

Court of Appeals of the State of Georgia

ATLANTA, April 23, 2026

The Court of Appeals hereby passes the following order:

A26O0001. LEON FRANSCECO BENJAMIN v. TIANA P. GARNER

The Gwinnett County Superior Court rejected the filing of a pro se petition filed by Leon Fransco Benjamin seeking to proceed in forma pauperis in a civil case he sought to file. Although the notice Benjamin received stated that the filing had been rejected because the in forma pauperis petition was denied, no written order was entered. After receiving notice of his rejected filing, Benjamin filed a petition for mandamus in superior court seeking to compel a hearing on his in forma pauperis petition, as well as a written, appealable order. Benjamin again asked to proceed in forma pauperis on the mandamus petition, and the clerk of court rejected for filing both the second in forma pauperis petition and Benjamin's mandamus petition. The stated reason for these rejections was Benjamin's alleged failure to file "a completed affidavit of eligibility to proceed in forma pauperis."¹ Pending before this Court is Benjamin's original mandamus petition, seeking an order requiring the superior court to hold a hearing and issue a written order on his initial petition to proceed in forma pauperis.²

¹ The materials submitted with the underlying petition show that Benjamin did file the required affidavit of indigence. That affidavit, however, is dated the same day that the trial court rejected his mandamus filing. Thus, it appears that the affidavit may not have been filed simultaneously with the petition.

² Benjamin filed his petition for mandamus in the Georgia Supreme Court, which transferred the case to this Court. Case No. S26O0822 (March 17, 2026).

It appears that the original petition was rejected for filing pursuant to OCGA § 9-15-2(d), which provides:

When a civil action is presented for filing under this Code section by a party who is not represented by an attorney, the clerk of court shall not file the matter but shall present the complaint or other initial pleading to a judge of the court. The judge shall review the pleading and, if the judge determines that the pleading shows on its face such a complete absence of any justiciable issue of law or fact that it cannot be reasonably believed that the court could grant any relief against any party named in the pleading, then *the judge shall enter an order* denying filing of the pleading. If the judge does not so find, then *the judge shall enter an order* allowing filing and shall return the pleading to the clerk for filing as in other cases. *An order denying filing shall be appealable in the same manner as an order dismissing an action.*

(Emphasis supplied.)

In light of the trial court's failure to perform its statutory duty to enter a written order denying Benjamin's initial in forma pauperis petition, he may be entitled to mandamus relief. However, we do not have jurisdiction to consider in the first instance whether the grant of such relief is warranted. Our Supreme Court recently held that Georgia's appellate courts are authorized "to grant a writ of mandamus only in matters related to an appeal or impending appeal, when necessary in aid of appellate jurisdiction or to protect or effectuate appellate court judgments." *Arnold v. Alexander*, 321 Ga. 330, 335(1) (914 SE2d 311) (2025). And because "superior court judges have the power to issue process in the nature of mandamus against other superior court judges or trial court officials," it "will be an 'extremely rare' circumstance that would require a party to seek a writ of mandamus in [an appellate court] in the first instance[.]" *Id.* at 335(1) n.6. Rather, the procedure to be followed before seeking to invoke this Court's original jurisdiction is to file the petition in the

appropriate lower court first, obtain a written order on that petition, and then file a direct appeal from that order. Id.

Here, it appears that Benjamin's second in forma pauperis petition and his mandamus petition were rejected because of a failure to follow court rules requiring the simultaneous filing of an affidavit of indigence. This is a deficiency which Franklin can – and should – remedy in the court below by refileing his petitions with the required attachments. Benjamin could then file a direct appeal from any ruling on those petitions. Should the trial court again fail to fulfill its statutory duty to enter a written order, Benjamin may then seek mandamus relief in this Court.

In light of the foregoing, this petition for mandamus is hereby DISMISSED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, 04/23/2026

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

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

Christina Bailey Smith

, Clerk.