

The House Committee on Judiciary offers the following substitute to SB 108:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to the
2 "Civil Practice Act," so as to change provisions relating to civil practice; to provide for the
3 appointment of special masters; to provide for authority; to provide for orders and reports;
4 to provide for procedure; to provide for compensation; to provide for a stay of discovery
5 when a motion to dismiss is filed; to provide for related matters; to provide for effective dates
6 and applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to the "Civil
10 Practice Act," is amended by adding a new Code section to the end of Article 6, relating to
11 civil trials, to read as follows:

12 "9-11-53.

13 (a) *Appointment, removal, and substitution.*

14 (1) Upon the motion of any party, a court may appoint a special master only to:

15 (A) Perform duties consented to by the parties;

16 (B) Monitor implementation of and compliance with orders of the court;

17 (C) Investigate and report to the court on factual issues identified by the court;

18 (D) Conduct an accounting as instructed by the court and report on the results of such
19 accounting;

20 (E) Review other matters allowed to be reviewed by special masters under the laws of
21 this state, subject to the procedural requirements of this Code section;

22 (F) Address discovery matters that the court cannot efficiently, effectively, or promptly
23 address;

24 (G) Provide guidance, advice, and information to the court on complex or specialized
25 subjects, including, but not limited to, technology issues related to the discovery
26 process;

27 (H) Monitor implementation of settlement agreements; or

28 (I) Cases filed pursuant to Title 19 if all of the parties consent to such appointment.

29 (3) A special master shall not have a relationship to the parties, counsel, action, or court
30 that would require disqualification of a judge under Code Section 15-1-8, unless the
31 parties consent with the court's approval to appointment of a particular person after
32 disclosure of any potential grounds for disqualification.

33 (4) The court shall notify the parties in writing of its intention to appoint a special
34 master, and the parties shall have ten days from the date of such notice to agree upon a
35 person to be appointed as special master and to notify the court in writing of such
36 agreement. If agreed upon, such person may be appointed as the special master. If the
37 parties cannot agree on the person to serve as special master, the parties may suggest
38 candidates for appointment, but the court may select any person to serve as special
39 master.

40 (5) In appointing a special master, the court shall consider the fairness of imposing the
41 likely expenses on the parties and shall protect against unreasonable expense or delay.

42 (6) A special master may be removed or substituted by order of the court, upon motion
43 of a party, or sua sponte.

44 (b) Order appointing a special master.

45 (1) The court shall give the parties notice and an opportunity to be heard before
46 appointing a special master.

47 (2) The order appointing a special master shall direct the special master to proceed with
48 all reasonable diligence and shall state:

49 (A) The special master's duties, including any investigation or enforcement duties, and
50 any limits on the special master's authority under subsection (c) of this Code section;

51 (B) The circumstances, if any, in which the special master may communicate ex parte
52 with the court or a party;

53 (C) The nature of the materials to be preserved and filed as the record of the special
54 master's activities;

55 (D) The time limits, method of filing the record, other procedures, and standards for
56 reviewing the special master's orders, findings, and recommendations; and

57 (E) The basis, terms, and procedure for fixing the special master's compensation under
58 subsection (h) of this Code section.

59 (3) The court may enter the order appointing a special master only after the special
60 master has filed an affidavit disclosing whether there is any ground for disqualification

61 under Code Section 15-1-8 and, if a ground for disqualification is disclosed, after the
62 parties have consented with the court's approval to waive the disqualification; the special
63 master shall certify in such affidavit that he or she will discharge his or her duties as
64 required by law and pursuant to the court's instructions without favor to, or prejudice
65 against any party.

66 (4) The order appointing a special master may be amended at any time after notice to the
67 parties and an opportunity to be heard.

68 (c) *Special master's authority.* Unless the appointing order expressly directs otherwise,
69 a special master has authority to regulate all proceedings and take all appropriate measures
70 to perform fairly and efficiently the assigned duties. The special master may by order
71 impose upon a party any noncontempt sanction provided by Code Section 9-11-37 or
72 9-11-45, and may recommend a contempt sanction against a party and sanctions against a
73 nonparty.

74 (d) *Evidentiary hearings.* Unless the appointing order expressly directs otherwise, a
75 special master conducting an evidentiary hearing may exercise the power of the appointing
76 court to compel, take, and record evidence.

77 (e) *Special master's orders.* A special master who makes an order shall file such order
78 with the clerk of court for docketing and promptly serve a copy of such order on each party
79 unless otherwise directed by the court. The clerk shall enter the order on the docket.

80 (f) *Special master's reports.* Unless otherwise indicated in the appointment order, a special
81 master shall report to the court:

82 (1) All motions submitted by the parties;

83 (2) All rulings made on all issues presented and all conclusions of law and findings of
84 fact;

85 (3) All evidence offered by the parties and all rulings as to the admissibility of such
86 evidence; and

87 (4) Such other matters as the master may deem appropriate.

88 (g) *Action on special master's order, report, or recommendations.*

89 (1) In acting on a special master's order, report, or recommendations, the court shall
90 afford the parties an opportunity to be heard and object to any portion thereof. The court
91 may receive evidence, and may adopt or affirm, modify, reject or reverse in whole or in
92 part, or resubmit some or all issues to the special master with instructions.

93 (2) A party may file a motion to reject or modify the special master's order, report, or
94 recommendations no later than 20 days from the date on which the special master's order,
95 report, or recommendations are served, unless the court sets a different time. The special
96 master's order, report, or recommendations shall be deemed received three days after
97 mailing by United States mail or transmission electronically, or on the same day if served

98 by hand delivery. In the absence of a motion to reject or modify an order, report, or
 99 recommendation within the time provided, the order, report, or recommendation shall
 100 have the force and effect of an order of the court.

101 (3) The court shall decide de novo all objections to findings of fact made or
 102 recommended by a special master unless the parties stipulate with the court's consent that:

103 (A) The special master's findings will be reviewed for clear error; or

104 (B) The findings of a special master appointed under subparagraph (a)(1)(A) of this
 105 Code section shall be final.

106 (4) The court shall decide de novo all objections to conclusions of law made or
 107 recommended by a special master.

108 (5) Unless the order of appointment establishes a different standard of review, the court
 109 may set aside a special master's ruling on a procedural matter only for an abuse of
 110 discretion.

111 (h) Compensation.

112 (1) The court shall fix the special master's compensation on the basis and terms stated
 113 in the order of appointment, but the court may set a new basis and terms after notice and
 114 an opportunity to be heard.

115 (2) The compensation fixed under paragraph (1) of subsection (h) of this Code section
 116 shall be paid either:

117 (A) By a party or parties; or

118 (B) From a fund or subject matter of the action within the court's control.

119 (3) The court shall allocate payment of the special master's compensation equally among
 120 the parties."

121 **SECTION 2.**

122 Said Chapter is further amended by adding a new subsection to Code Section 9-11-12,
 123 relating to answers, defenses, and objections in civil practice, to read as follows:

124 "(j)(1) Stay of discovery. If a party files a motion to dismiss before or at the time of filing
 125 an answer and pursuant to the provisions of this Code section, discovery shall be stayed
 126 for 120 days after the filing of such motion or until the ruling of the court on such motion,
 127 whichever is sooner; provided, however, that such stay may be extended:

128 (A) By the court on its own motion;

129 (B) By agreement of the parties, filed with the court; or

130 (C) By order of the court upon motion of a party to extend such stay for good cause.

131 (2) The filing of a motion to dismiss against less than all counts alleged shall only stay
 132 discovery related to the challenged claims.

133 (3) Discovery shall be extended for the duration of the stay of discovery imposed by this
134 subsection.

135 (4) Upon a showing of good cause, a court may grant a motion for expedited discovery
136 while the motion to dismiss is pending. Good cause may include, but shall not be limited
137 to, discovery needed because a witness will be unavailable during the discovery period
138 or because a party is seeking an interlocutory injunction.

139 (5) If a motion to dismiss raises defenses set forth in paragraph (2), (3), (5), or (7) of
140 subsection (b) of this Code section, limited discovery needed to respond to such defenses
141 shall be permitted until the court rules on such motion.

142 (6) The provisions of this subsection shall not modify or affect the provisions of
143 paragraph (2) of subsection (f) of Code Section 9-11-23.

144 (7) The court shall decide any motion to dismiss which results in the imposition of a stay
145 of discovery pursuant to this subsection during the time period in which such stay exists."

146 **SECTION 3.**

147 (a) Section 1 of this Act shall become effective on January 1, 2010.

148 (b) Section 2 of this Act shall become effective on July 1, 2009, and shall apply with
149 respect to motions to dismiss filed on or after July 1, 2009.

150 (c) Sections 3 and 4 of this Act shall become effective on July 1, 2009.

151 **SECTION 4.**

152 All laws and parts of laws in conflict with this Act are repealed.