

2016BX 00299

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



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

(REVISED 15 MARCH 2016 -- supersedes all previous versions)

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 and motions deadlines for each case will be provided under separate order.

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 will be provided in a separate order issued after arraignment (or waiver thereof). 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.

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. The Defendant is

directed not to file motions compelling the generalized disclosure of otherwise discoverable materials. Rather, the Defendant shall limit discovery litigation to specific, articulable instances in which the Defendant believes the State has failed to comply with one or more provisions of the law governing pre-trial disclosures. The State shall similarly limit any discovery litigation to concrete instances of the Defendant's failure to comply with the law.

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. (A sample notice is included in the Document Appendix to this Order.) The filing party may serve the opposing party via e-mail, but copies must also be filed with the Clerk of Court and sent to Case Manager Deedra Nelson at deedra.nelson@fultoncountyga.gov. 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 expiry of the ten days, send the Court a proposed order excluding the missing discovery. (A sample order is included in the Document Appendix.)

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

her qualifications to serve as an expert witness. The notice must be provided at least fourteen days before trial and seven days before any evidentiary hearing.

MOTIONS

A deadline for filing motions will be set forth in a separate order issued after arraignment (or waiver thereof). 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.

This deadline applies as well to (1) demurrers, (2) "immunity" motions pursuant to O.C.G.A. § 16-3-24.2, (3) other pleas in bar, and (4) Defendant's notice of intent to raise issues of insanity or mental illness.

The one standing exception to this deadline is for motions *in limine* seeking the Court's ruling in advance of trial on minor, discrete evidentiary issues (*e.g.*, the (in)admissibility of a particular record or fact). 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. Motions to suppress, sever,

dismiss, etc., are not properly cast as motions *in limine* and will not be permitted after the filing deadline -- again absent a showing of just cause.

Generalized motions and omnibus¹ motions are not to be filed; they will be denied as vague and dilatory. 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. Thus, a motion seeking to suppress “any and all statements” is insufficient; the motion must identify the specific statement(s) the movant is seeking to suppress, as well as provide a theory of suppression.

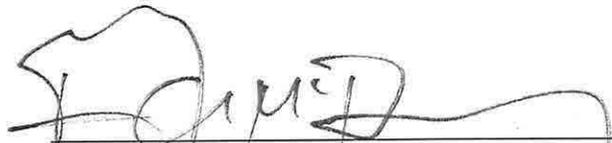
All motions must be filed with the Clerk of Court. Copies may be served on opposing counsel via e-mail. A courtesy copy of every motion must be sent to Case Manager Deedra Nelson at deedra.nelson@fultoncountyga.gov. Failure to provide the Case Manager with a copy of a motion will result in that motion not being calendared for a hearing and may constitute waiver of the issue.

¹ “Omnibus” motions include those infamous pleadings favored by some practitioners that compile (conceal?) multiple motions (many of which typically are in no way pertinent to the specific facts of the case at issue and are replete with boilerplate language) into a single filing. **Every motion requiring the Court’s attention must be filed separately.**

FINAL PLEA

A defendant's final plea hearing either will occur on a stand-alone calendar or else will be concurrent with her first trial calendar. A defendant who enters a guilty (or *Alford*) plea on or before the day of her final plea hearing may withdraw her plea if she is dissatisfied with her sentence. This right of withdrawal (premised on sentence dissatisfaction) must be exercised on the record in open court on the same day the plea was entered. This right of withdrawal expires when Court adjourns that day.

SO ORDERED on this 15th day of March 2016.



Robert C.I. McBurney, Judge
Fulton County Superior Court
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 MCBURNEY

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:

Submitted this ____ day of _____, 201__.

Counsel for Defendant

Copies to:

ADA

Ms. Deedra Nelson, Case Manager for Judge McBurney

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

vs.

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CRIMINAL CASE _____

JUDGE MCBURNEY

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 _____, 201__.

Judge Robert C.I. McBurney
Fulton County Superior Court

Copies to:

ADA
Counsel for Defendant