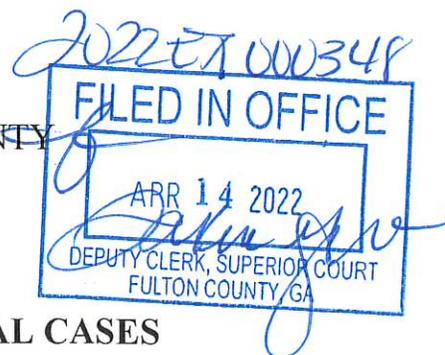


IN THE SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT
STATE OF GEORGIA



**STANDING SCHEDULING ORDER FOR CRIMINAL CASES
IN JUDGE WHITAKER'S DIVISION**

The following rules and procedures will govern criminal cases in this Division. Absent express permission from the Court, no exceptions or waivers to the requirements set forth herein are allowed.

DISCOVERY

General. The parties shall promptly and completely comply with the requirements of O.C.G.A. § 17-16-4. A specific deadline for completing non-expert discovery may be provided in a separate Scheduling Order issued after arraignment (or waiver thereof).

Extensions. Motions for an extension of that deadline shall be submitted in writing to the Court; such motions must provide a detailed, fact-based explanation of the need for the extension, along with a proposed order for the Court's consideration. As with all motions, a stamped filed courtesy copy must be provided on the same date as filing to the Court's chambers by email to Litigation Manager Sheila Rosser at Sheila.Rosser@fultoncountyga.gov.

Compelling Discovery. The parties are at all times subject to the ongoing discovery requirements of state and federal law, to include the State's obligation to provide arguably exculpatory and impeachment evidence to the Defendant. Any supplemental discovery must be supplemented as soon as practicable, but in no event later than 5 business days after receipt of such material.

The parties are directed not to file "form" motions seeking to compel the generalized disclosure of otherwise discoverable materials. Rather, the parties shall limit discovery litigation to specific, articulable instances in which the party believes the opposing party has failed to comply with one or more provisions of the law governing pre-trial disclosures and discovery obligations.

Deficiencies. To that end, either party may file a notice of discovery deficiency. Such notice may be filed at any time after the discovery deadline has passed and prior to the motions due date in the Scheduling Order; however, before

such filing, the parties must first communicate and endeavor to reach a solution. (A sample notice is included in the Document Appendix to this Order.) Should a party thereafter need to file a motion to compel discovery, such motion shall itemize the articulable and case-specific instances of alleged failure to comply with discovery obligations. **Note that the Notice requires certification that the parties have conferred and attempted to resolve the perceived issues.** If the served party does not cure the alleged deficiency within ten days (or otherwise adequately explain the delay), the filing party may, after the passage of the ten days, send the Court a proposed order, copied to opposing counsel and the Litigation Manager, proposing to exclude the missing discovery. (A sample order is included in the Document Appendix.) Perceived discovery deficiencies should be handled by the above notice, with a filed response, if desired. In no event should they be “litigated” through emails to the Litigation Manager.

Filing, Courtesy and Service Copies. All motions must be e-filed with the Office of the Clerk of the Superior Court. Parties filing motions which need Court action are required to provide a courtesy copy to Judge Whitaker’s Chambers via email to Litigation Manager Sheila Rosser at Sheila.Rosser@fultoncountyga.gov on the same day that the motions are filed in the Clerk’s office. Copies may be served on opposing counsel via email.

Experts. Any party seeking to rely on expert testimony at trial (or any evidentiary hearing) must provide written notice to the opposing party. This notice must include a meaningful summary of the expert’s expected testimony as well as the expert’s qualifications to serve as an expert witness. The notice must be provided at least seven (7) days before any evidentiary hearing involving said expert(s) and/or fourteen (14) days before the pre-trial conference.

MOTIONS

General. All motions should be filed by the date of the Case Management hearing. Motions filed after that date are untimely and generally will not be considered absent a showing of just cause for the late filing. *Copeland v. State*, 272 Ga. 816, 817 (2000); *Van Huynh v. State*, 258 Ga. 663 (1988); USCR 31.1. Any requests for extensions shall be submitted in writing to the Court with a detailed, fact-based explanation of the need for the extension, along with a proposed order for the Court’s consideration.

Applicability. The motions filing requirements and deadlines apply to all motions, including O.C.G.A. § 16-3-24.2 “immunity” motions as well as demurrers and other pleas in bar, and apply to the following notices: (a) State’s notice of O.C.G.A. §§ 24-4-404(b), 413, 414, and 417 evidence; (b) State’s notice of intention to use child hearsay; (c) Defendant’s notice of intent to raise issues of incompetency, insanity or mental illness (d) Defendant’s notice of intent to raise alibi defense and (e) Defendant’s notice of intent to introduce evidence of specific acts of violence by victim against third parties. These deadlines do not apply to motions *in limine* involving **discrete** evidentiary issues the significance of which is not readily apparent until focused trial preparation. However untimely motions improperly cast as motions *in limine* which are not true *in limine* motions, such as motions to suppress, to dismiss, or to sever defendants, will not be permitted after the Motions deadline absent a showing of just cause. These are typically matters whose significance is not readily apparent prior to focused trial preparation. Such motions will seldom require the presentation of witness testimony and typically can be ruled upon orally immediately before trial.

Particularization Required. Only those motions sufficiently particularized as to provide legal notice to the opposing party will be considered by the Court. Generalized and omnibus motions are not to be filed and if filed will be denied as vague, dilatory and in violation of this Order. Motions seeking to suppress “everything,” to include items not present in a particular case (*e.g.*, an identification in a case in which no identification was made) are improper and should not be filed. Rather, each motion shall be limited to a single issue (*e.g.*, suppression of statement, suppression of fruits of search warrant, etc.); multi-issue motions seeking to suppress, for example, both physical evidence *and* statements are not proper. In this vein, motions must specify, *with particularity*, the item(s) or statement(s) or event(s) at issue and must be tailored to the facts of the case. Thus, a motion seeking to suppress “any and all statements” is insufficient and will be denied. The motion must identify the specific statement(s) or evidence the movant is seeking to suppress, as well as provide a theory of suppression.

Filing, Courtesy and Service Copies. All motions must be filed with the Clerk of Superior Court. Parties filing motions are required to provide a courtesy copy to Judge Whitaker’s Chambers by email to Litigation Manager Sheila Rosser at Sheila.Rosser@fultoncountyga.gov on the same day that the motions are filed in the Clerk’s office. Copies may be served on opposing counsel via email.

Failure to provide Chambers with a copy of a motion may result in that motion not being calendared for a hearing and may constitute waiver of the issue.

FINAL PLEA AND TRIAL CALENDARS

General. A Final Plea Hearing will be held on the date set at the Case Management Conference in each Defendant's case. The State will not be allowed to reduce charges after the Final Plea Calendar absent good cause shown. The attorneys and defendants must appear at the Final Plea Calendar unless the case has been previously resolved. The Final Plea Date shall not be reset absent good cause shown and express order of this Court.

Order to Confer in Advance. The State should have any offer to the defense at least 2 days before the Final Plea Date. The Court hereby Orders the parties to confer before the Final Plea Date to determine whether the Defendant will enter a plea of guilty or move forward to trial. Cases not resolving by plea at the Final Plea Date will be further noticed to a Trial Calendar, which date will be given at the time of the Final Plea announcement. Trial Calendars will be rolling and cases may be called out of order.

Any plea tendered after the Final Plea calendar will be a non-negotiated plea.

Scheduling Guilty Pleas in Advance. Negotiated or non-negotiated pleas may be entered at any time prior to the Final Plea Date. The parties are directed to contact Litigation Manager Sheila Rosser at (404) 612-3743 or Sheila.Rosser@fultoncountyga.gov to schedule a date for entry of a guilty plea.

Continuance/Request for Status Conference. In the event a party intends to seek a continuance or has any other problem with going forward with trial on the assigned Trial Date due to incomplete production of discovery, incomplete witness information, client difficulties or otherwise, that party must notify the Court by written request for a continuance and/or a status conference at least 15 days before the Trial Date. The written request must specifically identify the grounds for the continuance, conference, or other problems with going forward with trial.

TRIAL DATE AND PRE-TRIAL PROCEDURE

Report for Trial. For all cases in which a plea of not guilty has been entered without resolution, the Defendants and counsel are directed to report before Judge Paige Reese Whitaker, at 185 Central Avenue, Atlanta, Georgia 30303, Courtroom 5D (or via Zoom or other video-conferencing method as may be set forth in a

separate order) for Trial. Should a pretrial conference be set, that date will be communicated in advance to the parties via email, and the parties must report as ordered.

Called in for Trial. Trials will be called in the order decided by the Court, which is not necessarily the order in which the cases appear on the published Trial Calendar. All cases will report for trial on the scheduled date unless otherwise excused. Cases not reached for trial will be on **two (2)-hour call** for the duration of the Trial Calendar and will roll to each successive Trial Calendar until reached or otherwise resolved. It is the duty of counsel to stay informed as to when the case will be called for trial.

Pre-Trial Submissions. Due **by noon THREE business days before the pre-trial conference.** Once a case is called in for trial for a set date, the parties are required to file with the Clerk of Court, serve on opposing counsel by email, and submit by email to Litigation Manager Sheila Rosser at Sheila.Rosser@fultoncountyga.gov or Judicial Assistant Gigi Green at gwendolyn.green@fultoncountyga.gov, **by noon THREE business days before the pre-trial conference**, the following THREE ITEMS:

a. A list of potential voir dire questions.

b. All motions in limine. Each such motion shall be a separate document and attachment to the email to opposing counsel and to Litigation Manager Sheila Rosser. Such motions should be limited to *discrete* evidentiary or procedural matters, such as the admissibility of a specific piece of evidence. As mentioned above, it is not proper to attempt to raise, as a motion in limine, matters that should have been resolved during the pre-trial motions phase of proceedings, such as the submission of identification evidence or a confession or a motion to sever, etc. Such a motion cast as a motion in limine will be denied as untimely absent good cause shown.

c. Proposed Jury Charges. The parties must submit all proposed requests to charge which, for the State, includes charges for the particular offense(s) alleged in the indictment. For pattern charges, each party is to submit **ONLY** the pattern charge **NUMBER** and not the text of the charge itself. For all non-pattern or modified pattern charges, the parties are required to submit the full text and to cite the case law, statute or other authority supporting such requested charge.

Clothing for Incarcerated Defendants. Due to Chambers before the close of business the **TWO** business days before trial.

CONDUCT DURING HEARINGS AND TRIAL

The Court, in order to assure proper hearings and a proper trial, further orders that all counsel shall, during the trial and other court appearances before this division, conform their conduct in accordance with these requirements:

1. Timeliness. Counsel and all parties will timely appear before the Court at each setting and following each recess.

2. Voir Dire Procedure. Counsel shall submit to the Court all proposed voir dire questions as directed above. Prior to the commencement of voir dire, typically at the pre-trial conference, the Court will discuss with the parties which of their proposed questions will be permitted and which will be disallowed.

a. General and Statutory Questions. The Court will propound all general questions to the entire panel, as well as those questions submitted by the parties which the Court indicated pre-trial it would ask. Prospective jurors will be seated in the gallery in numerical order; each prospective juror will have a card with his or her juror number on it. Prospective jurors will respond to the Court's questions by raising their cards.

b. Individual Questions. At the completion of general questioning, prospective jurors will be brought, twelve at a time for follow-up questioning (or as established otherwise due to COVID-19 precautions). Counsel will then be permitted to conduct the follow-up questioning, panelist by panelist, provided that counsel are efficient in their use of the panelists' time. The Court will not permit the parties to ask repetitive questions during examination of potential jurors. Counsel will restrict their voir dire examination to such matters as are permissible by law and shall not engage in arguing their case or in placing inadmissible matters before the jury panel. Counsel shall not lead jurors and instead are directed to ask open-ended, non-leading questions. If counsel are repeating inquiries or exploring areas outside the scope of the general questions, the Court may resume the role of questioner. This process will be repeated, twelve panelists at a time, until the Court determines that enough jurors have been qualified to permit peremptory striking to begin. For efficiency and effective use of notes, counsel may individually voir dire panelists from counsel table.

c. Motions to Strike for Cause. These may be handled following completion of individual questioning and prior to the peremptory strikes, following questioning of each panel, or individually at the Court's discretion.

d. Jury selection. The parties shall consider each juror in order, starting with the State and then the Defendant(s). Once a jury of twelve has been selected, the same process will then be applied to the next Panel Member, with the parties using their alternate strikes until the alternate jurors are selected. Before striking begins, the Court will inform the parties of the universe from which they are to strike (e.g., from No. 1 through No. 36).

3. Witnesses on hand. Counsel should have enough witnesses on hand for each day's proceedings and ready to be called so that the proceedings move efficiently.

4. Exhibits. Exhibits should be marked before trial. Any party intending to introduce exhibits during trial shall provide a copy of the exhibit list to each opposing party prior to jury selection. The exhibit list should include for each exhibit both the exhibit number and a brief description of what the exhibit purports to be. Counsel are under a continuing obligation to preview exhibits with opposing counsel before relevant witnesses are called to the stand. It is not an appropriate use of the jurors' time to have the parties reviewing proposed exhibits while the witness waits on the stand and the jurors sit idly in the box.

5. Digital Submission of Exhibits. Pursuant to the rules of the Judicial Council of Georgia, all transcripts and accompanying exhibits that can be digitized are required to be e-filed. Due to the size limits of eFileGa, all exhibits must be scanned individually and emailed to the court reporter, provided by flash drive, or the equivalent. For oversized or non-paper exhibits, i.e., guns, poster boards, etc., a digital photograph of the object, marked with an exhibit sticker, should be provided to the court reporter. Any DVDs/CDs should be provided to the court reporter with the original and one copy, contained in a hard case (e.g., jewel case).

6. Stipulations. All stipulations must be made in writing, signed by the parties and presented to the Court outside the presence of the jury. No counsel should offer to enter into a stipulation orally before the jury, unless prior permission is granted by the Court.

7. Preparation of Orders. Counsel shall promptly prepare orders or judgments to be presented to the Court and email the same to the Court via Litigation Manager Sheila Rosser at Sheila.Rosser@fultoncountyga.gov and opposing counsel simultaneously and within three business days of the entry of that order of judgment by the Court unless directed otherwise by the Court. In no instance should counsel directly email the Judge.

REQUEST FOR COURT SERVICES

Court Translator. Upon request, the Court will provide a translator to provide interpretation services for any non-English speaking Defendant. The request for a translator must be submitted in writing to Litigation Manager Sheila Rosser at Sheila.Rosser@fultoncountyga.gov or Judicial Assistant Gigi Green at gwendolyn.green@fultoncountyga.gov no later than 5 business days prior to the hearing date.

Court Production Order. At the request of counsel, the Court will order production of a Defendant and/or witness incarcerated in any prison or jail system or facility. For individuals located within the Georgia Department of Corrections system, the requested inmate information should coincide with the Georgia Department of Corrections information. Parties must submit their request in writing to Litigation Manager Sheila Rosser at Sheila.Rosser@fultoncountyga.gov, and the production request must be received no later than 30 business days before the scheduled court appearance.

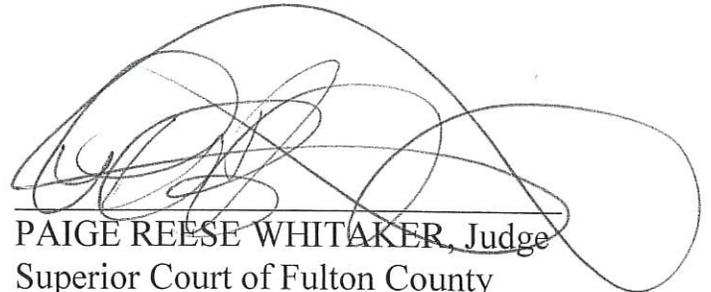
Courtroom Evidence Presentation. In the event any party intends to utilize exhibits during any hearing, trial, or other proceeding and the counsel is unfamiliar with the evidence presentation technology in Courtroom 5C, then that attorney request equipment training sufficiently in advance of trial so as not to delay any proceedings. Training can generally be accomplished in 15 minutes. This request should be submitted in writing to Litigation Manager Sheila Rosser at Sheila.Rosser@fultoncountyga.gov or Judicial Assistant Gigi Green at gwendolyn.green@fultoncountyga.gov, no later than 5 business days before the proceeding date.

APPEARANCE AT ALL CALENDARS AND HEARINGS

Attorneys. Attorneys are required to appear at all published calendars (and may appear virtually if prior permission to do so is granted) unless a proper Leave of Absence in accordance with USCR 16.1 or 16.2, or a proper conflict letter in accordance with USCR 17.1 is timely filed or the attorney is otherwise expressly excused by the Court. Note that any Leave of Absence not filed pursuant to USCR 16.1 or 16.2 or filed prior to entry of appearance of counsel in the case at issue, and not served upon chambers, stands denied under USCR 16.4. Note that unless USCR 17.1 is followed in all its subsections, then the attorney shall not be deemed to have a conflict pursuant to USCR 17.1(A).

Defendants. Unless expressly excused by the Court or permitted to appear virtually, Defendants must appear at all calendar calls and hearing dates for the case even if the defendant's attorney has a properly filed conflict letter, leave of absence, or other expressly excused absence. Failure to report shall result in forfeiture of any bond which may have been set and issuance of a bench warrant for the arrest of the Defendant.

SO ORDERED on this 14th day of April, 2022.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above the printed name of the judge.

PAIGE REESE WHITAKER, Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

Document Appendix

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

vs.

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CRIMINAL CASE _____

JUDGE WHITAKER

NOTICE OF DISCOVERY DEFICIENCY

This case was arraigned on _____. Discovery was due on _____. As of this filing, Defendant has not been provided with the following item(s) believed to be discoverable:

Counsel for the parties have conferred about this matter and are unable to reach an accord.

Submitted this ____ day of _____, 20__.

Counsel for Defendant

Copies to:

ADA

Sheila Rosser, Litigation Manager for Judge Whitaker

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

vs.

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CRIMINAL CASE _____

JUDGE WHITAKER

ORDER EXCLUDING EVIDENCE

This case was arraigned on _____. The State was served with a Notice of Discovery Deficiency on _____. Ten days have since passed, and the State has not cured the deficiency or otherwise demonstrated that, for good cause, it has been unable to do so. Consequently, pursuant to O.C.G.A. § 17-16-6, the Court excludes the following items:

SO ORDERED this ____ day of _____, 20__.

Judge Paige Reese Whitaker
Superior Court of Fulton County

Copies to:

ADA
Counsel for Defendant