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March 8, 2013

VIA FACSIMILE AND U.S. MAIL

The Honorable Edgar W. Ennis, Jr.
Superior Court Judge
Macon Judicial Circuit
Superior Court of Bibb County
601 Mulberry Street, Suite 310
Macon, GA 31201

Re: Holliday v Georgia Department of Transportation. Civil Action No. 12-CV-58472

Dear Judge Ennis:

I represent the Georgia Department of Transportation ("GDOT"). This Office is in receipt of your court reporter's voicemail notice that an emergency hearing has just now been scheduled for Monday, March 11, 2013 at 10:00 a.m. in the above-referenced matter. It was received at approximately 4:30 p.m. today.

The notice to this Office does not satisfy O.C.G.A. § 9-10-2. O.C.G.A. § 9-10-2 provides that:

Any verdict, decision, judgment, decree, order, ruling, or other judicial action by any court in this state in any matter in which this state or an official of this state in his official capacity is a party defendant, intervenor, respondent, appellee, or plaintiff in fi. fa. shall be void unless it affirmatively appears as a matter of record either:

- (1) That the Attorney General was given five days' advance written notice by the adverse party or his attorney of the time set for the particular trial, hearing, or other proceeding as a result of which the verdict, decision, judgment, decree, order, ruling, or other judicial action was entered; or

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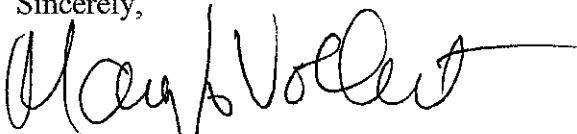
- (2) That the Attorney General or an assistant attorney general was present in person at the trial, hearing, or other proceeding; or
- (3) That the Attorney General or an assistant attorney general has, in writing, waived the notice.

Compliance with the provisions of O.C.G.A. § 9-10-2 is mandatory. Hawes v. Bigbie, 120 Ga. App. 294 (1969); Cofer v. Williams, 141 Ga. App. 72 (1977). The record has to “show affirmatively that the Attorney General was extended the requisite notice of the proceeding upon which the trial court’s judgment was based, that he made an appearance, or that he waived notice.” Caldwell v. Atlanta Bd. of Educ., 152 Ga. App. 291, 293 (1979). In the absence of such a showing in the record, “the judgment is void.” Id.

The provisions of O.C.G.A. § 9-10-2 will not be waived in this matter. Written notice in compliance with O.C.G.A. § 9-10-2 should be directed to me. Any order obtained without providing this notice will be void.

If you have any questions, please contact me.

Sincerely,



Mary Jo Volkert
Senior Assistant Attorney General

cc: Jane Smith
Dr. Lindsey Holliday (*via email and U.S. Mail*)
Erica Woodford, Clerk of Court (*via U.S. Mail*)