Council of Municipal Court Judges Annual Report

Dear Georgia Municipal Court Stakeholder:

Judge Nelly Withers
President
Council of Municipal Court Judges of Georgia

On behalf of the Council of Municipal Court Judges, I am pleased to present the 2010 Annual Report of the Council of Municipal Court Judges for your review. This report provides a historical overview of Georgia municipal courts, communicates summary caseload and demographic statistics, and highlights the principal activities undertaken by the Council. Our hope is that you will find information contained within this report helpful to your understanding of the extraordinary work accomplished within our courts.

Municipal courts are widely recognized as the class of court most likely to be visited by citizens. Many Georgians will form lasting impressions about the judiciary, in terms of how it functions and its effectiveness, based on their experience in municipal court. It is understandable then that our efforts during 2010 centered upon three focus areas: (1) standardized operations and improved reporting (2) enhanced customer service; and (3) enriched competencies of our judges and court staff.

Perhaps our crowning achievement of the year was to establish a set of uniform rules applicable to the 372 municipal courts, including Recorders Courts in Chatham County, Columbus-Muscogee, Gwinnett County and DeKalb County which have municipal court jurisdiction. These rules make certain no appreciable differences exist between courts operating within the state. The formal adoption of these rules and promulgation by the Supreme Court of Georgia ensure that our courts provide fair and accessible justice, uphold citizen's rights, and preserve public safety.

This report also highlights an important initiative to investigate real world issues affecting municipal courts from a court user's perspective. With the assistance of the Administrative Office of the Courts, customer surveys were conducted at courts throughout the state. Participants were asked to rate their experience in terms of court accessibility and fairness. Information gleaned will enable the Council and member judges to become better informed and more responsive to citizen needs.

During the year, the council also sought to enhance the professional competency of our judges and court staff. An update to the municipal court Benchbook was published and disseminated to all judges. A faculty development program was developed and instituted with assistance from the Institute of Continuing Judicial Education. As well, the Council sought legislation which set forth the basic requirement that municipal court judges be members in good standing of the State Bar of Georgia. Although the legislation was not passed into law, we remain undeterred and will seek to reintroduce the bill during the ~~upcoming~~ session. We believe this legislation represents the strong desires of our membership and propels us toward the prevailing goal of operating the efficient and effective municipal courts our citizens have come to expect.

Finally, the Council also met the established the goal of producing a yearly report, the first of which you hold in your hand. We hope you will view this publication as a tangible example of our commitment to transparency and accountability to you, our stakeholder. Thank you for taking time to review our publication. We appreciate your interest and support for your local municipal court.

INSIDE:

Note from The Editor

Judge Margaret Gettle Washburn

We are please to present the first Annual Report of the Council of Municipal Court Judges. We think that you will find the facts regarding the Municipal Courts informative in your capacity as a judge, clerk, court administrator, legislator, or layman. Also provided here within are articles that will prove to be intriguing, insightful and thought provoking.

By the Numbers Municipal Courts in Georgia

It is often said that most people's only encounter as a party in court in Georgia is in a municipal court. Available data suggest the truth of that assumption. Georgia has 535 cities. Municipal courts, including recorder's courts, serve 372 of those cities. All Georgia courts are required to submit caseload data to the Administrative Office of the Courts (AOC). While most courts do submit data, not all do, and uniformity of reporting is not complete. The last official compiled data is for 2008. Municipal courts reported over 1.2 million filings in 2008. This number is certainly misleading, for many courts, including Atlanta, reported caseload for only half the year, and many busy metropolitan courts, such as Savannah, Augusta, Macon, Columbus and Sandy Srings reported no data. It would require no large leap of logic to assume that municipal courts actually handle close to two million cases per year, more than any other class of courts by a large margin. Indeed, preliminary, unofficial data for 2009 show municipal court filings of almost 1.8 million, again with partial year numbers and some large courts' data unavailable. This significant number of filings is of course most directly related to the fact that municipal courts deal in large part with traffic matters. In 2008, traffic filings accounted to 76% of all municipal court filings, and in 2009 74%.

From the judicial perspective, the purpose of municipal courts, or any court for that matter, is not to generate revenue. But the financial aspects of the work of municipal courts cannot be ignored. The Georgia Superior Court Clerks' Cooperative Authority (GSCCCA) serves as a clearinghouse for collecting surcharges added to criminal and civil cases, and collects data regarding monies collected by courts which are not remitted to GSCCCA. A review of remittances and reportable funds for FY2010, ending June 30, 2010, reveals some interesting facts.

Multiple surcharges are mandated by the general assembly to be collected in addition to traffic and criminal fines. Most of those surcharges apply to all courts, including superior, state, probate, magistrate and municipal courts. Those surcharges include brain and spinal injury trust fund, crime lab, crime victims' compensation, driver education, indigent defense, peace officers and prosecutors training and others. In FY010, all georgia courts remitted to GSCCCA $89.5 million for these various surcharges. Of that amount $37.2 million, or almost 42%, was remitted by municipal courts. The next highest remitting court system was the state courts, sending the GSCCCA $22.7 million, or 25% of the total. Of course these figures mostly reflect the differing jurisdiction of various courts, not their efficiency or effectiveness at collecting fines.

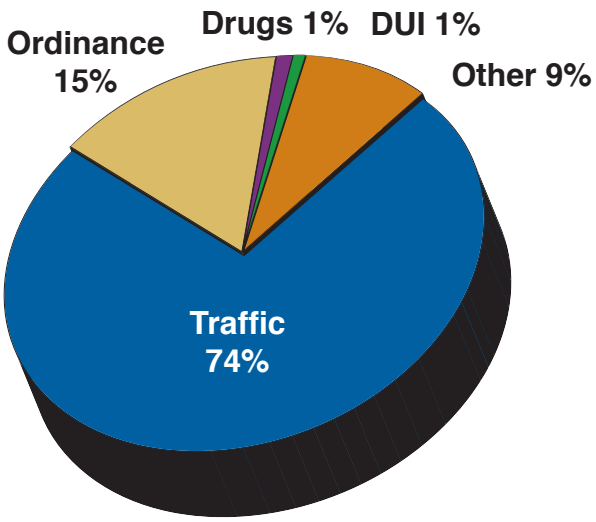
In addition to collecting and remitting to gscca millions in surcharges designated for funding various statewide programs, all georgia courts report to gscca collections for a myriad of mandated and non-mandated funds, including alternative dispute resolution, clerk's retirement fund, law library, sheriff's retirement fund, drug abuse treatment and education, county jail fund, and others. These "reportable" funds are not remitted to gscca. In FY2010, these reportable funds for all georgia courts totalled over $455 million. Municipal courts reported over $175 million of these reportable funds, or over 38% of the total. Of this amount, municipal courts reported collecting almost $126 million for their cities' general funds, and almost $21 million for their counties' general funds.

For those wishing to discover more detail about remittable or reportable funds, you can visit the GSCCCA's tracking website at http://www.courttrax.org/reportscanned.asp

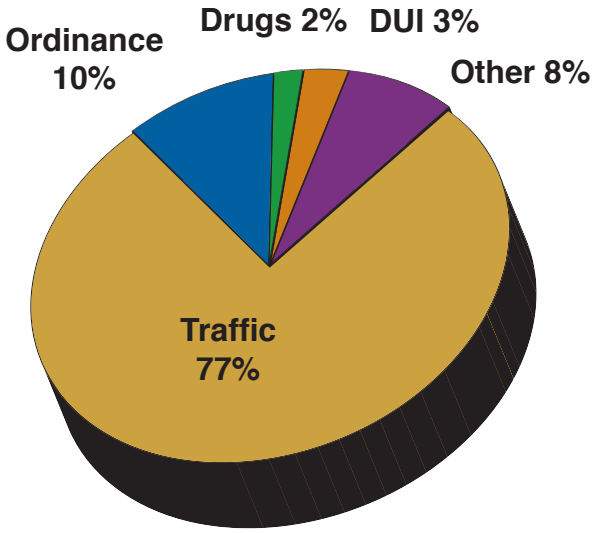
Statistics

Recent caseload information for the municipal courts by cities may be accessed online at www.georgiacourts.gov

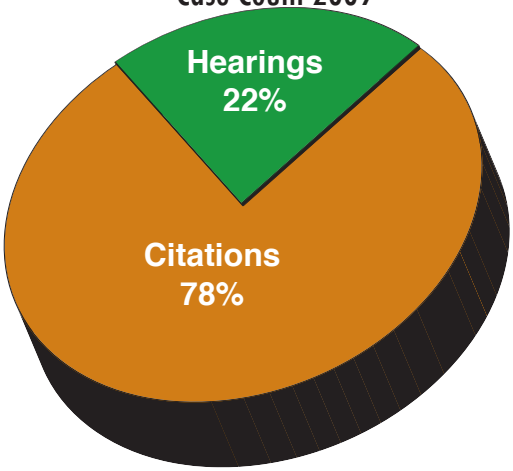
Municipal Courts Citations by Type
Case Count 2009



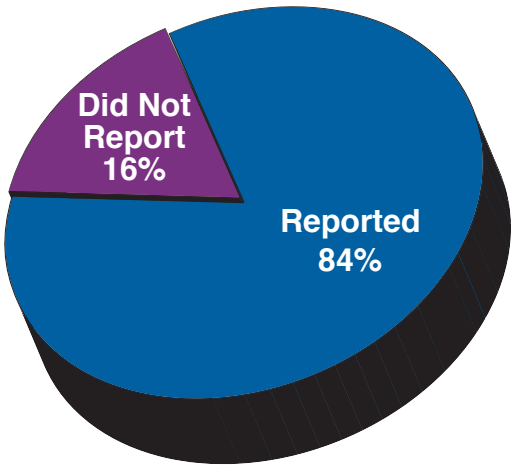
Municipal Courts Hearings by Type
Case Count 2009



Municipal Courts
Citations vs. Hearings
Case Count 2009



Percentage of Municipal Courts
Reporting
Case Count 2009



Indigent Defense and Georgia's Municipal Courts

Judge Charles L. Barrett, III, Liaison to Georgia Public Defender Standards Council.

In the landmark case of *Alabama v. Shelton*, decided by the Supreme Court of the United States in 2002, the Court announced the rule that, in any criminal prosecution wherein there is a possibility of incarceration, the right to counsel attaches. Likewise, in cases of indigency, court-appointed counsel is required to be provided. In 2003, the Georgia General Assembly enacted the Indigent Defense Act, so as to implement the requirements of *Alabama v. Shelton*. As of January 1st, 2005, any municipal court operating within the State of Georgia and having jurisdiction over the violation of municipal ordinances and over such other matters as are by specific or general law made subject to the jurisdiction of municipal courts shall not impose any punishment of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement, probation, or loss of liberty, as authorized by general law or municipal or county ordinances, unless the court provides to the accused the right to representation by a lawyer, and provides to those accused who are indigent the right to counsel at no cost to the accused. OCGA § 36-32-1(f)(g)(h).

All Georgia municipal courts are, accordingly, required to appoint counsel to any indigent person requesting appointment of counsel, in connection with any criminal prosecution. The Federal Poverty Guidelines, published periodically by the Department of Health and Human Services, is the principal guideline by which municipal courts determine whether or not a person is "indigent" for purposes of eligibility for appointed counsel in the municipal courts. All of the municipal courts of the state must either have a system in place for appointment of counsel in indigent cases, or lose the ability (jurisdiction) to try any criminal offenses. The Georgia municipal courts have undertaken to address this issue, and the Council of Municipal Court Judges maintains liaison with the Georgia Public Defender Standards Council, whose mandate is to ensure that adequate and effective legal representation is provided to indigent persons. In connection with municipal court jurisdiction, an "indigent person" is one charged with a misdemeanor, violation of probation, or a municipal or county offense punishable by imprisonment who earns less than 100% of the Federal Poverty Guidelines unless there is evidence that the person has other resources that might be reasonably be used to employ a lawyer without undue hardship on the person or his or her dependents. OCGA § 17-12-2(6)(A).

The Georgia municipal courts recognize their responsibilities in providing adequate representation to indigent criminal defendants, under *Alabama v. Shelton*, and the Georgia Indigent Defense Act of 2003.

The Municipal Courts and the Georgia General Assembly - A Retrospective

Judge Charles L. Barrett, III, Chair, Legislative Committee - CMCJ

The Council of Municipal Court of Georgia was created by statute in 1994. OCGA § 36-32-40, et. seq. The Council is made up of all of the judges of the municipal courts of the State of Georgia. The Council was authorized to organize itself and develop a constitution and bylaws. The principal officer of the Council is its president, who serves a one-year term. The Council also has an Executive Committee composed of two representatives from each judicial administrative district, as well as the officers of the Council.

OCGA § 36-32-40 sets forth the purpose of the Council, which is to effectuate the constitutional and statutory responsibilities conferred upon it by law; to further the improvement of the municipal courts and the administration of justice, to assist the judges of the municipal courts throughout the state in the execution of their duties, and to promote and assist in the training of such judges. Since its inception, the Council has vigorously pursued this statutory mandate, with the municipal courts now being represented on the Judicial Council of Georgia.

The judges of Georgia's municipal courts are subject to the Georgia Municipal Courts Training Council Act. OCGA § 36-32-20, et. seq. The Georgia Municipal Courts Training Council oversees and administers the mandatory training of municipal judges. Under OCGA § 36-32-27, anyone who becomes a municipal judge must now satisfactorily complete 20 hours of training in the performance of his or her duties, and thus becomes a "certified municipal judge". In addition, and in order to maintain the status of a certified municipal judge, each person certified as such must complete 12 hours of additional training per year.

Under the auspices of the Council of Municipal Court Judges, our judges strive to uphold and advance judicial professionalism and competence through appropriate legislation. Our judges have enthusiastically supported legislative initiatives dealing with improvements in the administration of justice. For instance, The Council, through its legislative committee, drafted amendments to OCGA § 15-18-80, et. seq., so as to establish statutory authorization for prosecutors in municipal courts to create and administer pre-trial intervention and diversion programs. These pre-trial diversion programs are, typically, utilized in cases involving lower-risk first offenders who are charged with offenses such as shoplifting, underage alcohol possession, etc. The pre-trial intervention and diversion programs provide meaningful alternatives to prosecuting offenders in the criminal justice system, and prosecutors in municipal courts have been implementing pre-trial diversion programs since 2006, when OCGA § 15-18-80, et. seq. was amended.

The Council of Municipal Court Judges has an abiding interest in maintaining the highest levels of professionalism for our courts. The Council believes that the public is best served by a statutory requirement that municipal court judges be licensed to practice law in this state, and be members, in good standing, of the State Bar of Georgia. Accordingly, the legislative committee of the Council drafted such legislation, with a "grandfather" provision for sitting judges who did not meet those qualifications. In the 2009 session of the General Assembly, Representative Jay Powell introduced House Bill 478, which was given a "do pass" recommendation by the House Committee on Governmental Affairs. The measure did not reach a floor vote, and was, ultimately, reintroduced as House Bill 1236, in the 2010 session of the General Assembly. This measure passed both houses in the 2010 session, but was vetoed by the Governor. The Council anticipates that this legislation will be introduced at the 2011 session of the General Assembly.

The Council of Municipal Court Judges, will continue to work closely with the members of the General Assembly in addressing, and advocating, for additional legislation that serves the best interests of the people of the State of Georgia.

CourTool Measure 1 (NCSCJ) Access and Fairness Survey

"[N]ever mistake activity for achievement."

John Wooden

The 101 Greatest Business Principles of All Time

"Those courts that do not measure fairness fail themselves and their public."

Honorable Kevin Burke and Honorable Steve Lehen

The Evolution of the Trial Judge from Counting Case Dispositions to a Commitment to Fairness for the Widener Law Journal

Mr. Kevin Tolmich, Planning and Evaluation Officer

Measuring a court's performance can be a tricky process. First, courts have some customers who do not necessarily want to be their customer. Second, court/judge processes and decisions may not be appropriately reflected by a couple of performance measures. These numbers can be skewed if left on their own merits without an accompanying explanation. And third, the culture in the judiciary is usually one of isolation from other government entities due to the desire to preserve the perception of impartiality and avoid pro se contact with litigants. The isolation can lead to others determining how the court is measured rather than the court deciding how to define success.

With that, there is a growing expectation by the public and court users that the court be accountable and transparent. The public wants to be able to understand the operations of the courts and determine if the courts are operating effectively and efficiently. The lack of performance information from the court ultimately impacts the views and expectations customers have of the courts. Appropriately instituted, performance management can strike a balance between expectations and reality. This balance is a difficult tightrope to walk, but it can lead to extremely successful results if the court gets the right help.

Looking at the core functions of a court, two underlying principles are key to a court's success. First, the court must be accessible to all court users, and second, the court users must feel that they were treated fairly. These two concepts, access and fairness, go much further than any other performance measure in shaping court users expectations and experiences in the judicial system. Surveys have shown that court users who felt they were treated fairly and felt they had a voice during the judicial process are more apt to understand and follow court orders even if the court user did not "win" the case.

The National Center for State Courts has developed a survey document to gauge access and fairness issues within a court. Using a Likert Scale model for answering statements (range of 1 to 5 with 1 meaning strongly disagree to 5 which means strongly agree), the survey focuses on issues related to access, issues related to fairness and demographic information. There are ten access statements such as "Finding the courthouse was easy" to "The court's website was useful". And there are five fairness statements include "The way my case was handled was fair" and "I was treated the same as anyone else". The demographic information asks: race, gender, and reasons for using the court.

The survey should be passed out to all court users including defendants, plaintiffs, attorneys, law enforcement officials and other court visitors. The survey needs to be conducted during a typical court day, and the survey needs to be anonymous. Analysis of the survey results can be done by court employees or can be sent to the Administrative Office of the Courts for analysis.

Many Georgia municipal courts have conducted the Access and Fairness survey with additional requests being made. The survey results will ultimately be able to help these court leaders find solutions that lead to improving customer service. The survey results help focus attention to areas that may be weak and highlight areas where performance is high.

Giving your customers a voice is paramount to the success of a court. Municipal courts see more people than any other court level so the public's expectations and perceptions of the judiciary are influenced by their experiences in the municipal courts. It is time court leaders get the information they need in order to provide better results and better experiences for our customers.

If you have any questions about conducting the Access and Fairness survey, please contact Lashawn Murphy with the AOC at 404-651-6325 or via email at lashawn.murphy@gaaoc.us.

"Constitutionalizing" Georgia's Municipal Courts: The Last Frontiers

Judge James T. Payne* and Judge E. R. Lanier**

The Need for Integration of Georgia's Municipal Courts into the Constitutional Framework

Spectacular achievements on the long road toward the full integration of Georgia's municipal courts into the state's judicial establishment have been registered in recent memory. The action of the Supreme Court of Georgia in 2010[1] to grant full membership on the Judicial Council of Georgia to representatives of the Council of Municipal Court Judges of Georgia was a significant milestone; the final approval and promulgation by the state Supreme Court of a progressive and well-crafted set of Uniform Rules of the Municipal Courts of Georgia was yet another.[2] A pyrrhic victory of sorts marked the success of a bill sponsored by the Municipal Court Council in the 2010 session of the Georgia General Assembly where a measure requiring, in general terms, membership in the State Bar of Georgia for appointment of an individual as municipal court judge was passed by substantial majorities in both the House and Senate, only later to be vetoed by the governor.[3] Every indication points to the fact that the municipal courts of Georgia are moving, glacially perhaps but inexorably, toward full and unquestioned status as full partners in the judicial branch of Georgia state government.

The single greatest remaining task in this long process is, we argue, a revision to the judicial article of the Georgia Constitution to afford to the municipal courts of this state a firm and unassailable constitutional foundation which will, at one and the same time, elevate the municipal court system of Georgia to full parity with Georgia's other courts of limited jurisdiction while, at the same time, "depoliticizing" the status, role, and functions of the municipal courts by effectively removing them — insofar as the Constitution is capable of so doing — from much of the vagary and pitfall of political discourse and exchange at the municipal, county and state level. The historical factors which bear on the failure of the municipal courts to achieve such a constitutional status in Georgia's present Constitution figure prominently in any strategy to achieve that status in these first decades of the 21st century.

Historical Perspectives: Georgia's Municipal Courts

The historical evolution which arguably began with James Oglethorpe's establishment of Savannah's Town Court in 1733 — significant for later developments in that it was designed to serve at one and the same time the judicial needs of both the local community and the proprietary colony of Georgia at large — culminated two and a half centuries later in a Constitution in which the election was made to provide constitutional foundation only for the institutional descendents of the colonial court's "state" function. The intervening 250 years saw the growth and elaboration of essentially two very separate and distinct traditions in judicial bodies associated with Georgia municipalities and other units of local government, one of which was destined — in very broad and general historical terms — to morph into the modern municipal court, while the other was to find its historical dénouement in today's constitutional class of State Courts. While the details of this historical progression far exceed the limitations of this short statement, the broader outlines of the story are important to a balanced understanding of Georgia's 21st-century municipal courts and their future challenges.

Georgia's earliest "city courts," such as those created in Darien (1816), Augusta (1817), and Savannah (1819), tended to proliferate as the 19th century progressed, resulting in an informal "class of courts" existing without constitutional foundation but keyed very closely to "the needs of particular localities, growing out of the fact that conditions were different from what they were in other places — conditions generally brought about by growth, increase in population, wealth and business."[4] The authority of the General Assembly to create this class of tribunals was later premised on the language of the 1865 and 1877 Georgia Constitutions which made reference to the power of the legislature to create "other courts" beyond those specifically enumerated in explicit constitutional terms.[5] With the passage of time, the legal attributes of these city courts became increasingly defined by legislation, constitutional reference, and appellate court precedent, so that with the approach of the end of the 19th century and early years of the 20th, these courts were distinctive in several broad respects. Appeals from them went to the Georgia Supreme Court or, later, Georgia Court of Appeals; their judges were authorized to grant motions for new trial; there was a free interchange of superior court and city court judges presiding at trials in both courts; there developed a tendency toward increased uniformity in the subject matter jurisdiction of these courts and their procedural rules of practice; and, in the city courts, there existed a right to a trial by jury of 12 persons.[6] City courts possessing the full panoply of these rights and prerogatives were deemed "constitutional city courts" in order to differentiate them from similar courts but which

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"Constitutionalizing" Georgia's Municipal Courts cont.

were deficient in one or more of these characteristics. The latter were denominated "statutory city courts,"[7] with the consequence that while a state court which could be created freely by the General Assembly without constitutional leave a statutory city court was, *inter alia*, subject to review by writ of certiorari in the superior courts[8] and lacked the power to grant a new trial.[9]

At the same time, the Legislature continued its exercise in creative court-making outside of the "constitutional city court"/"statutory city court" framework[10] while, by processes of consolidation, amalgamation and redesignation, the city courts of Georgia assumed the configuration of city courts, state courts,[11] civil courts and criminal courts. These developments continued until the advent of the 1983 Constitution. This evolution of an informal system of state courts lacked a firm constitutional foundation but rested upon the old city court stratum. It hastened after the mid-1960s when the cause of uniformity was advanced by the adoption of the Civil Practice Act,[12] made applicable to the state courts as courts of record.[13] This process came to its completion in the 1983 Constitution by the enumeration of state courts as a discrete class of courts,[14] albeit without any reference to the city court system which was the origin of these courts, together with the requirement of uniform state-wide subject matter jurisdiction within the state courts mandated by the new Constitution.[15]

The historical trajectory of Georgia's modern state court system the progression from constitutional and statutory city courts to their modern incarnation as state courts reveals a degree of interaction with the analogous development of Georgia's *municipal* courts, this despite the fact that the latter have yet to achieve the constitutional status granted the former in Georgia's new Constitution of 1983.

Professor Erwin C Surrency has documented in considerable detail the adjudicatory process in Georgia's colonial, revolutionary, early republican and late 19th century municipalities, and he paints an historical picture of considerable diversity and variety in the institutions within Georgia's early towns and cities charged with the enforcement of law and local ordinances.[16] Despite these variations, Surrency suggests certain basic patterns more or less universal in Georgia's urban government from the earliest times down until the end of the 19th century and on into the first decades of the 20th. Initially, he suggests, the earliest municipal charters rested on the premise that local elected officials had individual, virtually personal, roles in the enforcement of law, especially reflected in provisions adopted locally and addressing local conditions.[17] Wardens the 18th and 19th century version of today's city aldermen and members of city councils were expected to punish offenders within their wards; over time, Surrency maintains, this individual function came to be exercised collectively in board or city council sessions, where matters regarding the infringement of local ordinances would be heard and determined by these bodies, often in regular sessions under the presidency of the intendant or, as these officers came later to be known, mayor. Still later, such enforcement proceedings against individual respondents were set aside for special sessions of the municipal governing body as a whole and, ultimately, the presidency of these special sessions was delegated, very often to the mayor sitting alone, but just as frequently to a recorder[18] or other designated public official:

Beginning with the creation of the police court in Savannah, the mayor was gradually displaced in other cities and towns as the presiding officer. As early as 1856, the mayor and city council of Augusta could elect a recorder for a term of two years, in whom they could ßvest exclusive jurisdiction of all violations of their ordinances5 and to bind over to other courts of competent jurisdiction offenders charged with other criminal acts. ... In 1871, the mayor and council of Savannah were authorized to select a recorder to preside in the police court. In the same year, Atlanta was given the authority to elect a recorder to preside in the mayor's court. ... In 1880, the recorder's court was established in Macon and a city court in Griffin presided over by a city judge, both displacing the mayor as the presiding judge. ... Ten years later, the office of recorder was established in Rome to preside in the police court. ... But in this period, in the overwhelming number of cities, the mayor continued to preside in the mayor's court. By the close of the nineteenth century, courts in the towns and cities had become distinct institutions with the mayor presiding [only] in a few. ...[19]

Whatever the variety in form and function of these nascent municipal courts in earlier Georgia legal history, Surrency makes it clear that they all shared at least up until the early decades of the 20th century a bedrock common denominator in their strict limitation to the enforcement of local or municipal law and ordinance, a limitation which was to persist over time and ultimately to form one of the primary features distinguishing Georgia's municipal courts from her city courts. This fundamental limitation on the authority of the early mayor's, intendant's, recorder's, and police courts had its origin, Professor Surrency tells us, in the early recognition that these bodies existed essentially to correct and punish infractions of internal corporate rules and regulations, the relevant corporation being in this case, of course, the local municipal entity. The judicial function within the municipal corporation

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was, purely and simply, an exercise in internal housekeeping, having virtually no interest in, and absolutely no competence or subject matter jurisdiction over, the broader law of the colony or, later, the state.[20] This ancient reservation respecting the authority and subject matter jurisdiction of Georgia's municipal courts continued to resonate well into the 20th century, and can hardly be said to have been totally vanquished even today. Nevertheless, by the first decades of the 20th century the old demarcation line forbidding access to Georgia's municipal courts to subject matter jurisdiction over state offenses had been effectively breached, bringing in that respect at least a qualified parity between those courts (local courts) and the city courts (state courts) in the years prior to the adoption of the 1983 Constitution.

A harbinger of this important development lay, perhaps, in the old practice of the late 18th and early 19th century of appointing city aldermen and wardens as justices of the peace with subject matter jurisdiction over state misdemeanors, effectively amalgamating in one person (if not technically in one judicial body) legal authority to adjudicate offenses against local ordinances as well as state misdemeanors to the extent that the latter were within the subject matter jurisdiction of the justices of the peace.[21] This double-hatting of municipal officials made little impact on the traditional view held in Georgia's appellate courts that it remained unconstitutional for the Legislature to delegate to municipal courts subject matter jurisdiction over state misdemeanor offenses, especially in light of the fact that there existed a general law granting authority over this class of criminal activity to the state courts, i.e., statutory city courts, constitutional city courts, county courts, or at least briefly district courts.[22] Another creative stratagem to avoid infringement of the constitutional prohibition against the trial of offenses against state laws in Georgia's 19th century municipal courts was the recognition of the prerogative of municipal government to adopt ordinances essentially reiterating state law offenses, subject to the presence in the local ordinance of an additional element which served to distinguish and differentiate the local law from that of statewide application.[23] This legislative device, like the double-hatting of city officials with both municipal and state powers, served to alleviate, to some degree at least, the practical problems associated with the constitutional prohibition of the trial of state offenses in municipal courts, but it failed to address the constitutional obstacle at all.

Reforming Municipal Court Subject Matter Jurisdiction: The Modern Evolution

This thorny constitutional issue was finally addressed head on, at least within the limited context of driver-license related offenses under the Georgia State Highway Patrol Act of 1937, by a constitutional amendment of that year to permit Georgia's Courts of Ordinary the authority to try such offenses "in all counties in which there is no city or county court," and to afford "like jurisdiction" to certain non-state courts, including police courts and municipal courts.[24] This limited grant of very truncated subject matter jurisdiction to try certain state cases in municipal courts was hardly adequate to meet the burgeoning demands for a broader scope of authority in the municipal courts to address a wider variety of misdemeanor offenses, as the General Assembly learned to its chagrin when it sought in 1974 to vest those courts with power over minor drug offenses.[25] There was little question, as the need for a major revision of Georgia's 1976 Constitution became more apparent, that a major overhaul of municipal court subject matter jurisdiction was in the offing. The effective end of Georgia's ancient prohibition against the trial of state cases in municipal courts came, however, only with the adoption of the state's current Constitution in 1983.

Although, in the run-up to the adoption of the 1983 Constitution, a number of widely differing proposals were made for the structuring of local courts to handle state misdemeanor cases, there is little ambiguity about this matter in the final text which emerged out of this debate and which became the constitutional disposition of this issue on June 30, 1983, the effective date of the new instrument. After enumerating and establishing each of Georgia's classes of courts,[26] the new Constitution goes on to authorize the General Assembly to establish municipal courts and to provide explicitly for their authority over state law offenses:

In addition [to the enumerated classes of courts], the General Assembly may establish or authorize the establishment of municipal courts ... . Municipal courts shall have jurisdiction over ordinance violations and such other jurisdiction as provided by law. *Except as provided in this paragraph and in Section X, municipal courts, county recorder's courts and civil courts in existence on June 30, 1983, and administrative agencies shall not be subject to the provisions of this article.* The General Assembly shall have the authority to confer "by law" jurisdiction upon municipal courts to try state offenses.[27]

With this almost laconic verbiage, the new Constitution had brought the curtain down on the antediluvian jurisdictional regime which denied broad judicial authority to Georgia's ancient municipal courts, and in one fell swoop eradicated what was arguably the greatest single disability of the municipal

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court system and the one jurisdictional element which most distinguished them to their disadvantage from the other classes of Georgia's courts.

The Modern Subject Matter Jurisdiction of the Municipal Courts of Georgia

Until Georgia's municipal courts achieve full constitutional parity with the existing classes of courts enumerated and established in the 1983 Constitution, the baleful truth remains: the scope of power and authority of municipal courts indeed, their very existence remains in the last analysis subject to the currents and eddies of the political process, particularly in local city councils and in the Georgia General Assembly. This somewhat desultory reality should not, however, belie the substantial achievements in consolidating and extending the authority of these courts over the past quarter-century, largely in consequence of the adoption of the expansive language of Ga. Const., Article VI, § 1, ¶ 1, permitting the extension of municipal court subject matter jurisdiction by the Legislature, a political power which has been beneficially invoked by the Legislature in a number of significant instances since 1983. The resulting kaleidoscopic array of authority in these courts ranges, it sometimes seems, from the sublime to the ridiculous.[28]

The underlying substratum of municipal court subject matter jurisdiction in Georgia, given the history of these tribunals, remains unquestionably the enforcement of local ordinances adopted by the appropriate municipal authority. Even with the obvious systemic limitations on local authority in the adoption of such ordinances rooted in federal and state constitutions not to mention the restraining effect of both general and local legislation enacted by the General Assembly the scope of local ordinance or regulation remains a vast one and their enforcement by the municipal court a challenging task. The range of matters potentially appearing in the guise of local ordinance includes, as suggested by the Georgia Municipal Association,[29] everything from animal control regulation; construction and building regulation; environmental protection measures; general matters touching on the health, safety, and welfare; health and sanitation standards; municipal property protection; the abatement of nuisances on public or private property; police and fire protection; planning and zoning matters; the removal of public hazards; the maintenance of public peace; and much more.[30] Any detailed examination of these ordinances and their enforcement in the municipal courts is well beyond the limited scope of this statement, but their complexity in addition to the state and national constitutional issues they frequently raise is enhanced as well by fundamental limitations on the remedial authority of the municipal courts under constitutional and state law. [31]

Within the spectrum of general laws granting subject matter jurisdiction to Georgia's municipal courts and this is especially true in the quarter-century which has passed since the adoption of the 1983 Constitution none occupy a position so prominent (or, at least, so frequent) as do legislative grants of authority to those courts over state misdemeanors pertaining to the ownership, registration, and general operation of motor vehicles. The history of municipal court exercise of authority in this field, as noted earlier, precedes the general availability of constitutional authority in the Legislature to grant the municipal courts jurisdiction over state misdemeanors. Currently, OCGA § 40-5-124[32] vests in the municipal courts subject matter jurisdiction corresponding to that which was first authorized by constitutional amendment in 1937.[33] This direct and emphatic grant of jurisdiction is not mirrored in the indirect approach taken by the Legislature in OCGA § 40-6-372 which authorizes municipalities to adopt the Uniform Rules of the Road[34] as local ordinances: "[l]ocal authorities by ordinance may adopt by reference any or all provisions of this chapter or of Code Section 40-1-1[35] without publishing or posting in full the provisions thereof."[36] Whatever the demerits of this roundabout approach one, we submit, rooted in the 19th century concern over municipal court intrusion on state law misdemeanor turf, a concern now rendered antiquated and largely pointless by the clear language of the 1983 Constitution permitting the General Assembly wide latitude in granting "by law" authority to the municipal courts the Legislature was not so reticent or obtuse in the important jurisdictional provisions of OCGA § 40-6-391 (the "DUI" statute):

Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the misdemeanor or high and aggravated misdemeanor punishments provided for in this Code section upon a conviction of violating this Code section or upon a conviction of violating any ordinance adopting the provisions of this Code section.[37]

Given the groundbreaking nature of the 1983 Constitution's vast extension of the General Assembly's authority to empower municipal courts to try state offenses, the enthusiasm of the Legislature to invoke that license has been, in our view, rather tepid. Beyond the important motor vehicle-related offenses noted above, this constitutional authority has been drawn upon in only a handful of instances. In the first legislative session after the effective date of the new Constitution, for instance, OCGA § 36-32-6 was adopted to permit municipal court adjudication of crimi-

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nal cases respecting the possession of one ounce or less of marijuana.[38] It was not until four years later, in 1987, that the General Assembly again called upon its enhanced authority to provide "by law" additional grants to the municipal courts in matters other than those relating to motor vehicles by enacting OCGA § 36-32-9 (municipal court jurisdiction over first, second, and third shoplifting offenses regarding property valued at $300 or less) and OCGA § 36-32-10 (municipal court jurisdiction in regard to furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, persons under 21 years of age). More recently, in OCGA § 36-32-10.1, municipal courts have been authorized to try state cases involving criminal trespass.[39]

Finishing the Job: Constitutional Parity for Georgia's Municipal Courts

Given the almost centripetal, consolidating influences operating albeit glacially upon Georgia's municipal courts since their first appearance in colonial and early republican Georgia, these tribunals have now risen, we argue, to a functional, if not formal, par with those courts which had the good fortune in 1983 to be enumerated and established in the judicial article of Georgia's new Constitution. Now, with full representation on Georgia's Judicial Council; the appearance of uniform procedural rules; the professionalization of its bench; and the amalgamating influences of the Municipal Home Rule requirements of the Georgia Constitution; that Constitution's uniformity standards expressed in Article VI; and Article III's limitations regarding general, special, and population laws, have all tended to this result.[40]

A panoply of matters remains on the agenda necessary to bring the municipal courts of this state to a full equality with those courts established by the Constitution, only a few of which can be mentioned here. The effort to require state bar membership for municipal court judges should, we maintain, be renewed, especially in light of the fact that Georgia now has a governor who is, at one and the same time, a lawyer and the father of a superior court judge, and will presumably be sensitive to the overriding need for enhanced professionalism on all of Georgia's benches. Serious consideration should be given to the requirement for the appointment of a solicitor or other prosecutor in each municipal court in the state, together with state-wide provisions in light of Georgia's growing diversity regarding the availability of interpreter services. Internally, the Council of Municipal Court Judges of Georgia should, in the wake of its successful effort to obtain uniform procedural rules, now turn its energies to the standardization of "announcement" language for use in those courts respecting general matters such as the right to trial by jury, appointment of counsel, the right to remain silent, and the like; similarly, the Council should consider the adoption of standardized waiver forms for use in general matters such as jury trial waiver, waiver of rights to counsel, requests for transfer to other courts, and similar matters. In earlier eras, the single greatest disability of the municipal court system of the state was its glaring exclusion from the adjudication of state law (especially state criminal misdemeanor) cases. With the success over the past quarter-century of Georgia's municipal courts addressing this class of cases under the authority of the "by law" power of the General Assembly to grant state case subject matter jurisdiction to municipal courts, serious study should be devoted now to the possibility of legislation to provide for general criminal misdemeanor subject matter jurisdiction to municipal courts across the board. This would include the possible legislative elimination of subject matter jurisdictional limitations on municipal courts respecting repeated violations of Georgia's criminal trespass laws and the prohibitions on the possession of alcohol by persons under 21 years of age.[41] The single greatest measure, however, to bringing municipal courts to a constitutional parity with all other courts of the state, we submit, is an early constitutional amendment to embrace them within the enumerated classes of the state's tribunals. It is only when Georgia's municipal courts have achieved such a stable and enduring establishment and foundation that they will be positioned to address, fully and fairly, the public demands which will surely be placed upon them in the coming decades of the 21st century.

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*__Judge Jim Payne__ is a long time Judge, now retired but still very active, on the Municipal Court of Acworth, Georgia, and the Municipal Court of Holly Springs, Georgia.

**__Judge E. R. Lanier__ is Judge of the Municipal Court of Monticello, Georgia.

Both authors acknowledge with deep gratitude their reliance in every facet of this short statement on the research, writings, and scholarship of two giants in the field of Georgia legal history, both of whom have devoted special attention to the municipal courts of this state. Prof. Erwin C Surrency, the founder of the American Society of Legal History, has devoted a lifetime to the study of Georgia's legal past while on the law faculties at Temple University in Philadelphia and the University of Georgia; his immeasurable contributions to the study of Georgia's history continues even to this day. The life and works of Professor Edward C. Brewer, III – formerly a distinguished practitioner in Atlanta, author of important works on Georgia appellate practice, and later a member of the law faculty at the University of Northern Kentucky – were tragically cut short, but not before he had proven himself a brilliant scholar in the field of Georgia legal history and, particularly, the local courts of this state. Our pervasive dependence on his study, The City Court of Atlanta and the 1983 Georgia Constitution: Is The Judicial Engine Souped Up or Blown Up?, 15 Ga. St. U. L. Rev. 941 (1999) is intended to be obvious to the reader. Professor Surrency's The Historical Legal Basis for Establishing Georgia Cities, 9 J.S.L. Hist. 103 (2001), reprinted from the Georgia Historical Quarterly, volume 84-3 (Fall 2000), is a happy byproduct of his massive but unpublished work, The Creation of a Judicial System: The History of Georgia Courts, 1733 to Present (1997). There is no portion of this text for which the authors are not indebted to Professors Surrency and Brewer, but any errors present here are solely the responsibility of the two judges *cum* authors.

"Constitutionalizing" Georgia's Municipal Courts cont.

[1]*See* Order of the Supreme Court of Georgia dated October 6, 2010, under the authority of OCGA § 15-5-20, accessible at <http://www.gasupreme.us/rules/amended_rules/>.

[2]These rules are accessible at <http://www.gasupreme.us/rules/rules.php>.

[3]House Bill 1236, sponsored by Representative Willard of the 49th House District, would have enacted OCGA § 36-32-1.1 to provide that "[m]unicipal court judges shall be licensed to practice law in the State of Georgia and a member [sic] in good standing of the State Bar of Georgia," subject to provisions permitting the continued service of non-attorneys currently sitting as municipal court judges.

[4]Welborne v. State, 114 Ga. 793 (1902), at 810.

[5]*See, e.g.*, Ga. Const. 1877, Art. VI, §1, ¶ 1 and Ga. Const. 1865, Art IV, §1, ¶ 1.

[6]*See* generally, Edward C Brewer, III, *The City Court of Atlanta and the 1983 Georgia Constitution: Is The Judicial Engine Souped Up or Blown Up?*, 15 Ga. St. U. L. Rev. 941 (1999) [hereinafter sometimes *Brewer*], 948-950.

[7]Such statutory city courts were afforded constitutional reference in the Georgia Constitution of 1877. In Article VI, §2, ¶ 5 of that instrument, appeals were authorized "from the Superior Courts, and from the City Courts of Atlanta and Savannah, and *such other like Courts* as may be hereafter established in other cities." (Emphasis added). For an example of the application of this dichotomy of constitutional and "such other like courts," *i.e.*, statutory city courts, see Monford v. State, 114 Ga. 528 (1902), where the absence of the right to a trial by a jury of 12 persons was deemed to render the tribunal a statutory city court. Extending this logic, the Georgia Supreme Court later reasoned that a constitutional city court which reduced its jury size from the traditional 12 persons to one of five jurors would, by that fact, become a statutory city court. Barnes v. State, 211 Ga. 469 (1955).

[8]White v. State, 121 Ga. 592 (1905).

[9]Ash v. People's Bank, 149 Ga. 713 (1920).

[10]District courts came into being in 1870 (1870 Ga. Laws 32) but were abolished in 1871. (1871-1872 Ga. Laws 68). Similarly, "county courts" were created by the Legislature in 1872. (1871-1872 Ga. Laws 288).

[11]This terminology became the predominant nomenclature for the former city courts when, in 1970, the General Assembly directed that "state court"would become the standard reference to any existing city court exercising concurrent jurisdiction with the superior courts of Georgia over misdemeanor cases by jury trial or, alternatively, exercising jurisdiction in civil matters concurrent with the superior courts, unlimited by any jurisdictional amount. 1970 Ga. Laws 679-82.

[12]Civil Practice Act of 1966, O.C.G.A. § 9-11-1 *et seq*.

[13]The act provides broad scope for its application: "[t]his chapter governs the procedure in *all courts of record of this state in all actions of a civil nature* whether cognizable as cases at law or in equity …, " *id*. (emphasis added), a provision which, superficially at least, can be understood to evidence a legislative intent to exclude the municipal courts from its scope, even in the unusual, perhaps only theoretical, circumstance where a municipal court entertains a matter arguably civil in nature. Interestingly enough, however, this section also makes explicit reference to its application to *courts not of record*, this in a context where the exclusion of municipal courts in such rare cases is not so apparent: "[t]his chapter shall also apply to courts which are not courts of record to the extent that no other rule governing a particular practice or procedure of such courts is prescribed by general or local law applicable to such courts." The broader issue – whether or not municipal courts are ever deemed courts of record under any circumstances – as when, for example, they exercise subject matter jurisdiction over state law misdemeanor offenses – seems to be an open question. *See* Nguyen v. State, 282 Ga. 483 (2007), at p. 486, fn. 4: "[w]e express no opinion whether a municipal court is a state court *of record* when it tries a defendant for violation of the state misdemeanor offenses over which the General Assembly has given the municipal court jurisdiction." (Emphasis in original).

[14]Ga. Const., Article VI, § 1, ¶ 1 ("The judicial power of the state shall be vested exclusively in the following classes of courts: magistrate courts, probate courts, juvenile courts, *state courts*, superior courts, Court of the Appeals, and Supreme Court.") (Emphasis added).

[15]Ga. Const., Article VI, § 1, ¶ 5 ("… [T]he courts of each class shall have uniform jurisdiction, powers, rules of practice and procedure, and selection, qualifications, terms, and discipline of judges.").

[16]*See generally*, Erwin C Surrency, *The Historical Legal Basis for Establishing Georgia Cities*, 9 J.S.L. Hist. 103 (2001) [sometimes hereinafter, *Surrency*], especially at 117-122.

[17]For instance, Savannah's wardens "had the authority to make 'such bye-laws and regulations, and to inflict or impose such pains, penalties and forfeitures, as shall be conducive to the good order and government' of the town." Id at 111, citing Act of February 19, 1787, § 3, Watkins, *Digest*, 354. Significantly for the later delineation between municipal courts and city courts, Surrency notes, "the only limitation on this rule-making authority [of Savannah's board of aldermen] was the requirement that [these] laws not be contrary to the state constitution." *Id*. The pattern demonstrated in Savannah in the late 18th century was replicated, more or less, in Marthasville's 1843 charter (where town commissioners were empowered "to make… bylaws and regulations, and inflict such penalties for the violation of the same" (1843 Ga. Laws 84, § 3), perpetuated in Atlanta's 1847 charter ("[T]he Mayor and in his absence any three members of the City Council shall have full power and authority to impose such fines ... for the violation of any and or all of the by-laws and ordinances of said city within the corporate limits of the same." *See* 1847 Ga. Laws 50, §15, at 55.

[18]Professor Surrency explains the derivation of the term "recorder" as one rooted in earlier English corporation practice where the "recorder" was a significant corporate official charged with the correction of infractions against corporate rules. See *Surrency*, especially at 116.

[19]*Id* at 125. Professor Surrency further documents that "[t]he first separate court established exclusively to try offenders of local laws was the police court established in Savannah in 1849. ... This court of record was held by the mayor as often as he deemed necessary to hear offenses against the laws of the state touching the city, and the laws and ordinances enacted by the city. Punishments by fine and imprisonment could be imposed on the offenders by the court. The fines would be collected by the marshal by execution or mittimus, and offenders could be imprisoned in the Chatham County jail." *Id*, at 124-125.

[20]*See generally Surrency*, especially at 103-106. It seemed to have been unquestioned that local authorities held the right to adopt appropriate ordinances designed to punish behavior which would disturb the "local health, peace and good order"of the municipal corporation, even if the conduct in question was not violative of state law. "[T]he municipality could not," however, "punish conduct that was defined as a crime under state law unless specifically authorized by statute to do so." *Id*, at 117, *citing* Hood v. von Glahn, 88 Ga. 405 (1891). It was axiomatic that Georgia's early municipal corporations, while free to advance the interests of "good order and government" by its local legislation, were forbidden to enact local law found to be "repugnant to the laws and constitutions of [the] State." *Id*, at 118, *citing* Act of February 19, 1787, § 3, Watkins, *Digest*, 354, a section of the first charter of the City of Savannah.

[21]*Surrency*, at 112, *citing* Act of February 19, 1787, §3, Watkins, *Digest*, at 354. This pattern was adopted for Augusta as well (*Id., citing* Act of February 10, 1787, §10, Watkins, Digest, at 355). Professor Surrency concludes that "[i]t was a typical provision of all incorporation statutes [in the early 19th century] to confer the title of justice of the peace on local officers of the municipal corporation, which effectually granted to the mayors, intendants, wardens, commissioners or aldermen the full powers of that office. But to what extent this authority was exercised is far from clear. It became customary to limit this authority in later charters to exclude any civil jurisdiction that this authority would encompass." *Id*, at 112.

[22]*See, e.g.*, Grant v. Camp, 105 Ga. 428 (1898) and Aycock v. Town of Rutledge, 104 Ga. 533 (1898), decided under the 1877 Georgia Constitution and *cited* in *Brewer*, at 967.

[23]*See, e.g.*, Giles v. Gibson, 208 Ga. 850 (1952).

[24]Ga. Laws 1937 at 322. This constitutional provision was implemented by the General Assembly the following year. See Ga. Laws 1937-1938, at 558 (Extra Session). The legislation reflected the Legislature's understanding that the 1937 constitutional amendment prohibited the grant of such subject matter jurisdiction to Courts of Ordinary where a city or county court was found but did not interpret this limitation to be applicable to municipal courts. Hence, the statute extended subject matter jurisdiction over offenses under the 1938 act to "all Municipal Courts and Police Courts," to include "Mayor's Court or Recorder's Court, or like Municipal Court by whatever names called." Ga. Laws 1937-1938 at 559 (Extra Session), § 3. *See* generally, *Brewer* at 969-970.

[25]State v. Millwood, 242 Ga. 244 (1978). The *Millwood* court, as Professor Brewer points out, in holding unconstitutional the Legislature's attempt to vest the municipal courts with authority over offenses involving the possession of one ounce or less of marijuana, rolled out the old mantra that "the only courts with authority or jurisdiction under our Constitution to try 'state cases' or persons charged with the violation of State laws, are State courts," the court noting that this principle "is firmly established by the previous decisions of this court." *Millwood*, at 246, cited in *Brewer*, at 971.

[26]"The judicial power of the state shall be vested exclusively in the following classes of courts: magistrate courts, probate courts, juvenile courts, state courts, superior courts, Court of Appeals, and Supreme Court." Ga. Const., Article VI, § 1, ¶ 1. This enumeration excludes, quite obviously, municipal courts and by that fact withholds from them constitutional establishment and foundation – not to mention immunity on a par with the other courts from direct legislative action.

[27]*Id* (Emphasis added). The final sentence of this constitutional paragraph was the result of an amendment adopted in 1990. See Georgia Laws 1990, at p. 2440, § 1, ratified on November 6, 1990. There is, of course, some degree of redundancy and overlap in the two provisions of this constitutional section granting the General Assembly authority to vest power in the municipal courts by law. In Kolker v. State, 193 Ga. App. 306 (1989) , the Georgia Court of Appeals had ruled that the original reference in the original version of the 1983 Constitution to "by law" authority in municipal courts was ambiguous in that it seemed to conflict with the apparently exclusive grant of judicial authority to the enumerated classes of courts appearing earlier in the text of Ga. Const., Article VI, § 1, ¶ 1. After transfer to the Georgia Supreme Court, that court determined (260 Ga. 240 [1990]) that there was no ambiguity in the 1983 Constitution's provisions on the subject and that, therefore, the Recorder's Court of the City of Chamblee exercised valid authority over a state mis-

demeanor charge in finding the appellant guilty. In the interim, the constitutional machinery had been activated to clarify by amendment any questions about the meaning of Ga. Const., Article VI, § 1, ¶ 1 in light of the Court of Appeals's ruling in *Kolker*, a process which ultimately resulted in the last sentence of that constitutional section, even though the ruling of the Georgia Supreme Court seemingly had by that time already obviated the necessity for any such amendment. *See* generally *Brewer*, at 972-975.

[28]In how many courts, for instance, could the trial judge, on a single trial calendar, deal first with a seat belt violation based on a local ordinance with a potential fine of about $15, only to be faced next with a serious DUI case – unquestionably a state law matter – involving potentially a very hefty financial fine, not to mention lengthy incarceration of the offender, capped off with a nuisance abatement proceeding affecting the disposition of property valued in the millions of dollars? If variety is the spice of life, life as a municipal court judge is spicy indeed.

[29]*See* the Georgia Model Municipal Charter promulgated by the Georgia Municipal Association, accessible at <http://www.gmanet.com/Publications.aspx?CNID=19951>.

[30]This listing is hardly exhaustive, and we can anticipate that the scope of municipal ordinance authority – and hence, municipal court subject matter jurisdiction – will increase with time. *See e.g.*, OCGA § 16-7-48, authorizing municipal adoption of measures to control litter; *see also* OCGA § 16-12-120(d), permitting local ordinances to regulate conduct in public transit facilities where these are more restrictive than state law.

[31]Municipal courts are generally restricted in their sentencing authority to the powers indicated in their city charter even if the General Assembly has enacted legislation providing for more severe punishment of a given state law offense. OCGA § 15-7-84. There are notable exceptions to this ceiling, of course. *See*, respecting DUI cases, OCGA § 40-6-391(d)(1) ("Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the misdemeanor or high and aggravated misdemeanor punishments provided for in this Code section upon a conviction of violating this Code section or upon a conviction of violating any ordinance adopting the provisions of this Code section."). Other – perhaps broader – limitations in sentencing stem from constitutional and statutory sources. *See, e.g.*, City of Atlanta v. Wolcott, 240 Ga. 244 (1977) (indicating that, while the municipal court may abate a nuisance, an injunction against a continuing nuisance is available only in the superior court as a court of equity). In some instances, moreover, a defendant's demand for jury trial could divest the court of its subject matter jurisdiction over the case. *See, e.g.*, Gilbert v. City of Manchester, 204 Ga. App. 422 (1992); cf., *Smith v. State*, 270 Ga. App. 759 (2004) (principle applied in state court).The basic statutory ceiling for municipal courts in sentencing remains six months imprisonment and a monetary penalty of $1000. OCGA § 36-35-6.

[32]The statute provides explicitly that "[a]ny person charged with an offense under this chapter [Chapter 5, Drivers' Licenses, of Title 40 of the Code of Georgia] may be tried in any municipal court of any municipality if the offense occurred within the corporate limits of such a municipality. Such courts are granted the jurisdiction to try and dispose of such cases." OCGA § 40-5-24 (a). This authority would clearly reach the offenses described in OCGA § 40-5-120 (unlawful use of license or identification card); OCGA § 40-5-121 (driving while license is suspended or revoked); OCGA § 40-5-122 (permitting an unlicensed person to drive); OCGA § 40-5-123 (permitting an unauthorized minor to drive); and, arguably, OCGA § 40-5-125 (use of a fraudulent driver's license or identification card and the making of false statements in applications for drivers' licenses).

[33]1937 Ga. Laws 322, discussed *supra*.

[34]Among these Uniform Rules of the Road are, *inter alia*, OCGA § 40-6-252 (private parking lot restrictions); OCGA § 40-6-208 (restrictions in public transit authority parking lots); OCGA § 40-6-395 (fleeing or attempting to elude a police officer); and OCGA § 40-6-226 (improper parking in spaces restricted to those with disabilities). In addition, OCGA § 40-6-13 explicitly provides that "[a]ny court having jurisdiction to try and dispose of traffic offenses shall have jurisdiction to try and dispose of misdemeanor offenses provided for in Code Sections 40-6-10 [insurance requirements for operation of motor vehicles] and 40-6-11 [insurance requirements for operation of motorcycles]." The misdemeanor violation of OCGA §40-6-10, relating to motor vehicle insurance requirements, is made directly and explicitly within the subject matter jurisdiction of municipal courts under the provisions of OCGA § 36-32-7 ("The municipal court of each municipality is granted jurisdiction to try and dispose of cases where a person is charged with a misdemeanor under Code Section 40-6-10 of knowingly operating or knowingly authorizing the operation of a motor vehicle without effective insurance of such vehicle …"). Similarly, the operation of a motor vehicle without an appropriate certificate of emission inspection, as provided in OCGA § 12-9-55, is within the subject matter jurisdiction of municipal courts. *See* OCGA § 36-32-8.

[35]OCGA § 40-1-1 is the "definitions" section of Title 40 (motor vehicles and traffic).

[36]But *see* OCGA § 40-13-21(b) which vests authority exclusively in the municipal court with respect to Title 40 offenses within the boundaries of the State's municipal corporations having municipal courts: "Notwithstanding any provision of law to the contrary, all municipal courts are granted jurisdiction to try and dispose of misdemeanor traffic offenses arising under state law except violations of Code Section 40-6-393 and to impose any punishment authorized for such offenses under general state law, whether or not there is a city, county, or state court in such county, if the defendant waives a jury trial and the offense arises within the territorial limits of the respective jurisdictions as now or hereafter fixed by law."

[37]OCGA §40-6-391(d)(1).

[38]This statute was the follow-up chapter to the Legislature's attempt almost a decade earlier in 1974, noted earlier, to vest municipal courts with jurisdiction over offenses involving the possession of one ounce or less of marijuana. *See* 1974 Ga. Laws 221. The Georgia Supreme Court, in *State v. Millwood*, discussed above and in *Brewer* at 971, struck the law down as unconstitutional on the basis that only *state* courts, under the Georgia Constitution and cases interpreting it, had such authority over state cases.

[39]Enacted in 1992, this legislation authorizes municipal court power over offenses under OCGA § 16-7-21, Georgia's criminal trespass statute.

[40]See *Brewer*, especially at 975 *et seq*.

[41]OCGA § 16-7-21 and OCGA § 36-32-10(a), respectively, both of which are referenced, *supra*.