

## **RULES SUPERIOR COURTS SENTENCE REVIEW PANEL**

### **I. General**

**Rule 1.** Pursuant to O.C.G.A. § 17-10-6, the President of the Council of Superior Court Judges shall appoint one or more panels of three Superior Court Judges to serve as members of the Sentence Review Panel and shall designate the Chairman of each Panel. The President of the Council of Superior Court Judges shall also appoint another Superior Court Judge for a like term to serve as a supernumerary member when one of the regular members is disqualified or unable to serve. No Judge appointed to a Panel shall review a sentence which he has imposed or participate in any such review. The Panel shall serve 3 month terms (January through March; April through June; July through September; October through December).

**Rule 2.** The President of the Council of Superior Court Judges shall appoint annually an Administrative Board of 3 Superior Court Judges to maintain continuity between the Panels; to prepare annually a budget; to consider and revise the Rules; and to supervise activities of the Clerk and support staff.

**Rule 3.** The Administrative Board shall appoint a Clerk and support staff necessary to implement the Act. The Clerk and support staff shall serve at the pleasure of the Administrative Board.

**Rule 4.** The Panel shall not review death penalty cases, life sentences for murder or misdemeanors.

**Rule 5.** Sentences eligible for review are felony sentences of 12 or more years, including probated sentences, split sentences, sentences imposed under the First Offender Act. The Panel is not authorized to review probation revocations except sentences imposed under the First Offender Act. If a First Offender Act sentence is revoked and a sentence of 12 or more years is imposed, that sentence is reviewable even if the original First Offender Act sentence has already been reviewed by the Panel.

**Rule 6.** Felony sentences of less than 12 years are eligible for review only when they are to be served consecutively for a total of 12 or more years and were imposed in the same county within the same term of court.

**Rule 7.** The Panel shall not have the authority to suspend or reduce fines or to reduce a sentence below the statutory minimum. The Panel shall not have the authority to reduce an entire sentence to probation, suspend a sentence, reverse the conviction or change the charge for which the applicant has been sentenced. In reducing any sentence, the Panel shall not have the authority to impose or increase a fine or to prescribe more onerous conditions of probation than those contained in the original sentence.

**Rule 8.** Negotiated sentences will be reduced only in extraordinary cases. The sentencing court is required to identify such sentences on the face thereof.

**Rule 9.** (Reserved)

**Rule 10.** Filings and communications relating to cases pending before the Panel shall be directed to the Clerk of the Panel, and not to the Judges directly, and shall show that copies thereof have been served on opposing counsel.

**Rule 11.** The Clerks office shall be open Monday through Friday from 8:30 a.m. to 4:30 p.m. E.S.T./E.D.T. The address is: Clerk, Superior Courts Sentence Review Panel of Georgia, 18 Capitol Square, Suite 108, Atlanta. Georgia 30334. Telephone: (404) 656 5159.

**Rule 12.** When an expiration date falls on a Saturday, Sunday or official holiday, the time is extended through the next business day.

**Rule 13.** The contents of properly addressed registered or certified mail shall be deemed filed on the official postmark date.

**Rule 14.** There are no costs payable to the Clerk of the Panel.

**Rule 15.** No paper belonging to the office of the Clerk of the Panel shall be taken therefrom, except that the Clerk of the Panel may release the records to the Judges of the Panel for their respective official uses.

**Rule 16.** The Clerk of the Panel shall not provide photocopies of documents, but the Clerk of the Panel is authorized to furnish certified copies of records for use in other pending judicial proceedings.

**Rule 17.** Wherever in these rules the word "Clerk" shall appear, the same shall include the lawful deputies of said Clerk.

**Rule 18.** (Reserved)

**Rule 19.** (Reserved)

## **II. Filing the Application for Review of Sentence.**

**Rule 20.** Applications for Review of Sentence must include applicants name, county in which sentence was imposed, all indictment numbers of cases to be reviewed and the complete name and mailing address of the filing party, all of which must be typed or printed legibly in ink. If applicant is represented by more than one counsel, said application shall designate the name of the counsel to whom notices shall be sent.

**Rule 21.** Application for Review of Sentence forms may be obtained from the Superior Court Clerk or the Clerk of the Panel: however a form is not mandatory. A written request to the Clerk of Superior Court, including the requirements specified in Rule 20, is sufficient.

**Rule 22.** All Applications for Review of Sentence must be filed in the office of the Clerk of Superior Court where the sentence was imposed within 30 days of the

date of the following, whichever occurs last:

- (1) the sentencing order is filed in the office of the Clerk of Superior Court; or
- (2) Georgia Court of Appeals or Supreme Court remittitur affirming the conviction is made the judgment of the sentencing court.

**Rule 23.** Post sentence motions for modification of sentence filed in the sentencing court, habeas corpus actions, and federal appeals do not toll the 30 day filing limit specified in Rule 22.

**Rule 24.** Out of time Applications for Review of Sentence will be granted only when the Panel is ordered to do so by a court of competent jurisdiction or if the sentencing judge certifies to the Panel that an appropriate and timely explanation of the right of sentence review was not made to the defendant; however the sentencing judge shall have the right to grant a discretionary out of time review. In the event the sentencing judge is no longer available, then any other judge of that court shall make said certification.

**Rule 25.** (Reserved)

**Rule 26.** (Reserved)

### **III. Records Transmittal by Clerk of Superior Court.**

**Rule 27.** The Clerk of Superior Court shall certify and transmit to the Clerk of the Panel, within 10 days after filing of the Application for review of Sentence, 1 copy of the following:

- (1) Application;
- (2) Sentence(s);
- (3) Indictment(s), plea(s), court/jury verdict(s);
- (4) Criminal record, if any, of applicant;
- (5) Pre sentence or post sentence report, if any;
- (6) Appellate certification form in cases which the Georgia Court of Appeals or Supreme Court Remittitur affirming the conviction has been made the judgment of the court;
- (7) Eligibility Determination Form if the Application for Review of Sentence is not timely filed;
- (8) Clerks certification.

**Rule 28.** The Clerk of Superior Court shall not send the transcript of the plea or sentencing phase of the case unless the sentencing court prescribes by order or rule that said transcript shall be forwarded to the Panel.

**Rule 29.** Transmittal of records shall be by Clerk or deputy personally or by mail or express, charges prepaid. Transmittal by a party or attorney is prohibited.

**Rule 30.** Records shall be written or printed on one side of white paper not less than letter size. Thin paper which shows the following page and indistinct photocopies are unacceptable. Blue backings are prohibited unless the Clerks certification is pre printed thereon.

**Rule 31.** Following transmittal of the case to the Panel, the Clerk of Superior Court shall forward to the Clerk of the Panel copies of subsequent filings of any amendment to the sentence.

**Rule 32.** (Reserved)

**Rule 33.** (Reserved)

#### **IV. Docketing**

**Rule 34.** All applications shall be consecutively numbered and entered upon the docket in the order of their filing in the office of the Clerk of the Panel.

**Rule 35.** The Clerk of the Panel shall give notice of docketing by mail to the sentencing judge, applicant and district attorney. The Clerk shall make an entry on the docket indicating when the notice was mailed and it shall be conclusive evidence that notice was properly and timely sent.

**Rule 36.** If the Application for Review of Sentence appears on its face to be ineligible for review, the docketing notice shall so indicate.

**Rule 37.** (Reserved)

#### **V. Written Arguments.**

**Rule 38.** Oral arguments, videotapes or tape recordings are prohibited.

**Rule 39.** Applicant and district attorney shall have the right to submit only written argument relative to the sentence imposed and the harshness or justification thereof. Said argument shall be postmarked to the Panel within 15 days of the docketing date.

**Rule 40.** Arguments shall be typed or printed (double spaced) on paper not less than letter size (8 1/2" x 11"). The docket number assigned by the Sentence Review Panel must appear on the first page. Only one side of a sheet may be used. Pages must have margins of 2" at the top, not less than 1 1/2" at the left and not less than 1 1/2" at the bottom. No documents submitted in argument will be returned. Blue backings are prohibited.

**Rule 41.** Original and 3 copies of the entire argument shall be filed with the Clerk of the Panel. Indistinct photocopies are unacceptable. Service on opposing party, stating the name and address, shall be certified. Parties failing to comply with this rule shall be instructed to do so by the Clerk of the Panel.

**Rule 42.** The plea or sentencing transcript is not a statutory requirement. A party desiring such transcript included in the review shall submit 4 copies to the Clerk of the Panel.

**Rule 43.** The sentencing judge may submit a memorandum supporting his position and stating what facts, if any, he wishes to make available to the Panel. Original and 3 copies of such memorandum shall be submitted to the Clerk of the Panel and a copy shall be served on counsel for the parties by the sentencing judge.

**Rule 44.** There are exceptional cases in which the record does not reflect the uniqueness of the case. When a Superior Court Judge, because of the seriousness or uniqueness of a Case, makes a brief statement for the court reporter to attach to the sentence pointing out reasons why the sentence should not be reduced, then the Panel shall give such recommendation serious consideration.

**Rule 45.** (Reserved)

**Rule 46.** (Reserved)

## **VI. Judgments.**

**Rule 47.** The Superior Courts Sentence Review Panel shall be in continuous session and shall meet at such times as may be necessary to dispose of all cases within 90 days after they are ripe for consideration. The Chairperson shall call the meetings. A case shall be considered ripe for consideration if the 15 days for submission of written argument have elapsed, and all documents pertinent to the review of the case have been received.

**Rule 48.** The Panel shall dismiss without further consideration all docketed applications which are not eligible for review.

**Rule 49.** Factors to be considered in the review shall be the nature and circumstances of the crime, prior criminal record, age, disparity of sentences between co defendants, negotiated sentences, aggravating circumstances and mitigating circumstances. Members of the Panel shall not base their decision upon what sentence the Panel members would have imposed, but shall reduce a sentence or sentences only if they determine that the sentence under review is excessively harsh.

**Rule 50.** The Panel shall not issue written opinions.

**Rule 51.** Each judgment shall show on its face the votes, nonparticipation or disqualification of each Judge. Each Judge of the reviewing Panel shall sign the order and remittitur.

**Rule 52.** As soon as it is practicable after the entry of the judgment, the Clerk of the Panel shall transmit the order and remittitur to the Clerk of the Superior Court from which the case was received. If the sentence is affirmed or the application is

dismissed, a copy of the order and remittitur will be mailed to the applicant. If the sentence is reduced, a copy of the order and remittitur will be mailed to the sentencing judge, applicant, district attorney, probation office, parole office and the Department of Corrections.

**Rule 53.** The Panel will not entertain motions for reconsideration. The decision of the Panel shall not be reviewable. Applicant shall not have the right to file more than one application for a review of a sentence. Any order issued by the Panel shall be binding on all parties.

**Rule 54.** (Reserved)

**Rule 55.** (Reserved)

#### **VII. Effective Date.**

**Rule 56.** These Rules shall be in effect as of July 1, 1985.