

## Lola Diamond - Mandamus

---

**From:** Steve Castlen  
**To:** Anuva Chowdhury; Keri Avera; Lola Diamond; Lorenzo Stubbs; Margo Bai...  
**Date:** 1/12/2017 8:46 AM  
**Subject:** Mandamus  
**Attachments:** Mandamus\_Dec28.pdf

---

All,

We are now handling Mandamus filings. This is a result of the transfer of jurisdiction from the Supreme Court to our Court. We will not get all mandamus actions. So, please read - and keep a copy of - the attached overview of mandamus prepared by Ave.

Steve

Stephen E. Castlen  
Clerk/Administrator  
Court of Appeals of Georgia  
47 Trinity Avenue, S.W.  
Suite 501  
Atlanta, Georgia 30334



# Court of Appeals

## Memorandum

---

To: Judge Dillard

From: Ave Mince-Didier

Subject: Petitions for original mandamus relief

Date: December 28, 2016

---

As you know, effective January 1, 2017, pursuant to the Appellate Jurisdiction Reform Act of 2016, the Supreme Court will no longer retain exclusive jurisdiction over cases involving extraordinary remedies.<sup>1</sup> Extraordinary remedies include “mandamus, prohibition, quo warranto, and the like.” *Spence v. Miller*, 176 Ga. 96, 99 (167 SE 188) (1932).

---

<sup>1</sup> Effective January 1, this Court will have jurisdiction in “(1) Cases involving title to land; (2) All equity cases, [except death cases]; (3) All cases involving wills; (4) All cases involving extraordinary remedies, [except death cases]; (5) All divorce and alimony cases; and (6) All other cases not reserved to the Supreme Court or conferred on other courts.” OCGA § 15-3-3.1 (a) (4). See also Ga. Const. of 1983, Art. VI, Sec. VI, Par. III. The Supreme Court will retain its exclusive appellate jurisdiction in all cases involving constitutional questions and election contests and will retain its general appellate jurisdiction in all habeas corpus cases and all cases in which a sentence of death was or could be imposed. See Ga. Const. of 1983, Art. VI, Sec. 6, Par. II; Art. VI, Sec. 6, Par. III. See also *Neal v. State*, 290 Ga. 563, 572 (722 SE2d 765) (2012) (Hunstein, C. J., concurring) (Supreme Court has appellate jurisdiction over all murder cases).

A writ of mandamus will issue to compel the performance of an official duty in the absence of another specific legal remedy. See OCGA § 9-6-20. Mandamus petitions have been filed in the Supreme Court and will likely come to this Court in one of two ways. First, mandamus petitions may come by direct appeal.<sup>2</sup> Second, appellate courts have limited original mandamus authority in aid of the courts' jurisdiction. See Ga. Const. of 1983, Art. VI, Sec. I, Par. IV ("Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments; but only the superior and appellate courts shall have the power to issue process in the nature of mandamus, prohibition, specific performance, quo warranto, and injunction."). This provision, however, "is merely enabling, not mandatory." *Graham v. Cavender*, 252 Ga. 123, 124 (311 SE2d 832) (1984). Thus, a mandamus petition must be raised, in the first instance, in the superior court. See *Brown v. Johnson*, 251 Ga. 436 (306 SE2d 655) (1983). The judge named as respondent will disqualify, and another judge will be appointed to rule on the petition. See *id.* This is the procedure to be followed "in all but those extremely rare situations in which there is a need for the exercise of [an appellate] court's original jurisdiction."<sup>3</sup> *Graham*, 252 Ga. at 124. See

---

<sup>2</sup> All judgements and orders "granting or refusing to grant mandamus" are subject to direct appeal. OCGA § 5-6-34 (a) (7). See also OCGA §§ 9-6-1; 9-6-28 (both of which were amended effective January 1, 2017, to omit references to review of mandamus cases in the Supreme Court).

<sup>3</sup> As the Supreme Court has noted, prior to the effective date of the Georgia Constitution of 1983, "the only sanction provided by law for the failure or refusal of a judge

also *Gay v. Owens*, 292 Ga. 480, 483 (2) (738 SE2d 614) (2013) (petition for writ of mandamus seeking additional pre-trial sentence credit must be filed in superior court).

To further understand how the Supreme Court handles these cases, I reached out to John Earles of Justice Blackwell's staff and he referred me to Mary Jo Bryan, a central staff attorney at the Supreme Court. According to Mary Jo, most of the petitions for original mandamus relief that the Supreme Court receives are from pro se prisoners<sup>4</sup> seeking to vacate their convictions. Rather than addressing these issues on the merits, the Supreme Court routinely dismisses these petitions under *Brown*, 251 Ga. at 437. See also *Graham*, 252 Ga. at 124. Mary Jo provided me with copies of some dismissal orders, which are attached to this memo. See Case Nos. S17O0476 (Nov. 7, 2016); S17O0389 (Oct. 31, 2016); S17O0170 (Oct. 3, 2016); S17O0250 (Oct. 3, 2016). I believe that the vast majority of petitions for original

---

to obey the provisions of [OCGA § 15-6-21(a)] requiring prompt judicial action" was "impeachment and removal from office." *Graham*, 252 Ga. at 123. See also *Clark v. Hunstein*, 291 Ga. 646, 647 (1) (733 SE2d 259) (2012). Our law had "been that mandamus could issue only from a superior tribunal to an inferior tribunal, hence a superior-court judge could not mandamus another superior-court judge to compel the taking of judicial action." *Graham*, 252 Ga. at 124. In an effort to provide a more efficient remedy, the constitution now provides that the superior and appellate courts have the power to issue mandamus. *Id.*

<sup>4</sup> The Supreme Court requires a prisoner appealing an order on mandamus to file the appeal by application under the Prison Litigation Reform Act, OCGA § 42-12-8. The Supreme Court Clerk's office will return, without filing, any original mandamus petitions filed by prisoners if the petition is not on the form approved by the Administrative Office of the Courts (AOC). See *Gay*, 292 Ga. 480. If a prisoner's original petition that is not on an AOC form is docketed inadvertently, the Supreme Court will strike it. See S14O1904 (Sept. 8, 2014) (attached).

mandamus relief that this Court will receive will likewise be disposed of by dismissal orders prepared by central staff.

The Supreme Court also receives mandamus petitions seeking original habeas relief. If this Court were to receive such petitions, central staff would continue to transfer such cases to the Supreme Court. Even prior to January 1, cases filed in this Court on the basis of its original mandamus jurisdiction should not be transferred to the Supreme Court in light of the appellate courts' shared original mandamus jurisdiction. See Ga. Const. of 1983, Art. VI, Sec. I, Par. IV. See also Case No. S17O0637 (Dec. 12, 2016) (attached). Finally, there is one question regarding original mandamus jurisdiction that the Supreme Court has not yet decided: whether, given the appellate courts' shared original mandamus jurisdiction, it will transfer original mandamus petitions that are filed there after January 1 to this Court. See Ga. Const. of 1983, Art. VI, Sec. I, Par. IV.

Currently, mandamus petitions filed in this Court are docketed as emergency motions as a matter of policy (although a search of DT shows that they have also been docketed as applications). Because these petitions are not emergency motions and, generally, are not time-sensitive, it is proposed that IT will create a new category of "original jurisdiction" cases and the Clerk's Office will docket the petitions as such, and assign the cases to a three-judge panel for disposition.



**SUPREME COURT OF GEORGIA**

Case No. S1401904

Atlanta, September 8, 2014

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**MARCUS ANTHONY TERRELL v. JENNIFER GOWER et al.**

Because petitioner's original petition for mandamus was not filed on a form promulgated by the Administrative Office of the Courts, it may not be accepted for filing. See OCGA § 9-10-14 (b) and Gay v. Owens, 292 Ga. 480 (738 SE2d 614) (2013). Accordingly, the Court hereby directs that the petition be stricken from the docket.

All the Justices concur.

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

I certify that the above is a true extract from the Minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

*Suzanne C. Fulton*, Chief Deputy Clerk



**SUPREME COURT OF GEORGIA**  
Case No. S17O0476

Atlanta, November 7, 2016.

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**THERIAN WIMBUSH et al. v. R. L. BUTCH CONWAY, SHERIFF**

Petitioner seeks to invoke this Court's original jurisdiction for the grant of pretrial habeas relief. The Court previously dismissed petitions seeking the same relief, Wimbush v. Conway, S17O0127, S17O0131 (Sept. 6, 2016), and because original jurisdiction for pretrial habeas actions continues to lie in the superior court and because this case does not present any basis for the extremely rare exercise of this Court's original jurisdiction, the Court hereby dismisses the petition.

All the Justices concur.

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

I certify that the above is a true extract from the  
Minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto  
affixed the day and year last above written.

*Sue C. Pulton*, Chief Deputy Clerk



SUPREME COURT OF GEORGIA

Case No. S17O0389

Atlanta October 31, 2016

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

JOHNNIE CULBREATH v. ROBERT S. REEVES, JUDGE

Petitioner filed an original Petition for Writ of Mandamus asking this Court to direct Judge Reeves, who is presiding over petitioner's action in which he seeks a writ of habeas corpus, to grant him a default judgment, summary judgment, reversal of his conviction, and release from incarceration. Although petitioner styles his original petition as one for mandamus, the relief he seeks is not a proper subject for a mandamus petition. See generally OCGA § 9-6-20; Bibb County v. Monroe County, 294 Ga. 730, 736 (2) (b) (755 SE2d 760) (2014). Nor has he presented an issue warranting the extremely rare exercise of this Court's original jurisdiction. See Brown v. Johnson, 251 Ga. 436 (306 SE2d 655) (1983) (original petitions for mandamus are to be filed in superior court rather than the Supreme Court of Georgia); Gay v. Owens, 292 Ga. 480 (738 SE2d 614) (2013). Therefore, this petition hereby is dismissed.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

*Sue C. Fulton*, Chief Deputy Clerk



SUPREME COURT OF GEORGIA  
Case No. S17O0170

Atlanta October 3, 2016

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

WILLIAM VESSELL v. TOMMY HANKINSON, JUDGE

Petitioner has filed in this Court an original petition in which he seeks mandamus relief compelling Judge Hankinson to rule on his motion to vacate void conviction. However, “the superior courts of this state have the power, in proper cases, to issue process in the nature of mandamus . . .,” and thus there was no need for petitioner to seek relief in this Court. Brown v. Johnson, 251 Ga. 436 (306 SE2d 655) (1983). Until such time as petitioner has pursued mandamus relief by a stand-alone petition filed in superior court, this is not one of the extremely rare instances in which this Court will exercise original mandamus jurisdiction. See Gay v. Owens, 292 Ga. 480, 483 (2) (738 SE2d 614) (2013). Accordingly, the original petition for writ of mandamus is hereby dismissed.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk 's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

*Suzanne C. Pulton*, Chief Deputy Clerk



SUPREME COURT OF GEORGIA  
Case No. S17O0250

Atlanta      October 3, 2016

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

GARRY D. MULLIS v. THE STATE

Petitioner has filed a document styled as a petition for mandamus, but which seeks relief in the form of the setting aside of his conviction. This Court lacks jurisdiction to grant such original relief. See Ga. Const. of 1983, Art. VI, Sec. I, Para IV, and Art. VI, Sec. VI, Para. II-III. See generally, Brown v. Johnson, 251 Ga. 436 (306 SE2d 655) (1983). Therefore, the Court hereby dismisses the petition.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk 's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

*Suzanne C. Bullock*, Chief Deputy Clerk



# SUPREME COURT OF GEORGIA

Case No. S17O0637

Atlanta December 12, 2016

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

## MORRIS RICKS v. RHONDA SMITH, CLERK

Petitioner filed this original petition for writ of mandamus in the Court of Appeals, which transferred it here on the ground that this Court has general appellate jurisdiction over mandamus cases under Article VI, Section VI, Paragraph III of the Georgia Constitution of 1983, which says: “Unless otherwise provided by law, the Supreme Court shall have appellate jurisdiction of . . . (5) [a]ll cases involving extraordinary remedies.” Mandamus is such an extraordinary remedy. See Spence v. Miller, 176 Ga. 96, 99 (167 SE 188) (1932). Although it is true that until the end of 2016, this Court has general appellate jurisdiction over appeals filed in cases involving extraordinary remedies, the petition in this case sought to invoke the jurisdiction of the Court of Appeals to issue a writ of mandamus in the first instance. Like the superior courts, both appellate courts have original jurisdiction to issue mandamus pursuant to Article VI, Section I, Paragraph IV of the Constitution, which says: “Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments; but only the superior and appellate courts shall have the power to issue process in the nature of mandamus, prohibition, specific performance, quo warranto, and injunction. . . .” See, e.g., Clark v. Hunstein, 291 Ga. 646, 647-648 (733 SE2d 259) (2012) (discussing this Court’s exercise of such original jurisdiction); Expedia, Inc. v. City of Columbus, 305 Ga. App. 450, 455 (699 SE2d 600) (2010) (recognizing that the Court of Appeals has original mandamus jurisdiction but declining to exercise it to review an interlocutory discovery order). Because this case involves original jurisdiction to issue mandamus rather than appellate jurisdiction over a mandamus case, the Court of Appeals erred in transferring this petition to this

Court, and it is hereby returned to the Court of Appeals.

All the Justices concur.

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

I certify that the above is a true extract from the  
Minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto  
affixed the day and year last above written.

*Sui C. Pulton*, Chief Deputy Clerk