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Calendar Call is the official publication of the General Practice and Trial Section of the State Bar of Georgia. Statements and opinions expressed in the editorials and articles are not necessarily those of the Section of the Bar. Calendar Call welcomes the submission of articles on topics of interest to the Section. Submissions should be double-spaced, typewritten on letter-size paper, with the article on disk or sent via e-mail together with a bio and picture of the author and forwarded to Executive Editor: David A. Sleppy or Rebecca "Becky" Payne, 649 Irvin St., P.O. Box #689, Cornelia, GA 30531, you may email them at dsleppy@catheyandstrain.com. or RPayne@catheyandstrain.com

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The Georgia Law of Screening Orders: Preventing Repeated Frivolous, Malicious, and Unsubstantiated Complaint Filings by Self-Represented Litigants

by Judge Christopher C. Edwards and Taylor Wood



Former Griffin Judicial Circuit Chief Judge Christopher Charles Edwards received his B.A. from Vanderbilt University and his J.D. from Nova Southeastern Law School. Former Judge Edwards began his career as an Assistant District Attorney in the Griffin Judicial Circuit, then continued as an Assistant District Attorney in the Brunswick Judicial Circuit, for a total of five years, from 1981 to 1986. Beginning in 1986, Former Judge Edwards maintained a private mostly civil jury trial practice for twelve years. Before taking the bench, former Judge Edwards both prosecuted and defended murder to jury verdict as lead counsel. After seventeen years of jury trials, former Judge Edwards was elected Superior Court judge in

August, 1998 and began his first four year term January 1, 1999. He was re-elected in 2002, 2006, 2010, 2014, and 2018 without opposition.

Former Judge Edwards has served on five committees of the Council of Superior Court Judges: pattern jury charge, benchbook, uniform rules, bench and bar, and access to justice and fairness in the courts. Former Judge Edwards also now serves on the Board of Governors and on the Board of the General Practice and Trial Section of the State Bar of Georgia. Former Judge Edwards received an Outstanding Service Award from the Fayette Bar Association, the Robert Benham Award from the State Bar of Georgia, another award from the Fayette County Bar Association "For Tireless Efforts to Improve and Strengthen the Bar Association and Community", and the "Thomas R. Burnside, Jr. Excellence in Bar Leadership" as nominated by the Fayette County Bar Association. Fulfilling a campaign promise, he has spoken in schools to over 58,000 students on the education earnings premium, encouraging academic excellence.

In 2021, he joined The Mabra Firm to resume practicing as a trial lawyer. Former Judge Edwards is now in his thirty-ninth year as a Georgia lawyer after having served as a Superior Court Judge for over twenty years. He has authored original legal articles published in "The Verdict", published by the Georgia Trial Lawyers Association, "The Family Law Journal" and "Calendar Call" published by the State Bar of Georgia, The Georgia Courts Journal published by the Georgia Administrative Office of the Courts, and "The Champion", nationally published by the National Association of Criminal Defense Lawyers.



Taylor Wood is a graduate of the 2019 class of Mercer Law School and previously served as Judge Edwards' staff attorney."

Most courts and lawyers are familiar with more than one frequent frivolous self-represented plaintiff. These self-represented litigants file the bizarre complaints that are shared among lawyers as dark entertainment, resulting in hearings that resemble theater of the absurd, challenging even the best tempered jurists' ability to be patient, dignified and courteous. Here's a federal district court judge's description of such a complaint. "The court characterized

the complaint as 'kitchen-sink style,' 'confusing, repetitious, and baseless,' and containing 'pages of nonsense' with 'outlandish and frivolous arguments liberally scattered throughout.' [T]he court rejected the allegations of criminal racketeering to be implausible and 'nothing short of preposterous.'" What can courts do to manage such clear abuses of due process?

Due process allows prior restraint on free access to due process by allowing courts to preemptively ap-

prove or disapprove its use by those self-represented litigants who have repeatedly abused due process. "No person is free to abuse the courts by inundating them with frivolous actions which burden the administration of the courts for no useful purpose."

An effective response is for counsel or the judge to start the process that can result in a screening order, requiring the self-represented person and

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the clerk to notify the judge for pre-approval, or screening, before any new complaint, submitted by that self-represented person, is accepted for filing in that court. Screening orders are not yet widely used in Georgia, but several Georgia cases spell out the rules.

What are the Georgia rules on screening orders? Screening orders may require judicial pre-approval of filing any new actions by a self-represented litigant who shows a pattern or history of frivolous filings. A blanket prohibition, banning all filings by a self-represented litigant, is not allowed: "... limitation on [the litigant's] ability to file pro se lawsuits [can] not totally deprive [the litigant] of meaningful access to the courts and ...[must be] reasonable under the circumstances." Screening orders can apply to permanently require pre-approval of all future self-represented actions in the court entering the screening order, but should preferably be tailored to screen only self-represented actions involving a certain subject matter or certain named defendants.

What process is due before due process is subject to prior restraint? A party may file a motion, or the

court may issue an order noticing the court's own sua sponte motion to consider granting a screening order. Screening orders can only be entered in a pending action to apply in the future, in that court. The screening order must be incorporated in the final judgment or else the final judgment will supersede and vacate it by operation of law. Whether a party's motion or the court's own motion, thirty days response time should be allowed. No oral hearing is required, but after timely due process notice, a screening order may be issued. There is no evidentiary standard in the Georgia case law for issuance of a screening order. The authors suggest a clear and convincing evidentiary standard is appropriate because limits on exercise of due process should be cautiously applied. When entering a screening order, the screening order should attach a prescribed application form, to ensure the screened self-represented party knows how to proceed to attempt filing a new self-represented action. In other words, a permanent screening order, should attach an application form to allow attempted future filings.

What happens when a "screened" plaintiff under a screening order

wishes to file a new action? The party governed by the screening order must first file an application to file a new action, with the intended complaint exhibited to the application for judicial approval or disapproval. The application seeks the court's sanction to allow filing, like an adoption or condemnation, so the usual nonrefundable civil filing fee is due upon filing the application, subject to waiver for indigency if so determined. When the party applies to file, the clerk must assign a judge to the action to review the application. The judge must then enter an order, to approve or disapprove filing and service of the proposed complaint. Alternatively, an order can deny the application but allow the self-represented plaintiff to amend the proposed complaint for a second chance at approval to file, such as by narrowing the causes of action or adding affidavits.

Georgia courts should be reserved in granting screening orders, but when appropriate, screening orders can prevent repeated abuse of due process, maintaining constitutional intent to provide due process on genuine justiciable claims.

EXHIBIT 1: Example Order on Noticing Court’s Intent to Consider Granting Screening Order

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____,
Plaintiff,
_____,
Defendant. } Civil Action No. _____

ORDER NOTICING COURT’S INTENT TO CONSIDER GRANTING SCREENING ORDER

The Court notifies the parties of the Court’s own motion to consider granting screening order to permanently require judicial pre-approval for filing of any new self-represented civil action by _____ as authorized by Howard v. Sharpe, 266 Ga. 771 (1996); Smith v. Adamson, 226 Ga. App. 698 (1997); In re Lawsuits of Carter, 235 Ga. App. 551 (1998); Hooper v. Harris, 236 Ga. App. 651 (1999); Moreton Rolleston, Jr., Living Trust v. Kennedy, 277 Ga. App. 541 (2001); Tahamtan v. Chase Mortg. Corp., 252 Ga. App. 113 (2001); and Higdon v. Higdon, 321 Ga. App. 260 (2013). Parties may respond in writing to the Court’s own motion for screening order within thirty (30) days under USCR 6.2, whereupon order will issue after consideration of any responses. No oral hearing shall occur. USCR 6.3.

SO ORDERED this ____ day of _____, _____.

Judge

EXHIBIT 2: Example Permanent Screening Order

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____,
Plaintiff,
_____,
Defendant. } Civil Action No. _____

PERMANENT SCREENING ORDER

The Court has previously issued an order notifying the plaintiff and defendant of hearing on the motion/ Court’s motion to consider entry of screening order to require judicial pre-approval of future self-represented court actions.

A screening order is appropriate in circumstances where the “limitation on [the litigant’s] ability to file pro se lawsuits does not totally deprive [the litigant] of meaningful access to the courts and is reasonable under the circumstances.” Higdon v. Higdon, 321 Ga. App. 260, 266-67 (2013), citing Smith v. Adamson, 226 Ga. App. 698, 700 (1997).

The motion for temporary/permanent screening order is hereby GRANTED, considering all filings of record. The Court finds the filings in this action clearly and convincingly authorize the permanent screening

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order described below, in the public interest and the interest of the orderly administration of justice in this Court. This screening order is tailored to the necessity presented by the clear and convincing probable prospect of future frivolous, unsubstantiated, harassing filings considering the motives and methods shown filings in this action. "File," "filing," or "attempting to file," as used herein, includes filing or attempting to file any self-represented civil action or petition. _____ is required to use the form labeled "Application for Filing Self-Represented Action." Failure to fully comply with this permanent screening order may subject the above-named person to civil or criminal contempt.

_____ is ordered to never submit, and the Clerk and deputy clerks of this Court are ordered to never accept, the self-represented filing of any action with the Clerk of this Court by _____, without following the process described below, which does not totally or unreasonably deprived of meaningful access to file self-represented actions in this Court by this screening order.

Instructions to Judge: Choose A. to screen all future actions. Choose B. to screen defined actions only.

Initial A. or B. A written order of pre-approval of filing a self-represented action, executed and entered by a judge, is required before _____ files or attempts to file any self-represented action in this Court. Any written order allowed under law in the Court's discretion is also authorized, but only after an application for filing submitted

Initial A. or B. B. _____ is ordered to submit an application for filing to the Clerk of this Court to seek pre-approval of filing any self-represented action by written court order, brought in his/her legal name or any variant of his/her legal name, against any defendant/the following defendants: _____ and/ or regarding the following subject matter: _____.

Oral approval of the Clerk, a deputy clerk, or any judge to file a self-represented action is insufficient. Any self-represented action inadvertently or otherwise filed in this Court by _____ without full compliance with this permanent screening order requiring use of an application to file and obtain pre-approval of filing by written court order of a judge, is subject to summary sua sponte dismissal, without prejudice, by the presiding judge or assigned judge, immediately upon discovery of noncompliance with this permanent screening order, whether the noncompliance is occasioned by _____, or the Clerk or any deputy clerk of this Court, or by any other person or circumstance.

This order does not apply to any self-represented appellate review, including by either direct appeal or petition for writ of certiorari, from an inferior court to this Court. This order does not apply to actions filed by a member of the State Bar of Georgia representing the person barred by this screening order.

The Court finds there is no just reason for delay and orders the Clerk enter final judgment in favor of the moving party, granting motion for permanent screening order against _____ on the terms stated. O.C.G.A. 9-11-54(b). To the extent final judgment is previously entered, this is an amendment to that final judgment; if not yet entered, this screening order shall be incorporated in any future final judgment entered in this action.

SO ORDERED this ____ day of _____, _____.

Judge

EXHIBIT 3: Example Application for Filing

Exhibit 1 to Screening Order in Civil Action No. _____

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

IN RE: APPLICATION TO FILE)
CIVIL ACTION SUBMITTED BY) Civil Action No. _____
_____)

APPLICATION FOR FILING OF SELF-REPRESENTED ACTION

ATTENTION CLERK: This application for filing may be accepted for e-filing, but the attached proposed self-represented action, hereinafter “action,” shall not be accepted for filing, including e-filing, by the Clerk without the presiding judge, or the judge assigned by the Clerk, first approving this “application for filing” by entering a written order of approval. This application for filing shall not be accepted by the Clerk without paying the full non-refundable filing fee in effect at the time this application for filing is submitted, which shall be credited toward the filing fee of the attached proposed action if the Court approves the attached proposed action for filing by written order, or upon the judge approving indigent filing of this application, by written order. Approving indigent filing of the application does not also allow indigent filing of the proposed action itself.

I understand that the Clerk of this Court shall not accept the attached proposed action or self-represented motion to intervene as a party plaintiff, hereinafter “action,” for filing or e-filing unless the presiding judge or assigned judge first reviews and approves the attached proposed self-represented action, by written order.

I state under oath the attached is the true, correct, complete, and exact proposed action seeks to file, including all exhibits, attachments, and verifications, if any, and that there may be no alteration or amendment thereof prior to filing, if approved for filing.

Under oath in furtherance of this application for filing:

I affirm the proposed action is not frivolous, malicious or vexatious, and is substantially justified.

I state no attempt at service of process has been or shall be attempted, unless and until the presiding judge or assigned judge of this Court approves the attached action for filing by written order.

Date of Signature

Signature of applicant must be under oath administered by notary public signed below

This affidavit for filing is required to be made under oath orally administered by the notary public whose name and signature appear below.

Sworn to and subscribed before me:

[Affix seal here]

Printed name: _____

Notary Public, State of Georgia

My commission expires: _____

Instruction to Applicant:

Attach complete copy of proposed complaint to this application, and present to Clerk of Court with civil filing fee or affidavit of indigence.

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EXHIBIT 4: Example Order on Application to File

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

IN RE: APPLICATION TO FILE)
CIVIL ACTION SUBMITTED BY) Civil Action No. _____
_____))
Herein "Applicant to File Civil Action")

ORDER ON APPLICATION TO FILE PROPOSED SELF-REPRESENTED ACTION

- This order is for a judge of this Court to either approve or disapprove the filing of any self-represented action the above-referenced applicant.
- **Instructions to Judge: Choose from the options below.**
 - To approve filing of self-represented action, go to page 2;**
 - to disapprove filing of self-represented action, go to page 3-4.**
- The Court has "...consider[ed] the strength of the plaintiff's case before [approving or disapproving] it[s] filing [by reviewing the proposed action]." *Ahmed v. Arizona State Uni.*, 671 Fed. Appx. 437 (9th Cir. 2016).

TO APPROVE THE FILING, USE THIS PAGE

The application to file proposed self-represented action is hereby:

- approved for filing with the Clerk.

TO DISAPPROVE THE FILING, USE THIS PAGE AND THE NEXT PAGE

The application to file proposed self-represented action is hereby:

- disapproved. [Instructions to Judge: If you check to disapproval box, it is not necessary to check any box below unless the Court finds it proper to identify cure(s) to the complaint that would gain approval for filing. If a motion for reconsideration of disapproval is subsequently filed by applicant, the Court finds that the following amendment(s) to the proposed filing may possibly cure the defects in the filing that caused disapproval, if any cure is possible.] Filing a motion for reconsideration does not ensure application for filing will be granted, even if one of the boxes below is checked. Filing a motion for reconsideration does not toll any time limits to seek appellate review.
- Entry of appearance of an attorney at law for applicant to civil action in this application, and submission of recast action showing signature and bar number of a member in good standing of the State Bar of Georgia as attorney for applicant, with copy sent to chambers of the assigned judge by counsel.
- Recasting of the entire proposed action to make "a short and plain statement of the claims showing the pleader is entitled to relief and [a] demand for judgment for the relief to which the pleader deems himself entitled[.]" O.C.G.A. § 9-11-8(A)-(B); *Ahmed*, 671 Fed. Appx. at 438, with copy sent to chambers of the assigned judge. *Higdon v. Higdon*, 321 Ga. App. 260, 266 (2013).
- Attaching affidavit(s), exhibit(s) or verification(s) to the proposed complaint to substantiate its merit as follows, within ten (10) days of the date of this order including the following: _____

Other: _____

Smith v. Anderson, 226 Ga. App. 698, 699-700 (1997).

- Any action taken in paragraph 3(a), (b), or (c) of this order may be the subject of a written motion for reconsideration by any party filed within thirty (30) days of this order. Stumm v. Wilkie, 2019 WL 6487202 (7th Cir. 2019). A motion for reconsideration shall not toll the time for seeking appellate review of this order, if any appellate review is available under law.
- If filing of a self-represented action by applicant is approved by this order or any subsequent order, applicant is advised that if applicant amends his/her pleadings to state a materially or substantially different cause of action after approval, the materially or substantially different causes of action are subject to dismissal upon the Court's motion, or, a party's motion, after notice and opportunity to be heard.
 - Applicant is required by this order to include a conspicuous list of the street addresses of all defendants and co-plaintiffs in applicant's proposed filing for use by the Clerk in serving a copy of this order upon each defendant and co-plaintiff immediately upon entry of this order. The Clerk is ordered to immediately serve this order by e-filing service upon all defendants and co-plaintiffs, if any, or by United States mail using the list of street addresses mentioned above, if e-filing electronic service is not immediately feasible upon entry of this order.
 - If filing is approved by this order, the summons submitted to the Clerk by applicant for execution by the Clerk, and every return of service, affidavit of service, or acknowledgment of service, shall include description of the service of this "Order on Application to File Proposed Self-Represented Action," to give notice of the prospect of a motion for reconsideration conferred by paragraph 4.
 - The remedy for failure of duty under paragraph 6 or 7 shall be tolling of the time to move for reconsideration conferred by paragraph 4.

SO ORDERED this ____ day of _____, _____.
