p. 1108, ' 1; Ga. L. 1949, p. 1940, ' 1; Code 1981, ' 45-17-1; Ga. L. 1984, p. 1105, ' 1; Code 1981, ' 45-17-1.1, as redesignated by Ga. L. 1986, p. 1446, ' 1.)

45-17-2. Qualifications of notaries.

(a) Any individual applying for appointment to be a notary public must be:

(1) At least 18 years old;

(2) A resident of this state;

(3) A resident of the county from which such individual is appointed; and

(4) Able to read and write the English language.

(b) The qualifications of paragraphs (2) and (3) of subsection (a) of this Code section shall not apply to any individual applying for appointment as a notary public under the provisions of Code Section 45-17-7. (Orig. Code 1863, ' 1449; Code 1868, ' 1506; Code 1873, ' 1500; Code 1882, ' 1500; Civil Code 1895, ' 501; Civil Code 1910, ' 619; Code 1933, ' 71-102; Ga. L. 1947, p. 1108, ' 1; Ga. L. 1949, p. 1940, ' 2; Ga. L. 1953, Nov.-Dec. Sess., p. 330, ' 1; Ga. L. 1984, p. 1105, ' 1; Ga. L. 1985, p. 1469, ' 1; Ga. L. 1986, p. 1446, ' 2.)

45-17-2.1. Application to be a notary; endorsements and declarations.

(a) Any individual desiring to be a notary public shall submit application to the clerk of superior court of the county in which the individual resides or, when applying under the provisions of Code Section 45-17-7, to the clerk of superior court of the county in which the individual works or has a business.
(Code 1981, '45-17-2.1, enacted by Ga. L. 1984, p. 1105, '1; Ga. L. 1985, p. 1469, ''2,3; Ga. L. 1986, p. 1446, '3; Ga. L. 1999, p. 81, '45.)

45-17-3. Oath of office

Before entering on the duties of his office, each notary public shall take and subscribe before the clerk of the superior court the following oath, which shall be entered on his minutes:

AI, _____, do solemnly swear or affirm that I will well and truly perform the duties of a notary public to the best of my ability; and I further swear or affirm that I am not the holder of any public money belonging to the state and unaccounted for, so help me God.@

(Orig. Code 1863, ' 1447; Ga. L. 1868, p. 130, ' 2; Code 1868, ' 1504; Code 1873, ' 1498; Code 1882, ' 1498; Civil Code 1895, ' 499; Civil Code 1910, ' 617; Code 1933, ' 71-103; Ga. L. 1947, p. 1108, *'1;* Ga. L. 1984, P. 1105, ' 1.)

45-17-6. Seal of office.

(a)(1) For the authentication of his notarial acts each notary public must provide a seal of office, which seal shall have for its impression his name, the words "Notary Public," the name of the state, and the county of his residence; or it shall have for its impression his name and the words "Notary Public, Georgia, State at Large." Notaries commissioned or renewing their commission after July 1, 1985, shall provide a seal of office which shall have for its impression the notary's name, the words "Notary Public," the name of the state, and the county of his appointment. The embossment of notarial certificates by the notary's seal shall be authorized but not necessary, and the use of a rubber or other type stamp shall be sufficient for imprinting the notary's seal. A scrawl shall not be a sufficient notary seal. An official notarial act must be documented bythe notary's seal.

45-17-8. Powers and duties generally.

(a) Notaries public shall have authority to:

(1) Witness or attest signature or execution of deeds and other written instruments;

(2) Take acknowledgments;

(3) Administer oaths and affirmations in all matters incidental to their duties as commercial officers and all other oaths and affirmations which are not by law required to be administered by a particular officer;

(4) Witness affidavits upon oath or affirmation;

(5) Take verifications upon oath or affirmation;

(6) Make certified copies, provided that the document presented for copying is an original document and is neither a public record nor a publicly recorded document certified copies of which are available from an official source other than a notary and provided that the document was photocopied under supervision of the notary; and

(7) Perform such other acts as they are authorized to perform by other laws of this state.

(b) No notary shall be obligated to perform a notarial act if he feels such act is:

(1) For a transaction which the notary knows or suspects is illegal, false, or deceptive;

(2) For a person who is being coerced;

(3) For a person whose demeanor causes compelling doubts about whether the person knows the consequences of the transaction requiring the notarial act; or

(4) In situations which impugn and compromise the notary's impartiality, as specified in subsection (c) of this Code section.

(c) A notary shall be disqualified from performing a notarial act in the following situations which impugn and compromise the notary's impartiality:

(1) When the notary is a signer of the document which is to be notarized; or

(2) When the notary is a party to the document or transaction for which the notarial act is required.

(d) A notary public shall not execute a notarial certificate containing a statement known by the notary to be false nor perform any action with an intent to deceive or defraud.

(e) In performing any notarial act, a notary public shall confirm the identity of the document signer, oath taker, or affirmant based on personal knowledge or on satisfactory evidence.

(f) The signature of a notary public documenting a notarial act shall not be evidence to show that such notary public had knowledge of the contents of the document so signed, other than those specific contents which constitute the signature, execution, acknowledgment, oath, affirmation, affidavit, verification, or other act which the signature of that notary public documents, nor is a certification by a notary public that a document is a certified or true copy of an original document evidence to show that such notary public had knowledge of the contents of the document so certified. (Ga. L. 1863-64, p. 58, ' 2; Code 1863, ' 1451; Code 1868, ' 1508; Code 1873, ' 1502; Code 1882, ' 1502; Civil Code 1895, ' 503; Civil Code 1910, ' 621; Code 1933, ' 71-108; Ga. L. 1947, p. 1108, ' 1; Ga. L. 1984, p. 1105, ' 1; Ga. L. 1986, p. 1446, ' ' 5, 6; Ga. L. 1987, p. 1113, ' 1.)

Editorial note: only those portions of the Notaries Public Act which might apply to court reporting have been reprinted here.

45-17-8.1. Signature and date of notarial act.

(a) Except as otherwise provided in this Code section, in documenting a notarial act, a notary public shall sign on the notarial certification, by hand in ink, only and exactly the name indicated on the notary=s commission and shall record on the notarial certification the exact date of the notarial act.

(b) The requirement of subsection (a) of this Code section for recording of the date of the notarial act shall not apply to an attestation of deeds or any other instruments pertaining to real property.

(c) No document executed prior to July 1, 1986, which would otherwise be eligible for recording in the real property records maintained by any clerk of superior court or constitute record notice or actual notice of any matter to any person shall be ineligible for recording or fail to constitute such notice because of noncompliance with the present or any prior requirements of this Code section. (Code 1981, ' 45-17-8.1; *Ga. L.* 1984, p. 1105, ' 1; Ga. L. 1985, p. 1469, ' 6; Ga. L. 1986, p. 1446, ' 7.)

45-17-8.2. Misrepresentation prohibited.

A notary shall not make claims to have or imply he has powers, qualifications, rights, or privileges that the office of notary does not authorize, including the powers to counsel on immigration matters and to give legal advice. (Code 1981, ' 45-17-8.2; enacted by Ga. L. 1984, p. 1105, ' 1.)

45-17-20. Penalty; prosecution of violations of article.

(a) Any person who violates subsection (d) of Code Section 45-17-8 shall be guilty of a misdemeanor.

(b) Each clerk of superior court is authorized to recommend to the appropriate prosecuting officers that criminal proceedings be instituted for violations of this article. (Code 1981, ' 45-17-20; Ga. L. 1984, p. 1105, ' 1; Ga. L. 1985, p. 149, § 45)

6. Civil Notes, Public Records

6. a. DESTRUCTION OF NOTES - CIVIL

15-14-7. Destruction of notes; how authorized; petition; grounds; notice; order.

(a) Upon petition, the judge of a superior court, city court, or any other court, the judgments of which are subject to review by the Supreme Court or the Court of Appeals, may authorize destruction of a court reporter's notes taken of the evidence and other proceedings in civil actions in that court, subject to this Code section.

(b) The court reporter or other person in whose custody the notes are kept shall file a written petition in the court in which the trial was conducted requesting an order authorizing destruction of notes taken during the trial. The petition shall specify the name of the court reporter, the name of the person in whose custody the notes are kept if other than the court reporter, the place at which the notes are kept, and the names and addresses of the parties to the action or, if the address of a party is unknown, the name and address of counsel to that party if such is known.

(c) The petition shall certify one of the following:

(1) That the action is a civil action in which no notice of appeal has been filed, that the court reporter has not been requested or ordered to transcribe the evidence and other proceedings, and that a period of not less than 37 months has elapsed since the last date upon which a notice of appeal in the action could have been filed; or

(2) That the action is one in which the court reporter has been requested or ordered pursuant to law to transcribe the evidence and other proceedings, that the record has been transcribed, and that a period of not less than 12 months has elapsed from the date upon which the remittitur from the appeal has been docketed in the trial court.

(d) When a petition for the destruction of notes is filed pursuant to this Code section, the court shall cause due notice of the petition and the grounds therefor to be given to each party to the action or, if the address of a party is unknown, to the counsel to the party if such is known.

(e) Not less than 30 days after receipt of a petition pursuant to this Code section, the court shall authorize destruction of the specified notes unless such destruction, in the court's judgment, would impair the cause of justice or fairness in the action. (Ga. L. 1974, p. 410, '' 1-4.)

6. b. PUBLIC RECORDS

50-18-70. Inspection of public records; printing of computerized indexes of county real estate deed records; time for determination of whether requested records are subject to access*; electronic access to records*.

(a) As used in this article, the term "public record" shall mean all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency. "Public *record*" shall also mean such items received or maintained by a private person or entity on behalf of a public office or agency which are not otherwise subject to protection from disclosure; provided, however, this Code section shall be construed to disallow an agency's placing or causing such items to be placed in the hands of a private person or entity for the purpose of avoiding disclosure. As used in this article, the term "agency" or "public agency" or "public office" shall have the same meaning and application as provided for in the definition of the term "agency" in paragraph (1) of subsection (a) of Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization which: (1) has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state or their officers or any combination thereof; and (2) derives a substantial portion of its general operating budget from payments from such political subdivisions.

(b) All public records of an agency as defined in subsection (a), of this Code Section except those which by order of a court of this state or by law are prohibited or specifically exempted from being open to inspection by the general public, shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen.

(c) Any computerized index of a county real estate deed records shall be printed for purposes of public inspection no less than every 30 days and any correction made on such index shall be made a part of the printout and shall reflect the time and date that said index was corrected.

(d) No public officer or agency shall be required to prepare reports, summaries, or compilations not in existence at the time of the request.

(e) In a pending proceeding under Chapter 13 of this title, the "Georgia Administrative Procedure Act," or under any other administrative proceeding authorized under Georgia law, a party may not access public records pertaining to the subject of the proceeding pursuant to this article without the prior approval of the presiding administrative law judge, who shall consider such open record request in the same manner as any other request for information put forth by a party in such a proceeding. This subsection shall not apply to any proceeding under Chapter 13 of this title, relating to the revocation, suspension, annulment, withdrawal, or denial of a professional education certificate, as defined in Code Section 20-2-200, or any personnel proceeding authorized under Part 7 and Part 11 of Article 17 and Article 25 of Chapter 2 of Title 20.

(f) The individual in control of such public record or records shall have a reasonable amount of time to determine whether or not the record or records requested are subject to access under this article *and to permit inspection and copying*. In no event shall this time exceed three business days***. Where responsive records exist but are not available within three business days of the request, a written description of such records, together with a timetable for their inspection and copying, shall be provided within that period; provided, however, that records not subject to inspection under this article need not be made available for inspection and copying or described other than as required by subsection (h) of Code Section 50-18-72, and no records need be made available for inspection or copying if the public officer or agency in control of such records shall have obtained, within that period of three business days, an order based on an exception in this article of a superior court of this state staying or refusing the requested access to such records***

(g)***At the request of the person, firm, corporation, or other entity requesting such records, records maintained by computer shall be made available where practicable by electronic means, including Internet access, subject to reasonable security restrictions preventing access to nonrequested or nonavailable records.*** (Ga. L. 1959, p. 88, ' 1; Code 1981, ' 50-18-70; Ga. L. 1982, p. 1789, ' 1; Ga. L. 1988, p. 243, ' 1; Ga. L. 1992, p. 1061, ' 5; Ga. L. 1992, p. 1545, ' 1; Ga. L. 1992, p. 2829, ' 2; Ga. L. 1993, p. 1394, ' 2; Ga. L. 1993, p. 1436, ' ' 1, 2; Ga. L. 1994, p. 618, ' 1; Ga. L. 1998, p. 128, ' 50*; Ga. L. 1999, p.552,* ' ' *1,2*.)

50-18-90. Georgia Records Act.

50-18-91. Definitions.

As used in this article, the term:

(1) "Agency" means any state office, department, division, board, bureau, commission, authority, or other separate unit of state government created or established by law.

(2) "Court record" means all documents, papers, letters, maps, books (except books formally organized in libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or, in the necessary performance of any judicial function, created or received by an official of the Supreme Court, Court of Appeals, and any superior, state, juvenile, probate, or magistrate court. "Court record" includes records of the offices of the judge, clerk, prosecuting attorney, public defender, court reporter, or any employee of the court.

(5) "Records" means all documents, papers, letters, maps, books (except books in formally organized libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in performance of functions by any agency.

(6) ARecords center@ means an establishment maintained by the department primarily for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency=s office equipment or office space.

(7) ARecord series@ means documents or records having similar physical characteristics or relating to a similar function or activity that are filed in a unified arrangement.

(8) "Records management" means the application of management techniques to the creation, utilization, maintenance, retention, preservation, and disposal of records undertaken to reduce costs and improve efficiency of record keeping. "Records management" includes management of filing and microfilming equipment and supplies; filing and information retrieval systems; files, correspondence, reports, and forms management; historical documentation; micrographics; retention programming; and vital records protection.

(9) "Retention schedule" means a set of disposition instructions prescribing how long, where, and in what form a record series shall be kept.

(10) "Vital records" means any record vital to the resumption or continuation of operations, or both; to the re-creation of the legal and financial status of government in the state; or to the protection and fulfillment of obligations to citizens of the state.

50-18-92. Creation of State Records Committee; membership; duties; retention schedules; appeal to committee by agency heads; court records.

(a) There is created the State Records Committee, to be composed of the Governor, the Secretary of State, an appointee of the Governor who is not the Attorney General, the state auditor, and an officer of a governing body, as such terms are defined in subsection (a) of Code Section 50-18-99, to be appointed by the Secretary of State, or their designated representatives. It shall be the duty of the committee to review, approve, disapprove, amend, or modify retention schedules submitted by agency heads, school boards, county governments, and municipal governments through the division for the disposition of records based on administrative, legal, fiscal, or historical values. The retention schedules, once approved, shall be authoritative, shall be directive, and shall have the force and effect of law. A retention schedule may be determined by three members of the committee. Retention schedules may be amended by the committee on change of program mission or legislative changes affecting the records. The Secretary of State shall serve as chairperson of the committee and shall schedule meetings of the committee as required. Three members shall constitute a quorum. Each agency head has the right of appeal to the committee for actions taken under this Code section.
(b) Each court of this state may recommend to the State Records Committee and the Administrative Office of the Courts retention schedules for records of that court. The committee, with the concurrence of the Administrative Office of the Courts, shall adopt retention schedules for court records of each court. The destruction of court records by retention schedule shall not be construed as affecting the status of each court as a court of record. (Ga. L. 1972, p. 1267, ' 3; Ga. L. 1975, p. 675, ' 2; Ga. L. 1978, p. 1372, ' 1; Ga. L. 1981, p. 1422, ' 2; Ga. L. 1988, p. 426, ' 1.)

50-18-97. Effect of certified copies of records; fee.

The division may make certified copies under seal of any records or any preservation duplicates transferred or deposited in the Georgia State Archives or the records center or may make reproductions of such records. The certified copies of reproductions, when signed by the director of the department, shall have the same force and effect as if made by the agency from which the records were received. The department may establish and charge reasonable fees for such services. (Ga. L. 1972, p. 1267, ' 9.)

50-18-99. Records management programs for local governments.

(c) All records created or received in the performance of a public duty or paid for by public funds by a governing body are deemed to be public property and shall constitute a record of public acts.

50-18-102. Records as public property; destruction, alienation, etc., of records other than by approved retention schedule as misdemeanor; person acting under article not liable.

(a) All records created or received in the performance of duty and paid for by public funds are deemed to be public property and shall constitute a record of public acts.

(b) The destruction of records shall occur only through the operation of an approved retention schedule. The records shall not be placed in the custody of private individuals or institutions or semiprivate organizations unless authorized by retention schedules.

(c) The alienation, alteration, theft, or destruction of records by any person or persons in a manner not authorized by an applicable retention schedule is a misdemeanor.

(d) No person acting in compliance with this article shall be held personally liable. (Ga. L. 1972, p. 1267, ' 7; Ga. L. 1975, p. 675, ' 7.)

Editorial note: See also Retention Schedules - Section G

7. Electronic Signatures

7. a. Electronic records and signatures act

10-12-1. Short Title

This chapter shall be known and may be cited as the "Georgia Electronic Records and Signatures Act."

10-12-2. Construction

(a) The provisions of this chapter shall be construed to promote the development of electronic government and electronic commerce. (Code 1981, ' 10-12-2, enacted by Ga. L. 1997, p.1052, ' 1.)

(b) The General Assembly finds that this chapter is consistent with the Electronic Signatures in Global and National Commerce Act (15 U.S.C.S. Sections 7001, et seq., and 47 U.S.C.S. Section 231) as contemplated in Section 7002 (a)(2)(A) thereof and therefore continues to have the full force of law. The General Assembly further reaffirms its intent that this chapter continue to have the full force of law.

10-12-3. Definitions

As used in this chapter the term:

(1) "Electronic" means, without limitation, analog, digital, electronic, magnetic, mechanical, optical, chemical, electromagnetic, electromechanical, electrochemical, or other similar means.

(2) "Electronic record" means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form.

(3) "Electronic signature" means a signature created, transmitted, received, or stored by electronic means and includes but is not limited to a secure electronic signature.

(4) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity, and also includes any department, agency, authority, or instrumentality of the state or its political subdivisions.

(5) "Record" means information created, transmitted, received, or stored either in human perceivable form in a form that is retrievable in human perceivable form.

(6) "Secure electronic signature" means an electronic or digital method executed or adopted by a party with the intent to be bound by or to authenticate a record, which is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data are changed the electronic signature is invalidated.

(7) "Signature" means any symbol or method that a person causes to be attached to or logically associated with a record with the intent to sign such record. (Code 1981, ' 10-2-3, enacted by Ga. L. 1997, p. 1052, ' 1; Ga. L. 1998, p. 232, ' 1; Ga. L. 1999, p. 323, ' 1.)

10-12-4. Legal Effect; Contest based on fraud; authentication or identification; limitations; notary.

(a) Records and signatures shall not be denied legal effect or validity solely on the grounds that they are electronic.

(b) In any legal proceeding, an electronic record or electronic signature shall not be inadmissible as evidence solely on the basis that it is electronic.

(c) When a rule of law requires a writing, an electronic record satisfies that rule of law.

(d) When a rule of law requires a signature, an electronic signature satisfies that rule of law.

(e) When a rule of law requires an original record or signature, an electronic record or electronic signature shall satisfy such rule of law.

(f) Nothing in this Code section shall prevent a party from contesting an electronic record or signature on the basis of fraud.

(g) Nothing in this Code section shall relieve any party to a legal proceeding from complying with applicable rules of evidence requiring authentication or identification of a record or signature as a condition precedent to its admission into evidence.

(h) Where the authenticity or the integrity of an electronic record or signature is challenged in a court of law, the proponent of the electronic record or signature shall have the burden of proving that the electronic record or signature is authentic.

(i) Notwithstanding the preceding subsections of this Code section, the legal validity, effect, and admissibility of electronic records and electronic signatures shall be limited as follows:

(1) Each department, agency, authority, or instrumentality of the state or its political subdivisions shall determine how and the extent to which it will create, send, receive, store, recognize, accept, be bound by, or otherwise use electronic records or electronic signatures. Nothing in this chapter shall be construed to require any department, agency, authority, or instrumentality of the state or its political subdivisions to create, send, receive, store, recognize, accept, be bound by, or otherwise use electronic records or electronic signatures;

(2) A consumer shall not be required to create, send, receive, recognize, accept, be bound by, or otherwise use electronic records or electronic signatures without such consumer's consent. This paragraph shall apply to natural persons when engaged in transactions involving money, property, or services primarily used for household purposes; and

(3) The provisions of this Code section shall not apply to any rule of law governing the creation or execution of a will or testamentary or donative trust, living will, or health care power of attorney, or to any record that serves as a unique and transferable physical token of rights and obligations, including, without limitation, negotiable instruments and instruments of title wherein possession of the instrument is deemed to confer title.

(j) Any rule of law which requires a notary shall be deemed satisfied by the secure electronic signature of such notary. (Code 1981, ' 10-12-4, enacted by Ga. L. 1997, p. 1052, ' 1; Ga. L. 1998. p. 232, ' 2; Ga. L. 1999, p. 323, ' 1.)

10-12-5. Unauthorized use of Electronic signature.

A person whose electronic signature is used in an unauthorized fashion may recover or obtain any or all of the following against the person who engaged in such unauthorized use, provided that the use of such electronic signature in an unauthorized fashion was negligent, reckless, or intentional:

(1) Actual damages;

(2) Equitable relief, including, but not limited to, an injunction or restitution of money or property;

(3) Punitive damages under the circumstances set forth in Code Section 51-12-5.1;

(4) Reasonable attorneys' fees and expenses; and

(5) Any other relief which the court deems proper. Nothing in this Code section shall be deemed to waive the sovereign immunity otherwise provided by law to the state or any of its political subdivisions. (Code 1981, ' 10-12-5, enacted by Ga. L. 1997, p. 1052, ' 1; Ga. L. 1998, p. 232, ' 3.)

9-11-5. Service and filing of pleadings subsequent to the original complaint and other papers.

(a) Service -- When required. Except as otherwise provided in this chapter, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every

written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. However, the failure of a party to file pleadings in an action shall be deemed to be a waiver by him of all notices, including notices of time and place of trial, and all service in the action, except service of pleadings asserting new or additional claims for relief, which shall be served as provided bysubsection (b) of this Code section.

(b) Same -- How made. Whenever under this chapter service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. As used in this Code section, the term "delivery of a copy" means handing it to the attorney or to the party, or leaving it at his office with his clerk or other person in charge thereof or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Proof of service may be made by certificate of an attorney or of his employee, by written admission, by affidavit, or by other proof satisfactory to the court. Failure to make proof of service shall not affect the validity of service.

(c) Same -- Numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants, and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties, and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court within the time allowed for service.

(e) "Filing with the court" defined. The filing of pleadings and other papers with the court as required by this chapter shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. (Ga. L. 1966, p. 609, ' 5' Ga. L. 1967, p. 226, ' 4.)

7. c. Electronic Filing

15-10-53. Filing by Electronic means.

(a) Any magistrate court may provide for the filing of civil, garnishment, distress warrant, dispossessory, foreclosure, abandoned motor vehicle, and all other noncriminal actions, claims, answers, counterclaims, pleadings, postjudgment interrogatories, and other documents by electronic means.

(b) Any pleading or document filed electronically shall be in a format prescribed by the court.

(c) Any pleading or document filed electronically shall include the electronic signature of the person filing the pleading or document as defined in Code Section 10-12-3.

(d) Any pleading or document filed electronically which is required to be verified, verified under oath, or be accompanied by an affidavit may include such verification, oath, or affidavit by one of the following methods:

(1) As provided in subsection (j) of Code Section 10-12-4;

(2) By oath or affirmation of the party filing the pleading at the time of the trial of the case;

(3) By supplemental verified pleading; or

(4) By electronic verification, oath, or affidavit in substantially the following form: "By affixing this electronic verification, oath, or affidavit to the pleading(s) submitted to the court and attaching my electronic signature hereon, I do hereby swear or affirm that the statements set forth in the above pleading(s) are true and correct. Date:_____ Electronic Signature:_____"

(e) Service of any claim or complaint filed electronically shall be made as provided by law. Service of all subsequent pleadings and notices may be made electronically only on a party who has filed pleadings electronically; service on all other parties shall be made by such other means as are provided by law. Each pleading or document which is required to be served on other parties shall include a certificate of service indicating the method by which service on the other party has been made. An electronic certificate of service shall be made in substantially the following form: "By affixing this electronic certificate of service to the pleading(s) or document(s) submitted to the court and attaching my electronic signature hereon, I do hereby swear or affirm that I have this date served the opposing party with a copy of this pleading by e-mail or placing a copy in regular mail with sufficient postage thereon to the following address: (set forth address of opposing party). Date:_____ Electronic Signature:_____"

(f) Nothing in this Code section shall prevent a party from contesting an electronic pleading, document, or signature on the basis of forgery or fraud. Any pleading or document found by the court to have been fraudulently filed shall be stricken from the record.

(g) Where the authenticity or the integrity of an electronic pleading, document, or signature is challenged, the proponent of the electronic pleading, document, or signature shall have the burden of proving that the electronic pleading, document, or signature is authentic.

(h) Upon the receipt of any pleading or other document filed electronically, the clerk of magistrate court shall notify the filer of receipt of the pleading or document. Such notice shall include the date and time the court accepted the pleading or document as filed.

(i) Any pleading or document filed electronically shall be deemed filed as of the time the clerk of court gains electronic control of the document.

(j) When the filing of the pleading or document requires the payment of a fee, the clerk of magistrate court may establish procedures for the payment of such fees connected with such filing. The filing of any such pleading or document shall create an obligation by the party to pay such fee to the clerk of court instanter.

(k) The clerk of court may assess an additional transaction fee or fees for each electronic filing and electronic payment. (Code 1981, ' 15-10-53, enacted by Ga. L. 2000, p. 1580, ' 1.)

Judicial Council of Georgia
Board of Court Reporting

CASE LAW

Case Law in Georgia

Report of Case

1. **Where the plaintiff agreed with the reporter that he should take notes on the testimony given in a civil case, and the plaintiff was alone responsible for the fees to be paid for the service, the defendant could not compel the reporter to transcribe stenographic notes even though the defendant offered to pay the entire cost of reporting and transcribing the case.**

   There is no statutory duty to transcribe notes where the official reporter takes testimony in a civil case pursuant to an agreement with one of the parties, in which the other expressly declines to join. Such a duty arises only under the contract with the party who employed the reporter.
   Harrington v. Harrington, 224 Ga. 305, 161 S.E. 2d 862 (1968); *See also: Nixdorf Enterprises, Inc. v. Bell*, 127 Ga. App. 617, 194 S.E. 2d 486 (1972); O.C.G.A. § 15-14-20, § 15-14-23.

   However, provided that they pay a reasonable fee, any party or deponent may have a copy of the deposition transcripts under O.C.G.A. sec. 9-11-30(f)(2).
   Sams v. Champion, 184 Ga. App. 444, 361 S.E. 2d 852 (1987).

   A. **No private agreement of a court reporter and one party can prejudice the rights of the other party to have a transcript of the proceedings prepared.**

      If a party wishes to rely on the rule set forth above in *Harrington v. Harrington*, 224 Ga. 305, 161 S.E. 2d 862 (1968), he must invoke a ruling of a trial judge at commencement of proceedings that his opponent has expressly refused to participate in the costs of reporting. By placing this affirmative burden on the party seeking forfeiture of right of his opponent, it is intended that the possibility that a party will lose this important right by inadvertence or mistake will be avoided.
      Giddings v. Starks, 240 Ga. 496, 241 S.E. 2d 208 (1978).

      Party cannot be compelled to require a court reporter to prepare a transcript for opposing party, where they "clearly and distinctly stated that they did not desire to have the testimony transcribed and that he did not desire to share the cost of the take-down."
      Tow v. Reed, 180 Ga. App. 609, 349 S.E.2d 829 (1986), Ruffin v. Banks, 249 Ga. App. 297 (2001).

   B. **A party's exclusive right to transcripts of a proceeding, in which the other party refused to participate in contracting with the court reporter, does not extend to the transcript once it is filed.**
      Georgia American Insurance Company v. Varnum, 182 Ga. App. 907, 357 S.E. 2d 609 (1987).

2. **In all civil and criminal cases it is the right of any party to have the case recorded at his own expense.**

   It is the duty of the judge to appoint the court reporter and the duty of the reporter to attend all sessions in court.
   Massey v. State, 127 Ga. App. 638, 194 S.E. 2d 582 (1972); O.C.G.A. § 5-6-41, § 15-14-21; *See also: Dumas v. State*, 131 Ga. App. 79, 205 S.E. 2d 119 (1974).

   A. **It is not mandatory for the trial judge to have cases reported.**

      The provisions of § 5-6-41 (c) are discretionary. Nor is the judge obligated to inform parties of their right to have the case reported at their own expense.
      Gunter v. The National City Bank, 239 Ga. 496, 238 S.E. 2d 48 (1977); O.C.G.A. § 5-6-41 (c, j).

B. It is not incumbent on the trial judge to arrange for the official reporter to take down the evidence at the interlocutory hearing or the subsequent contempt hearing.

It has long been the practice in Georgia for counsel to arrange in advance if they want it done. The law does not mandate that every civil case be reported.
Savage v. Savage, 234 Ga. 853, 218 S.E. 2d 568 (1975).

If a plaintiff specifically declines to have a hearing transcribed *[sic]*, even though a court reporter is available at the call of the calendar, the trial judge is not obligated to have the hearing taken down.
Hixson v. Hickson (Two Cases), 236 Ga. App. 894, 512 S. E. 2d 648 (1999).

C. It lies within the discretion of the trial court to grant or deny an indigent the transcription of the trial of a misdemeanor.
Hughes v. State, 168 Ga. App. 413, 309 S.E. 2d 409 (1983).

D. When defendant in misdemeanor case asks that the case be recorded at his expense, the court must make sure that the court reporter is available to comply with the request.

Statutes do not put the duty upon the defendant who is charged with a misdemeanor and faces possible fine or imprisonment to insure prior to trial that the court reporter is complying with the statutory duty to attend court sessions. Further, the duty to make advance arrangements for the reporter cannot be imposed upon the defendant merely because of long established practice.
Thompson v. State, 240 Ga. 296, 240 S.E. 2d 87 (1977).

E. In the absence of a specific request by counsel, no record is required in a misdemeanor case.
Hunter v. State, 143 Ga. App. 541, 239 S.E. 2d 212 (1977).

F. Tape recording juvenile court proceedings is permissible under O.C.G.A § 15-28-11(b), where party did not object to said means of recordation.
In Re E.D. F., 243 Ga. App. 68, 532 S.E.2d 424 (2000).

3. Arguments of counsel need not be recorded.

O.C.G.A. § 17-8-5 states that the arguments of counsel need not be recorded where appellant made no request at trial that the opening statements of counsel be recorded. Thus there was no specific showing of how opening statements of prosecuting attorney were harmful and prejudicial to him. (The failure of the trial court to record the opening statements was not error.)
Newman v. State, 239 Ga. 329, 263 S.E. 2d 673 (1977); *Brown v. State*, 242 Ga. 602, 250 S.E. 2d 491 (1978); O.C.G.A. § 17-8-5.

A. Closing argument was not transcribed by court reporter (such is not required) and appellate court was not furnished with stipulation in record of reconstruction of argument and thus had nothing before it on which to rule as to enumeration of error relating to trial judge's failure to take proper corrective measures against prejudicial statement allegedly made by district attorney in closing argument.
Lyle v. State, 131 Ga. App. 8, 208 S.E. 2d 126 (1974).

B. Although not required by statute, counsel's closing arguments should be recorded when the state is seeking the death penalty. Failure to transcribe counsel's closing arguments does not automatically require the death penalty to be set aside.
Stephens v. Hopper, 241 Ga. 596, 247 S.E. 2d 92 (1978).

C. In absence of request, trial court does not err in failing to order recordation of voir dire, opening statements, and closing arguments.
Simmons v. State, 160 Ga. App. 391, 287 S.E. 2d 338 (1981).

D. Motion for a new trial is part of the "proceedings" in a felony as contemplated by O.C.G.A. § 17-85.
Hall v. State, 162 Ga. App. 713, 293 S.E. 2d 862 (1982).

4. Failure to record the voir dire in a case in which the sentence of death is imposed, is reversible error.
Owens v. State, 233 Ga. 869, 214 S.E. 2d 173 (1975).

A. The reporting of the voir dire is not mandatory in all felony cases. Any objection or motion in the course of voir dire and the court's ruling thereon must be reported.

However, it is not required that the entire voir dire in a felony case be reported, unless the death penalty is sought.
If the defendant wished a more complete record of the questioning of the juror in issue, he should have made a motion at the time of his objection to have the questions and answers made a part of the record.
The Supreme Court reversed the lower court's decision that voir dire is mandatory in all felony cases.
State v. Graham, 246 Ga. 341, 271 S.E. 2d 627 (1980).

5. Any contentions regarding a jury charging conference are not appealable, absent a transcript.

Where a jury charging conference is not subject to court reporter take-down at the request of both parties, any contentions on the matter are not appealable.
Fields v. State, 223 Ga. App. 569, 479 S.E. 2d 393 (1996).

6. In misdemeanor prosecution, defense counsel's failure to respond affirmatively to court's offer to have evidence and proceeding transcribed did not constitute ineffective counsel as a matter of law.
Hunt v. State, 133 Ga. App. 548, 211 S.E. 2d 601 (1974).

7. In felony prosecution, the law requires that testimony be reported and entered on the minutes of the court, eventually. Where the evidence discloses that the reporter could not have possibly prepared the transcript within 30 days the lower court erred in dismissing the appeal.

This is not a case of unreasonable delay.
Jackson v. State, 130 Ga. App. 581, 203 S.E. 2d 923 (1974)

A. Failure to timely file the transcript is not a basis for dismissal of appeal unless trial court finds delay unreasonable and inexcusable.
Patterson v. Professional Resources, 242 Ga. 459, 249 S.E. 2d 248 (1978).

Under statute O.C.G.A. §§ 5-6-42 and 5-6-48, the transcript of court proceedings must be filed within 30 days after notice of appeal is filed unless filing time is extended. To determine whether timely filing of the transcript did not occur due to inexcusable delay, the court will look to totality of circumstances. It is the appealing party's responsibility to order the transcript from the court reporter.
Jackson v. Beech Aircraft Corp., 217 Ga. App. 498, 458 S.E.2d 377 (1995).

B. Party must request extension of time though initial delay not his fault.

Where the evidence of record showed that after directing his secretary to call the court reporter and receiving her report regarding that conversation, appellant's counsel was duly placed on notice by his secretary's report of the phone conversation that the transcript was not fully transcribed as of the date of that call; this evidence, coupled with appellant's failure to request an extension of time and the lengthy delay that occurred in the preparation of the transcript, amply supported the findings of the trial judge and affirmatively established on the record that the failure to obtain an extension of filing time was caused by the appellant.
Baker v. Southern Ry., 192 Ga. App. 444, 385 S.E. 2d 125 (1989).

Where the transcript was completed by the court reporter, who failed to file it in the clerk's office, a six-day delay did not amount to an unreasonable delay in filing, nor was it inexcusable.
Wagner v. Howell, 257 Ga. 801, 363 S.E. 2d 759 (1988).

Burden is on appellant to request extension for filing transcript, and this burden cannot be shifted to court reporter by implying latter's duty to apply for extension.
Dunbar v. Green, 232 Ga. 188, 205 S.E. 2d 854 (1974).

Court reporter is amenable to trial judge for prompt and efficient performance of his duties. This relationship ordinarily provides judge with sufficient facts upon which to decide whether to grant or deny application for extension of time to file transcript without necessity of notice and hearing.
Rogers v. McDonald, 226 Ga. 329, 175 S.E. 2d 25 (1970).

"The mere passage of time [before the filing of a transcript] is not enough, without more, to constitute a denial of due process.]
Proffitt v. State, 181 Ga. App. 564, 353 S.E. 2d 61 (1987); *Boone v. State*, 1 FCDR 1646 (2001).

C. Transcript of habeas corpus hearing.

There is no clear legal duty to file transcript of a habeas corpus hearing within a particular period of time, but the court should exercise a sound discretion in inquiring into the cause for the delay in transcription and so base its decision for or against dismissal of complaint seeking mandamus.
Everett v. Rewis, 244 Ga. 427, 260 S.E. 2d 336 (1979).

D. Dicta from the case of Lowry v. State suggest increased attention by both judges and courts toward the timeliness of the Reporter's preparation of transcripts.

"Nonetheless, we feel compelled to state that every effort should be made by both the bench and the bar to avoid such lengthy delays in preparing transcripts of trials. Trial judges should exercise close supervision of court reporters to ensure prompt delivery of transcripts. Parties and counsel requesting transcripts should be diligent in payment to the court reporter and in checking on the progress of the transcript. Only through such efforts can litigation be brought to an orderly and timely end."
Lowry v. State, 171 Ga. App. 118, 318 S.E. 2d 744 (1984).

E. Under OCGA 5-6-48(f) Appellants are not accountable for delays caused by clerks of court, or caused by court reporters after the transcript has been ordered properly; appellants are only held accountable for delays that they cause.
Baker v. Southern R. Co., 260 Ga. 115, 390 S.E. 2d 576 (1990).

8. Duty to transcribe evidence in felony case, though punishment reduced to misdemeanor, or where misdemeanor found.
Williams v. Cooley, 127 Ga. 21, 55 S.E. 917 (1906).
Rozar v. McAllister, 138 Ga. 72, 74 S.E. 792 (1912).

9. All court reporters must transcribe evidence and other proceedings of which they have taken notes whenever requested to do so by counsel for any party, upon being paid the legal fees for such transcripts.

This was held not applicable where the record did not disclose that the appellant paid or offered to pay court reporter the legal fees for transcript of evidence.
Hair v. Chilton, 223 Ga. 632, 157 S.E. 2d 290 (1967).

10. Defendant is not entitled to daily transcript of proceeding in criminal case.
Chenault v. State, 234 Ga. 216, 215 S.E. 2d 223 (1975).

11. If proper foundation is laid for the playing of tape recording of defendant's statement, trial court will not err in allowing the court reporter to transcribe testimony from the recording after the trial instead of during the trial when the recording is heard by the jury.
Harris v. State, 237 Ga. 718, 230 S.E. 2d 237 (1976).

12. It is the duty of the state in all felony cases to have transcript of evidence or proceedings reported and prepared and after a guilty verdict has been returned, to file the transcript.
Parrott v. State, 134 Ga. App. 160, 214 S.E. 2d 3 (1975).

A. The state's duty to request court reporter to transcribe reported testimony in a felony conviction has no time limit and thus cannot relieve appellant of his duty to request court reporter to transcribe reported testimony at the same time that he files his notice of appeal.
State v. Hart, 246 Ga. 212, 271 S.E. 2d 133 (1980).

B. It is not the function of (the appellate) Court to prepare a transcript of the trial; that is the function of the state, as required by O.C.G.A. § 5-6-41(a).

"[N]otwithstanding fact that court reporter claimed she could not certify a completely accurate transcript of composite of wiretap tapes which were played during defendants' trial, record and trial transcript were complete and accurate enough to afford a full and fair review by Court of Appeals as to sufficiency of the evidence against defendant.
State v. Knowles, 247 Ga. 218, 274 S.E.2d 468 (1981).

13. Guilty Pleas and Reporting.

One cannot presume from a silent record that a guilty plea was voluntarily and knowingly entered. The record must show, or some evidence or allegation must show affirmatively that a plea of guilty was in fact knowingly and voluntarily entered.
Boykin v. Alabama, 395 U.S. 238, 89 SC 1709, 23 S.E. 2d 274 (1968);
Purvis v. Connell, 227 Ga. 764, 182 S.E. 2d 892 (1971).

14. The party having the responsibility of preparing and filing the transcripts refers to either the appellant or the appellee.

The obligation of the appellant relates to the transcript, and the obligation for the preparation of the record rests with the clerk. After the appellant has filed a notice of appeal, his duty as to the record is limited to the payment of costs (to the Clerk). Where the clerk fails to transmit the record, but there is no indication that this failure is occasioned by the failure of a party to pay costs, the trial court has no discretion to dismiss the appeal.
Long v. City of Midway, 251 Ga. 364, 306 S.E. 2d 639 (1983).

15. Where the notice of appeal states that a transcript of evidence and proceedings will be filed for inclusion in the record on appeal, the appellant is the party ultimately responsible for filing the transcript.
Curtis v. State, 168 Ga. App. 235, 308 S.E. 2d 599 (1983).

Where the proceedings of a bench trial are not recorded by a court reporter, if the appellant fails to submit a statutorily authorized substitute for consideration on appellate review, the appellate court will conclude that the trial court decided the case correctly.
Alexander v. Jones, 216 Ga. App. 360, 454 S.E. 2d 539 (1995)

16. Appellee's right where appellant designates portion to be omitted.

Even if the appellant has designated a relevant portion of the record on appeal for omission, the appellee is entitled, under this section, to file his own designation of record to correct the deficiency and, the appellee also has a remedy for correction of the record under O.C.G.A. § 5-6-41 (f), even after it has been transmitted

to the Court of Appeals; in the absence of any attempt on the appellee's part to exercise these remedies, the Court of Appeals must assume that the record before it is complete in all relevant respects.
Boats for Sail v. Sears, 158 Ga. App. 74, 279 S.E. 2d 314 (1981).

17. An official court reporter's tape of a judge's remarks in open court is a court record.

Superior Court Rule 21 provides: "All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below." No law limits public access to the judge's taped comments nor can access to them be denied under the procedure set out in Rule 21, which was not invoked [in this case]. Therefore, the tape or its transcript must be made available for public inspection under Rule 21.
Green v. Drinnon, Inc., 262 Ga. 264, 417 S.E. 2d 11 (1992).

18. Role of Court Reporter.
It is not a harmless error when the court reporter, as only an employee of the court and official transcriber of witness testimony, also testifies as a witness in a case for which she is reporting.
Slakman v. State, 272 Ga. 662, 533 S.E.2d 383 (2000).

19. No absolute right to a free transcript.

While there is a basic right to a free transcript to perfect a timely direct appeal, there is no absolute right to a free transcript. Petitioner must give some justification for use in a habeas corpus or related proceeding must be shown to be entitled to such records in a collateral attack.
Mydell v. Clerk, Superior Court of Chatham County, 241 Ga. 24, 243 S.E. 2d 72 (1978)**;** *Wilson v. Downie*, 228 Ga. 656 187, S.E. 2d 193 (1972).

A. No duty to provide free transcripts.

On appeal, an indigent is entitled to a free copy of trial court proceeding to which he has been a party, but there is no duty to provide transcripts "where original criminal trial proceedings have been adequately reviewed in habeas corpus proceedings brought by indigent."
Stalling v. State, 231 Ga. 37, 200 S.E. 2d. 121 (1973).

Trial court properly denies copies of record when petitioner's case is "on appeal with complete record, petitioner was represented by counsel, and petitioner alleged no necessity for the records.
Corn v. State, 240 Ga. 488, 240 S.E. 2d 694 (1978).

Defendant cannot bring a mandamus petition against a court clerk to obtain a copy of his trial transcript to pursue appeal when convictions are being appealed by defendant's attorney who has complete record of documents requested in his possession.
Heard v. Allen, 234 Ga. 409, 216 S.E. 2d 306 (1975).

Evidence

1. Stenographer's report, proved by him to be correct, though he may not remember the testimony, is competent to show what the witness to a former trial swore.

So far as the same be pertinent and otherwise competent.
Burnett v. State, 87 Ga. 622, 13 S.E. 552 (1891).

2. While a complete and accurate transcript may be beneficial to an appellant, it is not a necessity for a potent appeal.

A transcript prepared as to O.C.G.A. § 5-6-41 (j) from recollection shall upon the agreement of the parties and counsel, be entitled to be part of the record in the same manner as transcript filed by the court reporter.
Hunt v. State, 133 Ga. App. 548, 211 S.E. 2d 601 (1974).

A. When submission of transcript prepared by recollection is authorized.

O.C.G.A. § 5-6-41 (c), (d), and (g) authorize submission of transcript prepared from recollection only where trial has not been reported or where, for some other reason, actual transcript is not obtainable. *Harrison v. Piedmont Hospital*, 156 Ga. App. 150, 274 S.E. 2d 72 (1980).

B. Subsection (g) and (i) of O.C.G.A. § 5-6-41 do not deny due process.

Provisions of subsections (g) and (i) relating to preparation of transcript of proceedings from recollection or by stipulation, do not deny due process of law.
Wall v. Citizens & Southern Bank, 247 Ga. 216, 274 S.E. 2d 486 (1981).

C. One purpose of the requirement of filing transcripts under §§ 5-6-41 (e) and 5-6-43 (a) is to afford local counsel in the county where the case was tried convenient access to the exact duplicate copy of the record so as to enable him to easily ascertain the proper references to be included in his brief and written argument to the appellate court.
Law v. Smith, 226 Ga. 298, 174 S.E. 2d 893 (1970).

D. In a civil action, a trial court is not required to have evidence and proceedings reported by a court reporter.

Either party may request this at their own expense. Parties must keep in mind, however, that there can be no basis to prove grounds for appeal in the absence of a trial transcript.
Finch v. Brown, 216 Ga. App. 451, 454 S.E.2d 807 (1995).

E. Where a jury charging conference is not subject to court reporter takedown at the request of both parties, any contentions on the matter are not appealable.
Fields v. State, 223 Ga. App. 569, 479 S.E.2d 393 (1996).

F. If the proceedings of a bench trial are not recorded by a court reporter, the appellant must submit a statutorily authorized substitute for consideration on appellate review.

Failure to submit either a transcript or authorized substitute will lead the appellate court to conclude that the trial court decided the case correctly.
Alexander v. Jones, 216 Ga. App. 360, 454 S.E.2d 539 (1995).

3. The appellant must not by private instruction to the court reporter or clerk have matter omitted from the record on appeal which is not clearly indicated on notice of appeal.

The burden is on the appellant to bring to the reviewing court all of the oral and documentary evidence which is necessary to a consideration of errors enumerated. Where the appellee desires additional record for his own purposes he may designate it and where he wishes to object to that designated or omitted by the appellant he has available procedures in the trial court.
Ayers Enterprises v. Adams, 131 Ga. App. 12, 205 S.E. 2d 16 (1974).

4. Documents never admitted into evidence not part of appellate record.

A document which was never actually admitted into the evidence at trial cannot properly become a part of the record on appeal, but is not reversible error where the document is merely cumulative of competent evidence to the same effect.

Evidence which was never tendered or sought to be admitted in the trial court cannot be a part of the record on appeal. However, any evidence that pertains to the enumeration, which has been proffered or tendered to the trial court and either admitted or excluded by the trial court, must be included in the record on appeal. O.C.G.A. § 5-6-41.
Ray v. Standard Fire Ins. Co., 168 Ga. App. 116, 308 S.E. 2d 221 (1983).

A. Responsibility for filing documents relevant to disposition of appeal.
It is the primary responsibility of the appropriate parties and not this court to ensure that all documents relevant to the disposition of an appeal be duly filed.
Williams v. Food Lion, Inc., 213 Ga. App. 865 (1994).

5. There is no statutory requirement to transcribe proceedings consisting solely of argument.

Statute on transcription of testimony, O.C.G.A. § 17-8-5, does not require a transcription of proceedings which consist solely of argument.
Williams v. State, 217 Ga. App. 636, 458 S.E.2d 671 (1995).

A. Under O.C.G.A. § 17-8-5, all testimony and proceedings in a criminal case, except the argument of counsel, must be recorded by a court reporter. According to *State v. Graham*, 246 Ga. 341, 271 S.E. 2d 627 (1980), "proceedings" includes objections, rulings, and other matters which occur during the course of evidence as well as any post-trial procedures. This however, does not include charge conferences.
McBride v. State, 213 Ga. App. 857, 446 S.E. 2d 193 (1994); *Ricarte v. State*, 249 Ga. App. 50 (2001).

6. Appeals court cannot review any appeals claim based on closing argument unless the argument is recorded and a transcript is available.

The defendant's failure to include a transcript of the closing argument in the record precludes the Court of Appeals from reviewing a claim that the trial court unduly restricted the defense counsel's closing argument. The fact that counsel said that he did not wish to be responsible for paying the court reporter is no excuse. Appointed counsel is reimbursed by the county for such expense.
Whitt v. State, 215 Ga. App. 704, 452 S.E.2d 125 (1994).

7. Failure to timely object to court reporter's faulty recollection that exhibit was admitted into evidence constituted a waiver of claim that it was only demonstrative evidence, and the matter could not be raised for first time on appeal.
International Indem. Co. v. Regional Employer Service, Inc., 239 Ga. App. 420, 520 S.E.2d 533, (1999).

Payment of Fees

1. See Board of Court Reporting Rules and Regulations pertaining to fees.

2. Payment for transcripts is not included as part of court costs.

A pauper's affidavit in civil cases does not relieve appellant from payment of cost of having a trial transcript prepared by the official reporter.
Jackson v. Young, 134 Ga. App. 368, 214 S.E. 2d 380 (1975).

A. A felony defendant who appeals by pauper affidavit is entitled to have transcript provided if needed for consideration of errors alleged.
Sawyer v. State, 112 Ga. App. 885, 147 S.E. 2d 60 (1966).

B. The general requirement that transcript costs be paid by the appellant does not prevent the trial judge from awarding such expenses to the other party as expenses of litigation.
Adderholt v. Adderholt, 240 Ga. 626, 242 S.E. 2d 11 (1978).

3. It is within the sound discretion of the trial judge to prescribe the terms by which misdemeanor cases are to be reported.

In light of the fact the misdemeanor was not required by law to be recorded, but was recorded pursuant to private contract between the defendant and the court reporter, making the statute controlling the amount of fees of $30.00 a day.
Godwin v. State, 138 Ga. App. 131, 225 S.E. 2d 723 (1976); O.C.G.A. § 15-14-22.

4. **Where no agreement was made as to payment of stenographer's fees, the trial judge is authorized to fix terms of the payment.**
McDonald v. Dabney, 161 Ga. 711, 132 S.E. 547 (1926).

5. **Where parties agree on the proportionate part of fees of a court reporter for taking down testimony, each party is finally liable for such part of the fee, regardless of the outcome of the case.**

Therefore, an order taxing costs against one party does not include the part of such fees paid by the opposite party.
Ford Motor Co. v. Patterson-Pope Motor Co., 56 Ga. App. 794, 194 S.E. 69 (1937).

6. **"Although a court has power `[t]o control, in the furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it,. . .' O.C.G.A. § 15-1-3, it has no authority, by** *in personam* **order, to compel the payment of private contractual obligations incurred by an attorney for court reporting services."**
Augustine v. Clifton, 248 Ga. 553, 284 S.E. 2d 432 (1981).

7. **In criminal cases, a defendant can be taxed with costs.**
Costs include charges for services rendered by officers of the court, which includes court reporters. Costs as applied to proceedings include all charges fixed by statute as compensation for services rendered by officers of the court in the progress of the cause.
Giddens v. State, 156 Ga. App. 258, 274 S.E. 2d 595 (1980); *Davis v. State*, 33 Ga. 531, (1863)

8. **A party's delay in supplying a transcript for appeal is inexcusable when it is due to the party's delay in resolving a dispute with the court reporter over the cost of a transcript.**

Although such a delay may be inexcusable, the delay will not be considered unreasonable. The question of whether a delay in filing a transcript is unreasonable is a separate matter from the issue of whether such a delay is inexcusable and refers principally to the length and effect of the delay rather than the cause of the delay. Unreasonable delay may be defined as a delay which "may affect an appeal by: (a) directly prejudicing the position of a party by allowing an intermediate change of conditions or otherwise resulting in inequity; or (b) causing the appeal to be stale."
Cook v. McNamee, 223 Ga. App. 460, 477 S.E.2d 885 (1996).

Correctness

1. **Litigant may not be allowed to take recording of evidence from reporter and have them transcribed by typists in his own employment.**

Such a practice can not be allowed. The court reporter has a duty to give a correct report of the proceeding on trial and must certify to the correctness of such transcript.
Diamond v. Liberty National Bank & Trust, 228 Ga. 533, 186 S.E. 2d 741 (1972).

2. **Failure of a court reporter to certify the correctness of a transcript when filing it with a clerk of the trial court is an amendable defect.**

Either party may move to have the deficiency supplied or have corrected any errors that may appear. Failure to do so amounts to a waiver.
Harper v. Green, 113 Ga. App. 557, 149 S.E. 2d 163 (1966).

3. **The legislature has endowed the trial judges of the state with power to change or correct transcripts prepared by the court's reporter.**
Reed v. State, 130 Ga. App. 659, 204 S.E. 2d 335 (1974).

A. When trial court changed language of the charge in the original transcript it was not an abuse of

discretion. The trial court is still the final arbiter of any difference in the preparation of the record.
Miller v. State, 150 Ga. App. 597, 258 S.E. 2d 279 (1979); *Ross v. State*, 245 Ga. 173, 263 S.E. 2d 913 (1980).

B. Any issue as to the correctness of record is to be resolved by trial court, for that court retains jurisdiction even after case is docketed in appellate court to add additional record.
Pelletier v. Schultz, 157 Ga. App. 64, 276 S.E. 2d 118 (1981).

4. Where a case has been reported stenographically by an official court reporter either under an agreement of counsel or parties or under order of trial judge, if the judge is unable to remember the testimony he may order the testimony or brief written out in long hand by the reporter and prescribe the manner of payment.
National Bellas-Hess v. Patrick, 49 Ga. App. 280, 175 S.E. 255 (1934).

5. Failure of a transcript in a juvenile case to be prepared by a certified reporter is meritless as grounds for error.

Although O.C.G.A. § 15-11-28 mandates that a hearing before a juvenile court be recorded, the statute contains no requirement with regard to a certified court reporter.
D.C. v. State of Georgia, 145 Ga. App. 868, 245 S.E. 2d 26 (1978).

Editorial Note: This decision dealt only with the merits of a transcript being tainted because it was prepared by an uncertified reporter. It did not address the issue of whether the reporter was violating the law under O.C.G.A. § 15-14-36.

6. Failure to transcribe all hearings on motions and bench conferences after a motion for complete recordation of all proceedings has been filed is not an error if there is no showing of anything harmful or prejudicial which may have occurred at any of these proceedings.
Davis v. State, 242 Ga. 901, 252 S.E. 2d 443 (1979).

A. Defendant was not entitled to remand for purposes of attempting to create a transcript of what transpired during bench conferences, where trial court recounted matters that occurred in bench conferences in its order, denying defendant's motion for new trial and defendant did not challenge accuracy of trial court's finding.
McDougal v. State, 239 Ga. App. 808, 521 S.E.2d 458 (1999).

7. An incomplete transcript through no fault of defendant denies his right to appeal, and a new trial is required.
McElwee v. State, 147 Ga. App. 84, 248 S.E. 2d 162 (1978).

A. Party not entitled to a new hearing only because only a partial transcript was available, when the pertinent portions of the proceedings were transcribed.
In re Interest of S.K., 248 Ga .App. 122 (2001).

8. New reporter to be appointed on showing that first one incapable of transcribing tapes.

Where defendant shows that court reporter appointed by trial court is incapable of transcribing the tapes of a felony trial, another court reporter should be appointed.
Wilson v. State, 246 Ga. 672, 373 S.E. 2d 9 (1980).

9. Remedy in trial court.

When the transcript on record does not truly or fully disclose what transpired in the trial court and the parties are unable to agree thereon, the defendant's remedy is in the trial court, not the appellate court.
Epps v. State, 168 Ga. App. 79, 308 S.E. 2d 234 (1983).

10. **It is the duty of defense counsel to note and except to any trial errors and to pursue a full transcription thereof if desired.**

    His lack of diligence cannot be delegated as reversible error on the part of the trial court or court reporter on appeal. *Cagle v. State*, 160 Ga. App. 803, 287 S.E. 2d 660 (1982).

11. **Court Reporter for Federal District Court held not absolutely immune from damages liability for failing to produce transcript of federal criminal trial.**
    Antoine v. Byers & Anderson, Inc., 124 L. Ed. 2d 391, 113 S. Ct. 2167 (1993).

12. **Under O.C.G.A. § 5-6-41 (f) corrections to transcript are permitted before or after it has been taken to the appellate level.**

    O.C.G.A. § 5-6-41 (f) authorizes trial courts to accept amendments to transcripts to make them "conform to the truth."
    Bates v. State, 228 Ga. App. 140, 491 S.E.2d 200 (1997)

    O.C.G.A. § 5-6-41 (f) permits such corrections "either before or after the record is transmitted to the appellate court" upon suggestion by the parties or on the trial court's own initiative.
    State v. Sneddon, 235 Ga. App. 739, 510 S.E. 2d 566 (1998).

    In order for appellant to claim error because bench conferences were not taken down, he must show that he was prejudiced by such nonfeasance. There must be some record of an attempt to amend or supplement the record pursuant to O.C.G.A. § 5-6-41(f) for the court to "presume that appellant was prejudiced."
    Boone v. State, 1 FCDR 1646

Presence

1. **If counsel wants final arguments recorded, it is his duty to see that it is done, in as much as it is not required by statute. When present in court where court reporter's absence during argument is apparent, and there is no indication that counsel took any steps to have reporter recalled to courtroom, counsel cannot sit by and permit some matter he could correct by timely action and later claim error.**
   Harris v. State, 237 Ga. 718, 230 S.E. 2d 1 (1976).

2. **Presence of the official court reporter is not necessary in the court room at all times during the argument of counsel in a felony case.**

   Presence not needed in order for defendant to have a fair trial.
   Heard v. State, 210 Ga. 108, 78 S.E. 2d 38 (1953).

3. **The court reporter may be required to read testimony to which jurors disagree.**
   Green v. State, 122 Ga. 169, 50 S.E. 53 (1905).

4. **It is within the trial court's discretion to require the court reporter to read former testimony.**

   A refusal to order the court reporter to read back testimony just given is not an abuse of discretion.
   Davis v. State, 266 Ga. 801, 471 S.E. 2d 191 (1996); *See also: Pass v. State*, 227 Ga. 730, 182 S.E. 2d 779 (1971).

5. **Stenographers held in contempt for disobedience of an order to return and read evidence.**
   Watson v. Dampier, 148 Ga. 588, 97 S.E. 219 (1918).

6. **When defendant in misdemeanor case asks that the case be recorded at his expense, the court must make sure that the court reporter is available to comply with the request.**

Statutes do not put the duty upon the defendant who is charged with a misdemeanor and faces possible fine or imprisonment to insure prior to trial that the court reporter is complying with the statutory duty to attend court sessions. Further, the duty to make advance arrangements for the reporter cannot be imposed upon the defendant merely because of long established practice. *Thompson v. State*, 240 Ga. 296, 240 S.E. 2d 87 (1977).

7. **The court reporter should also attend any jury view so that any important statements or events may be thoroughly reviewed on appeal.**
Esposito v. State, 273 Ga. 183, 538 S.E.2d 55 (2000).

Depositions

1. **Deposition reduced to writing by stenographer but not accompanied by certificate of lack of interest held inadmissible in evidence.**

Where depositions are taken without commission and upon notice, under the provisions of the Civil Code (1910), § 5905 et seq., the testimony of the witness should be reduced to writing by the officer taking the depositions, or by the witness in the presence of the officer; but the officer may employ a disinterested stenographer to take down and write out the testimony. In either case the testimony, after it has been reduced to writing, should be subscribed by the deponent. *Woodward v. Fuller*, 145 Ga. 252 (6), 88 S.E. 974 (1916). Every such deposition "shall be retained by the officer taking it until he delivers it with his own hands into the court for which it is taken; or it shall, with a certificate of the reasons for taking it, and of the want of interest of the officer, and of the stenographer if one be employed, and with the notice, if any be given to the adverse party, be sealed up and directed to such court, and remain under his seal until opened in court." Civil Code (1910), § 5909.
Smith v. Loftis Bros. & Co., 43 Ga. App. 354, 158 S.E. 768 (1931).

2. **Party to pay costs of taking deposition.**

The party desiring the testimony, particularly where discovery is one of the purposes for taking the deposition, should be primarily responsible for payment of costs, in the absence of an order of the court to the contrary. A defendant has the right to examine the witness on redirect examination after the cross examination, and plaintiffs may not limit the deposition to cross examination by plaintiff. Defendant may continue the suspended examination of the witness and require plaintiff to pay the cost thereof. The defendant can protect himself from abuse by examining the witness and then submitting the matter of the cost thereof for decision of the trial judge.
Acres v. King, 109 Ga. App. 571, 136 S.E. 2d 510 (1964).

3. **Videotaping depositions of expert witnesses is authorized by Georgia law. However, stenographic transcription must also be used to record such testimony.**

Testimony of a witness by videotape is a better substitute for actual live testimony than the reading of a stenographic transcript provided by a court reporter.
Mayor of Savannah v. Palmerio, 135 Ga. App. 147, 217 S.E. 2d 430 (1975).

Editorial Note: See Board Opinion # BCR77-1; *and Common Questions and Answer, p. ____.*

4. **The costs of depositions and reporter's takedown fees may not be included as part of trial costs.**

The conclusion that expenses in discovery are not taxed as costs flows from the reasoning of O.C.G.A. § 9-15-8, which implies that the expenses incident to actual trial testimony are what is meant to be included in costs. *City of Atlanta v. Firefighters*, 240 Ga. 24, 239 S.E. 2d 353 (1977).

5. The Appellant's (court reporter) right to enforce his alleged contract to advance the expenses of depositions with the appellee (attorney) does not depend on the enforceability of the contract of the appellee (attorney) with his clients.

The appellant, a court reporter firm, sued to recover the cost of depositions in four cases. The appellee, an attorney, admitted that he had ordered a copy in three of the four cases. It was a jury question under all the evidence whether credit was expressly given to the appellee as agent for his clients on the contracts to furnish copies of depositions. The judgment of the trial judge in directing a verdict for the appellee was reversed. *Brown and Huseby v. Chrietzberg*, 242 Ga. 232, 248 S.E. 2d 631 (1978).

6. Appellants have the right to have the deposition transcribed and to have a copy of the deposition, provided they pay for it.

The trial court, being of the mind that the takedown notes belonged to the party who had paid for the deposition, and that the appellants could simply depose the witness on their own or subpoena the witness for the trial, denied the request for release of the takedown notes. This judgment was reversed. Clearly, O.C.G.A. §§9-11-30(c)(1) and 9-11-30(f)(2) give any party or the deponent the right to have the deposition transcribed and to have a copy of the deposition, provided they pay for it.
Sams v. Champion, 184 Ga. App. 444, 361 S.E. 2d 852 (1987).