

House Bill 927 (AS PASSED HOUSE AND SENATE)

By: Representatives Coomer of the 14th, Willard of the 51st, Dickey of the 140th, Nimmer of the 178th, Rogers of the 10th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to
2 enact reforms recommended by the Georgia Appellate Jurisdiction Review Commission
3 relating to appellate court efficiencies; to improve law assistant selection for the appellate
4 courts; to provide the Court of Appeals with greater procedural flexibility in its decisional
5 process; to transfer jurisdiction over certain appeals in civil cases from the Supreme Court
6 to the Court of Appeals; to amend the Official Code of Georgia Annotated, so as to conform
7 appellate references; to amend Chapter 2 of Title 15 of the Official Code of Georgia
8 Annotated, relating to the Supreme Court, so as to increase the number of Supreme Court
9 Justices and provide for their appointment and election; to change provisions relating to
10 reversals and affirmance; to change provisions relating to the terms of court; to provide for
11 effective dates and a contingent effective date and applicability; to provide for related
12 matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 PART I
15 SECTION 1-1.

16 This Act shall be known and may be cited as the "Appellate Jurisdiction Reform Act of
17 2016."

18 SECTION 1-2.

19 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
20 Code Section 15-2-19, relating to law assistants, as follows:

21 "15-2-19.

22 The Justices of the Supreme Court ~~are~~ shall be authorized to appoint law assistants for the
23 use of the court and to remove them at pleasure. The law assistants shall have been
24 admitted to the bar of this state as practicing attorneys; provided, however, that an

25 individual who graduated from law school but who is not a member of the bar of this state
 26 may be appointed as a law assistant so long as he or she is admitted to the bar of this state
 27 within one year of such appointment. It shall be the duty of the law assistants to attend all
 28 sessions of the court, if so ordered, and generally to perform the duties incident to the role
 29 of law assistant."

30 SECTION 1-3.

31 Said title is further amended by revising subsection (a) of Code Section 15-3-9, relating to
 32 law assistants, as follows:

33 "(a) The Judges of the Court of Appeals ~~are~~ shall be authorized to appoint law assistants
 34 for the use of the court and to remove them at pleasure. Each law assistant of the Court of
 35 Appeals shall have been admitted to ~~practice law in~~ the bar of this state as a practicing
 36 attorney; provided, however, that an individual who graduated from law school but who
 37 is not a member of the bar of this state may be appointed as a law assistant so long as he
 38 or she is admitted to the bar of this state within one year of such appointment."

39 PART II

40 SECTION 2-1.

41 Said title is further amended by revising Code Section 15-3-1, relating to the composition,
 42 divisions, how cases are heard, and decisions overruled, quorum, oral arguments, and
 43 assistance of other judges, as follows:

44 "15-3-1.

45 (a) **Composition.** The Court of Appeals shall consist of 15 Judges who shall elect one of
 46 their number as Chief Judge, in such manner and for such time as may be prescribed by
 47 rule or order of the court.

48 (b) **Divisions.** The court shall sit in divisions composed of three Judges in each division.
 49 ~~Two Judges shall constitute a quorum of a division.~~ The assignment of Judges to each
 50 division shall be made by the Chief Judge, and the personnel of the divisions shall from
 51 time to time be changed in accordance with rules prescribed by the court. The Chief Judge
 52 shall designate the Presiding Judges of the divisions and shall, under rules prescribed by
 53 the court, distribute the cases among the divisions in such manner as to equalize their work
 54 as far as practicable.

55 (c) **How cases heard.**

56 (1) ~~Each~~ Except as provided in paragraph (2) of this subsection, each division shall hear
 57 and determine, independently of the others, the cases assigned to it, ~~except that the~~
 58 ~~division next in line in rotation and a seventh Judge shall participate in the determination~~

59 of each case in which there is a dissent in the division to which the case was originally
60 assigned. Two Judges shall constitute a quorum of a division.

61 ~~(2) In all cases which involve one or more questions which, in the opinion of the~~
62 ~~majority of the Judges of the division or of the two divisions plus a seventh Judge to~~
63 ~~which a case is assigned, should be passed upon by all the members of the court, the~~
64 ~~questions may be presented to all the members of the court; and if a majority of all the~~
65 ~~members of the court decide that the question or questions involved should, in their~~
66 ~~judgment and discretion, be decided by all the members of the court, the case shall be~~
67 ~~passed upon by all the members of the court, provided that a majority of the Judges~~
68 ~~passing upon the case concur in the judgment.~~

69 ~~(3) In neither class of cases referred to in this subsection shall there be oral argument~~
70 ~~except before the division to which the cases are originally assigned.~~

71 (2) The Court of Appeals may provide by rule for certain cases to be heard and
72 determined by more than a single division and the manner in which those Judges will be
73 selected for such cases. When a case is heard and determined by more than a single
74 division, nine Judges shall be necessary to constitute a quorum.

75 ~~(d) **How decision overruled.** It being among the purposes of this Code section to avoid~~
76 ~~and reconcile conflicts among the decisions made by less than all of the Judges on the court~~
77 ~~and to secure more authoritative decisions, it is provided that when two divisions plus a~~
78 ~~seventh Judge sit as one court the court may, by the concurrence of a majority, overrule any~~
79 ~~previous decision in the same manner as prescribed for the Supreme Court. As precedent,~~
80 ~~a decision by such court with a majority concurring shall take precedence over a decision~~
81 ~~by any division or two divisions plus a seventh Judge. A decision concurred in by all the~~
82 ~~Judges shall not be overruled or materially modified except with the concurrence of all the~~
83 ~~Judges.~~

84 ~~(e) **Quorum.** When all the members of the court are sitting together as one court, eight~~
85 ~~Judges shall be necessary to constitute a quorum. In all cases decided by such court as a~~
86 ~~whole by less than 15 Judges, the concurrence of at least eight shall be essential to the~~
87 ~~rendition of a judgment.~~

88 (d) **Decisions as precedent.** The Court of Appeals shall provide by rule for the
89 establishment of precedent and the manner in which prior decisions of the court may be
90 overruled.

91 ~~(f)(e) **Oral arguments.** The Court of Appeals may hear oral arguments at places other~~
92 ~~than the seat of government. Reasonable notice shall be given of such hearings.~~

93 ~~(g)(f) **Assistance of other judges; procedure.** Whenever the court unanimously~~
94 ~~determines that the business of the court requires the temporary assistance of an additional~~
95 ~~judge or additional judges or one additional panel, the court may request the assistance of~~

96 senior appellate judges as provided in Chapter 3A of this title or senior superior court
 97 judges ~~as provided in Code Section 47-23-101~~. The Judge whose case assignment is
 98 transferred to the additional judge shall not vote on the case."

99 PART III

100 SECTION 3-1.

101 Said title is further amended by adding a new Code section to read as follows:

102 "15-3-3.1.

103 (a) Pursuant to Article VI, Section VI, Paragraph III of the Constitution of this state, the
 104 Court of Appeals rather than the Supreme Court shall have appellate jurisdiction in the
 105 following classes of cases:

106 (1) Cases involving title to land;

107 (2) All equity cases, except those cases concerning proceedings in which a sentence of
 108 death was imposed or could be imposed and those cases concerning the execution of a
 109 sentence of death;

110 (3) All cases involving wills;

111 (4) All cases involving extraordinary remedies, except those cases concerning
 112 proceedings in which a sentence of death was imposed or could be imposed and those
 113 cases concerning the execution of a sentence of death;

114 (5) All divorce and alimony cases; and

115 (6) All other cases not reserved to the Supreme Court or conferred on other courts.

116 (b) This Code section shall not otherwise affect the jurisdiction of the Supreme Court or
 117 the Court of Appeals."

118 SECTION 3-2.

119 Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to certiorari and
 120 appeals to appellate courts generally, is amended by revising Code Section 5-6-14, relating
 121 to execution of extraordinary orders of the Supreme Court, as follows:

122 "5-6-14.

123 When judgments are rendered ~~in the Supreme Court~~ on appeal in injunction or other
 124 extraordinary cases, the judges of the superior courts may give immediate effect to such
 125 judgments."

126 **SECTION 3-3.**

127 Part 7 of Article 1 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating
 128 to receivership powers and procedures generally, is amended by revising Code Section
 129 7-1-155, relating to injunction to restrain department, as follows:

130 "7-1-155.

131 Any financial institution of whose business or property the department has taken
 132 possession as receiver may, at any time within ten days after the department has become
 133 receiver, apply to the principal court for an order requiring the department to show cause
 134 why it should not be enjoined from continuing as receiver. Service may be made in such
 135 action by serving the commissioner personally or by leaving a copy with the deputy in
 136 charge of his or her office in the department or by serving the deputy receiver appointed
 137 by the department to manage the affairs of such financial institution. The court shall, after
 138 a hearing upon the merits, either dismiss the application or order the department to
 139 surrender to the financial institution possession of its business and property; but no such
 140 injunction shall issue where the department has been appointed receiver by action of a
 141 court of competent jurisdiction or by action of the financial institution itself, in accordance
 142 with this chapter. Such application for injunction may in the discretion of the court be
 143 heard at any time after service as provided in this Code section, with the right ~~to~~ by either
 144 party ~~by~~ to appeal, as in other cases of applications for temporary injunction, ~~to carry said~~
 145 ~~case to the Supreme Court for review."~~

146 **SECTION 3-4.**

147 Chapter 6 of Title 9 of the Official Code of Georgia Annotated, relating to extraordinary
 148 writs, is amended by revising Code Section 9-6-1, relating to final judgment prerequisite to
 149 appeal, as follows:

150 "9-6-1.

151 No appeal as to any ruling or decision in a mandamus or quo warranto proceeding or in a
 152 case involving a writ of prohibition may be taken ~~to the Supreme Court~~ until there has been
 153 a final judgment in the trial court. The grant of a new trial shall be treated as a final
 154 judgment in these cases and subject to review as in other cases."

155 **SECTION 3-5.**

156 Said chapter is further amended by revising Code Section 9-6-28, relating to appeal, as
 157 follows:

158 "9-6-28.

159 (a) Upon refusal of the court to grant the mandamus nisi, the applicant may appeal ~~to the~~
160 ~~Supreme Court~~, as in other cases. Either party dissatisfied with the judgment on the
161 hearing of the answer to the mandamus nisi may likewise appeal.

162 (b) Mandamus cases shall be heard ~~in the Supreme Court~~ on appeal under the same laws
163 and rules as apply to injunction cases."

164 **SECTION 3-6.**

165 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and
166 primaries generally, is amended by revising subsection (c) of Code Section 21-2-171, relating
167 to review and appeal of denial of nomination petitions, as follows:

168 "(c) The decision of the officer denying a nomination petition may be reviewed by the
169 superior court of the county containing the office of such officer upon an application for
170 a writ of mandamus to compel the granting of such petition. The application for such writ
171 of mandamus shall be made within five days of the time when the petitioner is notified of
172 such decision. Upon the application being made, a judge of such court shall fix a time and
173 place for hearing the matter in dispute as soon as practicable; and notice thereof shall be
174 served with a copy of such application upon the officer with whom the nomination petition
175 was filed and upon the petitioner. At the time so fixed the court, or any judge thereof
176 assigned for the purpose, shall hear the case. If after such hearing the said court shall find
177 that the decision of the officer was erroneous, it shall issue its mandate to the officer to
178 correct his or her decision and to grant the nomination petition. From any decision of the
179 superior court an appeal may be taken within five days after the entry thereof ~~to the~~
180 ~~Supreme Court~~. It shall be the duty of the ~~Supreme Court~~ appellate court to fix the hearing
181 and to announce its decision within such period of time as will permit the name of the
182 candidate affected by the court's decision to be printed on the ballot if the court should so
183 determine."

184 **SECTION 3-7.**

185 Said chapter is further amended by revising Code Section 21-2-528, relating to appeals from
186 court's determination on contest petition, as follows:

187 "21-2-528.

188 An appeal from the final determination of the court may be taken within ten days from the
189 rendition thereof ~~to the Supreme Court~~ as in other civil cases. The filing of a notice of
190 appeal shall not act as a stay or supersedeas. The appellant may apply to the ~~Supreme~~
191 ~~Court~~ appellate court for a stay or supersedeas, and such court shall consider applications

192 for stays or supersedeas in such cases without regard to whether any notice of appeal has
193 been filed or the record docketed in such cases."

194 **SECTION 3-8.**

195 Article 3 of Chapter 4 of Title 23 of the Official Code of Georgia Annotated, relating to
196 decrees, is amended by revising Code Section 23-4-33, relating to decree in will or contract
197 matters, as follows:

198 "23-4-33.

199 When it becomes impossible to carry out any last will and testament in whole or in part,
200 and in all matters of contract, the judges of the superior courts shall have power to render
201 any decree that may be necessary and legal, provided that all parties in interest shall
202 consent thereto in writing and there shall be no issue as to the facts or, if there is such an
203 issue, that there shall be a like consent in writing that the judge presiding may hear and
204 determine such facts, subject to a review ~~by the Supreme Court~~ on appeal, as in other cases.

205 In all cases where minors are interested, the consent of the guardian at law or the guardian
206 ad litem shall be obtained before the decree is rendered."

207 **SECTION 3-9.**

208 Chapter 2 of Title 44 of the Official Code of Georgia Annotated, relating to recordation and
209 registration of deeds and other instruments, is amended by revising Code Section 44-2-84,
210 relating to review by Supreme Court, as follows:

211 "44-2-84.

212 All judgments and decrees of the superior court or the judge thereof which are rendered
213 under this article shall be subject to review by the ~~Supreme Court~~ of Appeals."

214 **SECTION 3-10.**

215 Said chapter is further amended by revising subsections (e) and (f) of Code Section 44-2-103,
216 relating to examiner's powers and appeal, as follows:

217 "(e) The right to grant a new trial upon any issue submitted to a jury and the right of appeal
218 ~~to the Supreme Court~~ shall be as provided for in Code Sections 5-6-37 through 5-6-44,
219 5-6-48, and 5-6-49.

220 (f) The judge may refer or recommit the record to the examiner in like manner as auditor's
221 reports may be recommitted or he or she may on his or her own motion recommit it to the
222 same or any other examiner for further information and report. ~~Where~~ When an exception
223 or exceptions to the examiner's report have been sustained by the court or by verdict on the
224 trial of an issue of fact or ~~where the Supreme Court~~ when the appellate court reverses the
225 judgment of the trial court, it shall not be necessary for the trial court to recommit the case

226 to an examiner, but the judge shall proceed to enter a decree in accordance with the law and
 227 the facts as thus established and appearing from the record; provided, however, that if the
 228 judge, in his or her discretion, is of the opinion that it is in the interests of truth and justice
 229 that a recommitment to an examiner should be made, ~~he~~ the judge may, upon the motion
 230 of any party or on his or her own motion, order a recommitment of the whole case or any
 231 part thereof or for the taking of additional testimony upon any matter which the court
 232 deems necessary to the rendition of a true and correct decree."

233 **SECTION 3-11.**

234 Said chapter is further amended by revising subsection (b) of Code Section 44-2-136, relating
 235 to cancellation of mortgage, as follows:

236 "(b) If the holder of the mortgage, certificate of indebtedness, or any lien, equity,
 237 encumbrance, lis pendens, or other similar matter relating to the registered land or any
 238 interest therein refuses to give the requisite authority for the cancellation thereof if and
 239 when the debt has been paid or no longer exists or when it is no longer legal and equitable
 240 that the registered title should be encumbered by the same, any person adversely affected
 241 may petition the court for an involuntary cancellation of the same. In such case, the judge
 242 shall cause a rule nisi to be served upon such holder requiring him or her to show cause on
 243 a day set, which day shall be not less than 30 days from the date the rule was served, why
 244 the mortgage, certificate of indebtedness, lien, or other encumbrance on the registered title
 245 should not be canceled. The petition and rule nisi shall be served personally on such holder
 246 at least 15 days before the date set for the hearing if such service be practical; but, ~~where~~
 247 when it is made to appear to the court that personal service cannot be practically effected,
 248 the judge may pass an order providing how the service shall be made. In case the holder
 249 is not a resident of this state or is unknown, service by publication shall be made upon the
 250 order of the judge in the manner prescribed in Code Section 9-11-4. In case of minors and
 251 persons of unsound mind, guardians ad litem shall be appointed. If any issue of fact as to
 252 the right of the petition to have the cancellation made appears, such issue shall, upon
 253 demand of either party, be tried by jury, with right of the judge to grant a new trial. If it
 254 appears that the registered title should be freed from the encumbrance, the court shall
 255 decree accordingly and order the cancellation noted upon the certificate of title. The judge
 256 shall have power by attachment for contempt, if necessary, to compel the holder of the
 257 mortgage certificate of indebtedness or other instrument to surrender it for cancellation.
 258 ~~The Supreme Court shall have jurisdiction for the correction of errors in the trial court."~~

259 **SECTION 3-12.**

260 Code Section 48-5-17 of the Official Code of Georgia Annotated, relating to proceedings to
 261 determine county entitled to return and payment, is amended by revising paragraph (3) of
 262 subsection (a) as follows:

263 "(3) The proceedings under this Code section shall be the same in all respects as in other
 264 actions seeking equitable relief except that the petition shall be triable at the first term of
 265 the court and, as in other cases, shall be reviewed ~~by~~ on appeal ~~to the Supreme Court of~~
 266 ~~Georgia.~~"

267 **SECTION 3-13.**

268 The following Code sections of the Official Code of Georgia Annotated are amended by
 269 replacing "Court of Appeals and the Supreme Court" with "Court of Appeals or the Supreme
 270 Court" wherever such term occurs in:

- 271 (1) Code Section 5-7-1, relating to orders, decisions, or judgments appealable and the
 272 defendant's right to cross appeal;
- 273 (2) Code Section 31-14-8.2, relating to appeals from orders of superior court or hearing
 274 examiner, costs, and right to counsel;
- 275 (3) Code Section 37-3-150, relating to right to appeal orders of probate court, juvenile court,
 276 or hearing examiner;
- 277 (4) Code Section 37-4-110, relating to appeal rights of clients, their representatives, or
 278 attorneys; and
- 279 (5) Code Section 37-7-150, relating to right to appeal orders of probate court, juvenile court,
 280 or hearing examiner.

281 **SECTION 3-14.**

282 The following Code sections of the Official Code of Georgia Annotated are amended by
 283 replacing "Court of Appeals, and the Supreme Court" with "Court of Appeals, or the
 284 Supreme Court" wherever such term occurs in:

- 285 (1) Code Section 37-3-150, relating to right to appeal orders of probate court, juvenile court,
 286 or hearing examiner;
- 287 (2) Code Section 37-4-110, relating to appeal rights of clients, their representatives, or
 288 attorneys;
- 289 (3) Code Section 37-7-150, relating to right to appeal orders of probate court, juvenile court,
 290 or hearing examiner.

291

PART IV

292

SECTION 4-1.

293 Chapter 2 of Title 15 of the Official Code of Georgia Annotated, relating to the Supreme
 294 Court, is amended by revising Code Section 15-2-1.1, relating to the number of justices, as
 295 follows:

296 "15-2-1.1.

297 The Supreme Court shall consist of ~~seven~~ nine Justices."

298

SECTION 4-2.

299 Said chapter is further amended by revising Code Section 15-2-10, which is reserved, as
 300 follows:

301 "15-2-10.

302 The additional justiceships created in 2016 shall be appointed by the Governor for a term
 303 beginning January 1, 2017, and continuing through December 31, 2018, and until their
 304 successors are elected and qualified. Their successors shall be elected in the manner
 305 provided by law for the election of Supreme Court Justices at the nonpartisan judicial
 306 election in 2018, for a term of six years beginning on January 1, 2019, and until their
 307 successors are elected and qualified. Future successors shall be elected at the nonpartisan
 308 judicial election each sixth year after such election for terms of six years and until their
 309 successors are elected and qualified. They shall take office on the first day of January
 310 following the date of the election. Reserved."

311

SECTION 4-3.

312 Said chapter is further amended by revising subsection (a) of Code Section 15-2-16, relating
 313 to reversal and affirmance, as follows:

314 "(a) In all cases decided by the Supreme Court, the concurrence of a majority of the
 315 Justices shall be essential to a judgment of reversal. If the Justices are evenly divided, the
 316 judgment of the court below shall stand affirmed. In all cases decided by the court, with
 317 at least a quorum but less than ~~seven~~ nine Justices, the concurrence of at least ~~four~~ five
 318 shall be essential to the rendition of a judgment; ~~and, if only four Justices act upon a case~~
 319 ~~and they are evenly divided, the case shall be reargued before a full bench, if possible,~~
 320 ~~before the term closes; and, if not possible, the judgment of the court below shall stand~~
 321 ~~affirmed."~~

322

PART V

323

SECTION 5-1.

324 Said chapter is further amended by revising Code Section 15-2-4, relating to place of
325 sessions and terms of court, as follows:

326 "15-2-4.

327 (a) The Supreme Court shall sit at the seat of government.

328 (b) Unless the Supreme Court by rule or order chooses to extend its terms of court, the
329 terms shall be as follows:330 (1) ~~December~~ January term beginning the first Monday in ~~January~~ December;331 (2) April term beginning the ~~third~~ first Monday in April; and332 (3) ~~August~~ September term beginning the first Monday in ~~September~~ August.

333 (c) Each term shall continue until the business for that term has been disposed of by the
334 court, provided that, unless sooner closed by order of the court, the ~~September~~ August term
335 shall end on ~~December 16~~ November 18, the ~~January~~ December term shall end on ~~April 14~~
336 March 31, and the April term shall end on July 3~~1~~ 17. No judgment in a second-term case,
337 other than a judgment on a motion for reconsideration in such case, shall be rendered
338 during the last 15 days of any term. Disposition of first-term cases may be made during
339 nonterm periods."

340

PART VI

341

SECTION 6-1.

342 (a) Except as provided in subsections (b), (c), (d), and (e) of this section, this Act shall
343 become effective upon its approval by the Governor or upon its becoming law without such
344 approval.

345 (b) Part II of this Act shall become effective on July 1, 2016.

346 (c) Part III of this Act shall become effective on January 1, 2017, and shall apply to cases
347 in which a notice of appeal or application to appeal is filed on or after such date.

348 (d) Part IV of this Act shall only become effective if funds are appropriated for the purpose
349 of Part IV of this Act in an appropriations Act enacted at the 2016 regular session of the
350 General Assembly. If funds are so appropriated, then Part IV of this Act shall become
351 effective on July 1, 2016, for purposes of making the initial appointments of the Supreme
352 Court Justices created by this Act, and for all other purposes Part IV of this Act shall become
353 effective on January 1, 2017. If funds are not so appropriated, then Part IV of this Act shall
354 not become effective and shall stand repealed on July 1, 2016.

355 (e) Part V of this Act shall become effective on December 5, 2016, and upon such date the
356 December term of court shall begin as provided by this Act; provided, however, that the term
357 of court which began on the first Monday in September, 2016, under the former provisions
358 of Code Section 15-2-4 shall end on December 16, 2016.

359

SECTION 6-2.

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