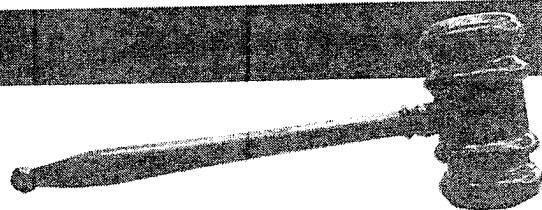


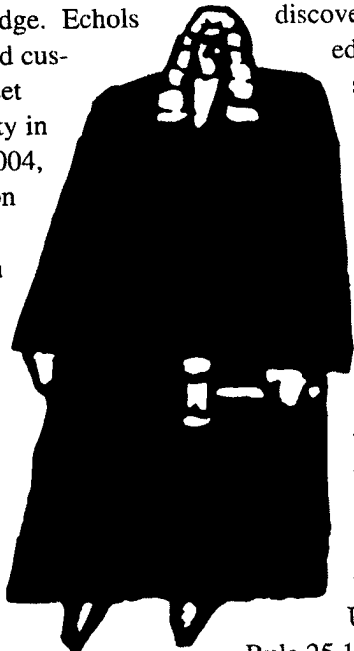
Echols v. Echols

Time requirements for Motions

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Echols v. Echols, 281 Ga. 546 (Jan. 2007) should serve as a reminder to lawyers of the time-sensitive requirement for filing a motion to recuse a potentially impartial or biased Judge. Echols involved a divorce and custody battle filed and set before Judge McGarity in 2003. On May 14, 2004, the wife filed a motion to recuse Judge McGarity based upon allegations that the judge's long-time business and personal relationship with Mr. Echols's family prohibited this judge from being impartial in the case. The wife alleged in her motion that at the beginning of the litigation in 2003, the husband told her that he and his family had known Judge McGarity forever, and that Judge McGarity had already decided to award custody of the child to the husband. Wife further alleged in her motion that in January 2004 the Judge had received extra judicial information from some other source with regards to re-financing the marital residence. This evidence caused her to further investigate and confirm the Judge's personal and



business relationship with Mr. Echols and his family. Finally, the wife alleged that, in an order filed May 6, 2004, Judge McGarity specially set the action for trial when discovery had not been completed; that this order demonstrated that Judge McGarity was biased against Ms. Echols; and that this order caused her to file her recusal motion.

Regardless of such persuasive evidence, the Supreme Court of Georgia held that the trial court correctly denied the wife's motion for recusal because it was not timely filed in accordance with the law. Under Uniform Superior Court Rule 25.1, a motion to recuse must be filed no "later than five (5) days after the affiant first learned of the alleged grounds for disqualification ... unless good cause be shown for failure to meet such time requirements." Here, Ms. Echols's recusal motion was based on Judge McGarity's bias against her due to his close personal and business relationship with Mr. Echols's family. One of the allegations of bias allegedly occurred at the beginning of the litigation when Mr. Echols

told her that his family had known Judge McGarity "forever" and that he would rule in his favor on custody. Moreover, the wife stated that she began to further investigate the alleged close business and personal relationship between Judge McGarity and Mr. Echols's family in January 2004. Finally, Ms. Echols stated that the May 7, 2004, order specially setting the case for trial confirmed Judge McGarity's bias and caused her to file the recusal motion. The Court ruled that the wife was alerted to this judge's alleged bias prior to five days before finally filing her motion for recusal on May 14, 2007. The Court explained, "Arguably, Ms. Echols should have filed her recusal motion within five days of her conversation with Mr. Echols in 2003." *Id.* Although wife responded that it was not until May 7, 2004 that she was totally convinced of such bias, the Court explained that at least a large part of her investigation and documentation occurred way before that date, and therefore her claim was stale.

In response to this case, a client or lawyer should file a motion to recuse as soon as they are alerted of any facts that might indicate impartiality of a judge. If not, the Court may hold, "you snooze, you lose."