



Court of Appeals of Georgia

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Court of Appeals Makes Historic Rules Change

Atlanta, July 13, 2020 – Beginning next month, a single dissent in a three-judge Court of Appeals case will no longer remove its value as precedent for future cases, nor will one judge’s disagreement with the reasoning of the case.

“This rule change brings the Court of Appeals of Georgia in line with other federal and state intermediate appellate courts throughout the country. It will further our role in building and maintaining a clear and a consistent body of case law throughout the state,” said Court of Appeals Chief Judge Christopher J. McFadden.

The rule change does not apply retroactively, and the precedential value of cases decided before August 1, 2020, remains the same.

The court’s establishment of precedent was previously fixed by statute. Most Court of Appeals cases are resolved by a single division of three judges. Under former OCGA § 15-3-1 (c) (1), if one of those judges issued a dissenting opinion in an appeal, additional judges were required to decide the case. In 2016, the Georgia legislature changed the law and gave the court the authority to provide its own rules governing these matters. See OCGA § 15-3-1 (c) (2), (d). As a result, in 2017, the court revised its procedures to provide that a case would be determined by a single division even if one judge dissents, except under limited circumstances when all 15 judges must participate. See Ga. Court of Appeals Rule 33.1.

But the court’s former rules still applied to the precedential value of three-judge cases. When a judge did not fully concur with the reasoning and result in an opinion, the case only decided the appeal and was not binding authority in future cases. See former Ga. Court of Appeals Rule 33.2 (a) (1) (eff. Dec. 4, 2017).

Effective August 1, 2020, however, the rule has changed. The new rule provides:

If an appeal is decided by a division of this Court or by the Court sitting en banc, a published opinion in which a majority of the judges fully concur in the rationale and judgment of the decision is binding precedent.

Georgia Court of Appeals Rule 33.2 (a) (1). The result of the rule change is that a published case decided by a single division will have binding precedential value where at least two judges fully

agree with the reasoning and result reached in the decision. In essence, these cases will provide direction for later cases.