

IN THE SUPERIOR COURTS OF THE OCMULGEE JUDICIAL CIRCUIT

STATE OF GEORGIA

IN RE: ORDER ON FILING AND SCHEDULING PRETRIAL MOTIONS IN
CRIMINAL CASES

NOTE: FAILURE TO STRICTLY COMPLY WITH THIS ORDER SHALL
RESULT IN MOTION BEING UNTIMELY, ABANDONED AND/OR
WAIVED AND THEREFOR NOT CONSIDERED BY THE COURT.

OCGA § 17-7-110, Time for filing pretrial motions, states, "*All pretrial motions, including demurrers and special pleas, shall be filed within ten days after the date of arraignment, unless the time for filing is extended by the court.*"¹

Uniform Superior Court Rule 31, Motions, demurrers, special pleas, and similar items in criminal matters, provides, in pertinent part, the following:

31.1. *Time for filing*

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

31.2. *Time for hearing*

*All such motions, demurrers, special pleas and notices shall be heard and considered at such time, date, and place as set by the judge. Generally, such will be heard at or after the time of arraignment and prior to the time at which such case is scheduled for trial.*²

¹Emphasis added.

²Emphasis added.

FILED IN OFFICE 10:53 AM/PM THIS
12th DAY OF November 20 10
JODY M. MOSS, CLERK OF SUPERIOR & JUVENILE COURT
MORGAN COUNTY, GEORGIA

PURSUANT TO SAID OFFICIAL CODE OF GEORGIA ANNOTATED § 17-7-110 AND UNIFORM SUPERIOR COURT RULE³ 31, in all criminal cases in the Ocmulgee Judicial Circuit the Court orders the following:

(1) **TIME FOR FILING.** The parties⁴ shall make and file all pretrial motions, demurrers, and special pleas within ten (10) days after arraignment, unless a judge by written order extends the time therefor prior to trial. The parties shall give and file all notices⁵ at least twenty (20) days before the first day of the trial week⁶ unless prior to the said first day of the trial week a judge by written order shortens or lengthens the said time or continues the case for the said trial week.

(2) (a) **DUAL DUTY TO SET AND SERVE.** Any attorney or pro se Defendant⁷ filing a pretrial motion⁸ shall, at the same time as the motion is filed with the Clerk, have the *dual duties* to (1) set a hearing on the motion on a specific scheduled motion day and (2) serve the opposing party with a copy of the motion and a notice of the hearing as provided by law. To accomplish this, the party filing a motion is *required to attach to each such motion⁹ at the time of filing a Notice of Hearing with Certificate of Service,¹⁰* which sets the hearing on the motion for a specific scheduled motion day.

³Uniform Superior Court Rule is hereinafter abbreviated as “USCR.”

⁴“Parties” and “party” as used in this order shall include the State and any Defendant, whether represented by counsel or not.

⁵“Notices” shall include (a) notices of the State’s intention to present evidence of similar transactions or occurrences and (b) notices of the Defendant’s intention (1) to raise the issue of insanity or mental illness or (2) to introduce evidence of specific acts of violence by the victim against third persons pursuant to USCR 31.1, 31.3, 31.4, and 31.6.

⁶In the instant order, the phrase “the first day of the trial week” always refers to the first day of the trial week for the criminal trial calendar on which a case appears.

⁷A “pro se defendant” is the term used for a defendant that does not have an attorney representing the defendant.

⁸For the sake of brevity, “motion” or “motions” hereinafter in this order shall include pretrial motions, demurrers, special pleas, and notices unless this order makes a specific reference otherwise.

⁹If several motions are filed jointly, then one Notice of Hearing with Certificate of Service may be used for all of them if said notice of hearing clearly denotes that it applies to all of the said motions.

¹⁰The required Notice of Hearing with Certificate of Service is attached to the instant order as Exhibit A. A form substantially similar to it may be used as a substitute.

(b) **TIME FOR HEARING.** *At the time a motion is filed, the attorney or pro se Defendant making the motion shall specifically set the motion for a hearing on a regularly scheduled motion day* no later than the fourth (4th) motion day after the motion is filed and, in any event, not less than ten (10) days *before* the first day of the trial week unless *prior* to the said first day of the trial week a judge by written order approves a variation therefrom or continues the case for the said trial week.

(c) **CONTINUANCES.** The parties by agreement may continue a scheduled hearing on a motion until another motion day in the above time prescribed for a motion to be heard. If a case is so continued by agreement within the prescribed time, the moving party shall have the duty to immediately file with the Court and serve an amended notice of hearing showing the relevant changes for the continuance. A hearing on a motion may only be continued outside the prescribed time if a judge in a written order approves such.

(d) **OBTAINING SCHEDULE FOR MOTION DAYS.** Counsel and pro se Defendants may obtain the scheduled dates for motion days from the Clerk of Superior Court for the county where the motion shall be filed, but the party filing the motion (and not the Clerk) is responsible for timely setting down the motion for a hearing and providing the opposing party with notice of the said hearing as provided by law.

(e) **PURPOSE; GOAL; UNTIMELY, ABANDONMENT OR WAIVER.** The purpose of this order is to provide for the filing of motions and the setting of the time for their hearing according to the above-stated statute and Uniform Superior Court Rule. In order in these trying times for the Court to use most efficiently the resource of jurors, both in their expense and the demand on their valuable time, one paramount goal of this order is that pretrial motions filed in a criminal case should be set for a hearing on a regularly scheduled motion day not less than ten (10) days *before* the first day of the trial week. *Unless the Court finds that a motion has been made as a result of a truly reasonably unanticipated emergency, the Court shall deem untimely, abandoned, and/or waived any pretrial motions not set for hearing and heard in the prescribed time; in such event, the Court shall not consider the said motion.* It is the sole duty of the party filing any pretrial motion to insure that the motion is heard during the prescribed time or that *prior* to the said first day of the trial week the party has a written order by a judge approving any above stated variation therefrom.

(f) **PLEA DAY PROHIBITION; MOTIONS IN LIMINE.** Please note that, under the terms of this order, unless an above-stated, specific exception applies, *pretrial motions*, including, without limitation, *motions in limine*, shall not be set for a hearing on the *guilty plea day* normally held on the first day of the trial week.

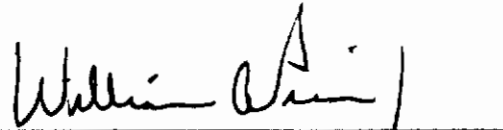
(3) **SERVICE OF ORDER.** At arraignment, the Clerk of Superior Court shall serve each Defendant, or if the Defendant is represented, said Defendant's attorney, with a copy of this order. After arraignment, if an unrepresented Defendant is appointed or hires an attorney, the Clerk will promptly serve the attorney with a copy of this order as soon as the Clerk is notified of the attorney entering an appearance in the case.

(4) **RECORD OF SERVICE.** The Clerk shall file in each case a notation showing the date and type of service of this order upon the attorney and/or pro se Defendant.

(5) **ASSIGNED CASES.** In any case assigned to a specific judge of the Ocmulgee Judicial Circuit, the assigned judge may provide for any exemptions or variations from this order that the judge finds necessary or desirable in that case, but all parties should consider themselves bound by this order until the assigned judge provides otherwise.

(6) **WHEN ORDER APPLICABLE.** This order when signed by the Chief Judge of the Ocmulgee Judicial Circuit shall be fully applicable to all criminal cases of a county in the said Circuit in which arraignment occurred on or after the date of its filing with the Clerk of Superior Court of said county. In all pending criminal cases in a county in said Circuit in which arraignment occurred before the date of this order's filing, if the Clerk serves the Defendant, or if the Defendant is represented, said Defendant's attorney, with a copy of this order, then paragraphs (2), (4), and (5) herein are applicable to said case; the applicability of the said paragraphs in these pending cases is qualified upon the Court finding that after service of this order there have been sufficient motion days and time for notice so that the party filing the motion can reasonably fulfill the duties required. Until the instant order is effective in a case, any pre-existing order concerning pretrial motions in criminal cases for the Ocmulgee Judicial Circuit shall remain in effect for cases covered by its terms.

SO ORDERED, this 9th day of November, 2010.



William A. Prior, Jr.
Chief Judge — Superior Courts
Ocmulgee Judicial Circuit

EXHIBIT A

THE SUPERIOR COURT OF [Insert Name of County] COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

vs.

Criminal Case No. _____

[Insert Defendant's name],

Defendant.

NOTICE OF MOTION

To: _____

[Name of Attorney for opposing party or Pro Se Defendant]

[Address of Attorney for opposing party or Pro Se Defendant]

Please take notice that the undersigned will bring the [insert descriptive title of motion] on for hearing before this Court in the Courtroom of the _____ County Courthouse, [city name], Georgia, on the _____ day of _____, 20____, at _____:____.M. or as soon thereafter as said motion can be heard.

This _____ day of _____, 20____.

[Signature above of Attorney or Pro Se Party making Motion]

[Name and Address above of the Attorney or Pro Se Party making this Motion]

CERTIFICATE OF SERVICE

I, _____, [Name of Attorney or Pro Se party making and therefore mailing the motion], do hereby certify that I have this day served the within notice of motion upon the individuals listed below by mailing a true copy of said notice of motion to them by U. S. Mail in envelopes having sufficient postage thereon to insure delivery and addressed as follows:

[Insert below Name and Address of the Opposing Attorney or Pro Se Party that is Receiving this Motion.]

This _____ day of _____, 20_____.

[Signature above of Attorney or Pro Se Party mailing Motion]

[Name and Address above of the Attorney or Pro Se Party mailing this Motion]