



MUNICIPAL COURT

Judges Bulletin

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Council of Municipal Court Judges Officers 2002 - 2003

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President's Corner



Viviane Ernstes

Thank you to all those individuals who give of their time, energy and wisdom in a concerted effort to make this Council successful and professional.

Representative Stephanie Stuckey Benefield has agreed to sponsor our pre-trial diversion bill this Session. Basically, we are asking the legislature to adopt OCGA §50-18-82 to give municipal court solicitors the power to create a pretrial diversion program and impose the standard fees allowed currently when solicitors for other classes of courts create such programs pur-

suant to § 15-8-80. I cannot give you a bill number yet as this amendment is still being drafted and finalized by legislative counsel.

In addition there are a couple of bills that may be of interest to you. First, the indigent defense bill, Senate Bill 102, particularly Section 3-8 that if passed, would amend OCGA § 36-32-1 and would provide in pertinent part: Any municipal court operating within this state and having jurisdiction over the violation of municipal ordinances ... shall not impose any punishment of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement,

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Shaver Update

On March 10, 2003, the Georgia Supreme Court reversed the decision of the Georgia Court of Appeals in *Shaver v. City of Peachtree City*, 253 Ga.App. 212, 558 S.E.2d 409 (2002), which had held that a Uniform Traffic Citation could not be used to charge a non-traffic offense and further held that under such circumstances, the trial court lacked jurisdiction. In its reversal of the Court of Appeals, the Supreme Court (docket number S02G0702), rejected both of these holdings and held that a UTC could be used to charge non-traffic offenses and that the failure to use the correct charging instrument "in no way ... equate(s) to a failure of jurisdiction over the case..." While the passage of House Bill 1169 by the 2002 legislature cured problems resulting from the decision of the Court of Appeals on a going forward basis, the status of numerous convictions on non-traffic misdemeanor cases prosecuted in lower courts with UTC's remained in doubt in light of the Court of Appeals' ruling on the trial court's jurisdiction. The Supreme Court appears to have removed any doubt about the validity of those cases.

Minutes from Fall Council Meeting

The winter meeting of the Georgia Council of Municipal Court Judges was held on January 31, 2003, at the James H. "Sloppy" Floyd Building in Atlanta, Georgia. The meeting was held following the legislative breakfast hosted by the Council.

The meeting was called to order by President Viviane Ernstes. The first order of business was the consideration of the minutes of the fall meeting in Macon on November 1, 2002. The minutes were approved as submitted.

Judge Ernstes deferred giving the president's report and called on Judge Ward for the treasurer's report. Judge Ward reported that, as of December 31, 2002, the Council had \$28,393.94 in its non-state appropriated funds account, an increase of \$10,290.00 since the last report. Bernadette Smith of the AOC reported that \$14,336.55 remained in the state appropriated funds account as of

December 31, 2002, to be used during the remainder of the 2003 fiscal year. The Council was advised that, because of proposed budget cuts across the board of three to five percent in every judicial branch, a lesser amount may be appropriated in the future than has been in the past.

The following committee reports were than given:

(1) Legislation: Judge Barrett advised that there are three pieces of legislation the Council seeks to introduce this year.

- Pre-trial diversion - Municipal Courts are not authorized by statute to offer pre-trial diversion so an amendment to OCGA § 15-18-80 is needed to allow courts statutory authority to establish pre-trial diversion programs.

- Daily jail service fee - This provision would allow municipal courts to impose a daily jail service fee on defendants for time spent in jail.

- Senior municipal judges - This legislation would authorize the creation of the position of senior municipal judges.

(2) Newsletter: Judge Washburn reported that Justice Benham advised her that he reads the Municipal Court Judges Bulletin cover to cover. The newsletter is a quality publication; however, it is sometimes hard to get people to contribute articles. Judge Washburn asks that anyone willing to submit an article contact her.

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President's Corner *continued*

probation, or other loss of liberty...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.... Any municipal court operating within this state...that holds committal hearings ... must provide to the accused the right to representation by a lawyer, and must provide to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Indigent Defense Board for representation of indigent persons in this state.... Any municipality or municipal court may contract with the Georgia Indigent Defense Board as a means of comply-

ing with the municipality's or municipal court's legal obligation to provide defense counsel at no cost to indigent persons appearing before the court in relation to violations of municipal ordinances, county ordinances, or state laws. The circuit public defender office or other approved indigent defense system for the judicial circuit in which the municipality is located shall have the obligation to provide such counsel for any case originating in municipal court that involves a charge of violation of state law and is bound over for prosecution to the state or superior court of the county in which the municipality is located.

Another piece of ethics legislation, House Bill 62, may require financial disclosures from part-time Judges

like us. If you would like to know the status of any of these bills, Judge Charles Barrett, our legislative authority, can give you an update on bills of interest to municipal courts as they work their way through the system.

We had a very productive Council meeting at the end of January and spent a good bit of time discussing potential legislation and receiving an update from the Administrative Office of the Courts on new software that will be available in the next few months to help courts calculate surcharges and fees.

If you have any issues or concerns that we should take up at the spring meeting, please feel free to call me at 404-373-1141 or email me at vhernstes@hotmail.com

Minutes from Fall Council Meeting continued

(3) Benchbook: Judge Cielinski advised that the Benchbook was at the printers and should be out soon.

Judge Ernstes then reported that there has been no progress made in getting a seat for the municipal court on the Judicial Council so the Municipal Court Judges Council may attempt on its own to get authorization. She also advised that the three bills the Municipal Court Council would like to have introduced have been presented to the Judicial Council.

Judge Bobbitt reported on the Council's work with the GMA. He had met with the GMA Task Force which was concerned primarily with indigent defense issues. The GMA is especially worried about municipal liability. A suggestion was made to establish a circuit wide public defender's office rather than having each municipality handle these issues on its own. Reservations were expressed about whether this could be done.

Judge Ward reported on the status of the County and Municipal Probation Advisory Council. There

are now about thirty private probation companies which seem to be doing very well.

Judge Cielinski gave a brief report on the activities of the Municipal Court Judges Training Council. He advised that the operating budget was in good shape and that the Council is now dealing with recertification issues for the current year.

Judge Still brought to the group's attention that the old Municipal Court Judges Association still had several thousand dollars sitting in a separate account. Judge Still moved that these funds be paid to the Council of Municipal Court Judges. The motion was seconded by Judge Washburn and passed unanimously. The money will be transferred in the near future.

Judge Coolidge then reported on the progress made by the court forms committee set up at the Council's last meeting. He had obtained forms currently being used for waiver of counsel in various courts and planned to send copies to members of the committee and call a meeting of the committee by phone. The committee

would draft a form and seek comments on the proposed form from the defense bar. Appropriate changes would be made and the forms would be provided to municipal courts to use if they so choose.

Judge Still brought up issues relating to the suspension of driver's licenses of those under eighteen years of age. DPS is not currently suspending licenses for under eighteens because of a problem with its computer program. When the program is fixed DPS will then issue suspensions for all of the backlog for the last two years. This is a problem as is the fact that DPS is not recognizing the date the court tells a defendant the license is suspended but is using the date entered into the computer by DPS. It was recommended that a delegate from the Municipal Court Judges Council be sent to DPS to address these issues. Judge Washburn and Judge Hairston volunteered to set up and attend a meeting with DPS.

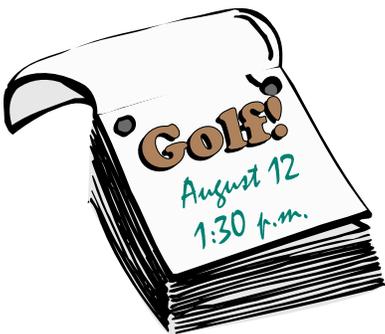
Judge Still further reported that legislation had been proposed to require that fines collected for cases made on interstates and limited access highways be sent to the state rather than the local government. It was pointed out that this is an issue to be dealt with by cities and counties rather than the Council. Judge Still also noted that there had been talk about a bill which would require each judge to file a financial disclosure form every year. He would follow up to try to determine exactly what is being proposed and monitor the issue.

Judge Coolidge reported on the activities of the GMA Municipal Court Task Force. He noted that GMA continues to support the existence of municipal courts as an appropriate forum for handling minor offenses but encourages municipal courts to

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Mark Your Calendars

4th ANNUAL COUNCIL OF MUNICIPAL COURT JUDGES GOLF TOURNAMENT



Tuesday, August 12, 2003
1:30 p.m.

Watch for registration information in the next newsletter.
Judge Jim Payne, Chief Judge, Acworth is again planning this event.

Obscure and Non-uniform Areas of Municipal Courts

Judge Robert T. Whatley
Austell Municipal Court

When judges convene in a Superior Court or State Court conference setting, they can be assured that the laws they operate under are uniform and perhaps the local rules and their relationship to the State Uniform Rules are the only thing they must be concerned with. They can then go on to the application of the law to current situations, not so with the Municipal Courts. The laws under which they operate differ widely with local legislation authority, local regulations, and city charter limitations.

For example there is a contentious issue now pending as to the procedure involving jury trials: the waiver thereof and the necessity of colloquy on the record. A group of judges on the other side of the room are not interested. Their court by local legislation has jury trials, namely the City Court of Atlanta. Then a discussion ensues as to subject jurisdiction and a discussion of the “State” charges that can be brought such as shoplifting and marijuana. Again, this same court in Atlanta, deemed a Municipal Court, can try cases “arising from a traffic stop” such as a gun charge, an assault charge, or other misdemeanor charges.

Other judges of these “special” hybrid courts who must attend municipal certification entertain civil cases such as the Columbus-Muscogee County will tell of civil cases that they hear in addition to the usual municipal cases.

But there is more. Most municipal court judges cannot set bonds for offenses exclusively within the province of the Superior Court, such as robbery or certain drug offenses. Not so in Fulton County and its

municipalities. From time to time the Fulton Superior Court judges give “orders” where local municipal judges can do so. Other judges around the state have no such orders.

When it comes to binding over felons from a municipal jail many cities did this or do it still. Now because of a federal lawsuit, this practice has been halted in at least Fulton County. Whether this will affect the other cities is unknown.

Then there is the matter of scores of city charters which may limit the amount of time an offender can serve for certain offenses and contempt, even though state law gives a maximum. Certain offenses provide that the city can pre-empt the state law and provide for lesser time. Contempt is also covered.

Now we consider the matter of where to appeal. Some charters provide review by certiorari to the superior court- others to a more circuitous route. Next, though uniform, there is an area few are totally familiar with and is somewhat of an obscure corner in municipal court practice. A close examination of OCGA § 41-1, et seq., give all municipal courts civil powers to abate nuisances, by ordering repair, demolition, clean-up, and other remedies too numerous to mention and containing many pages in the Code. An analysis of these powers would lead to think that they were in superior court. The powers are vast and seemingly would parallel a lengthy superior court-type case and come close to injunctive powers.

Also, a wide diversity exists in the administration of mandated sentences. One court may construe “shall serve 24 hours” in law as “24 hours”. Another may let the jailer award good time and release him in 12. Yet another judge may order no

jail at all and let his few hours prior to making his bond the jail sentence though it may be 5 or 6 hours. Some judges cite the law and feel bound –others cite discretion.

Another area is interesting though not directly bearing on the thrust of this article – however a judge may be called upon for input. Almost unknown to all is an obscure provision of the State Board of Pardons and Paroles that anyone with a sentence of 12 months or more is eligible for parole consideration if he specifically requests it. Assuming that a municipal judge gives a consecutive sentence of 16 months. This would come into play with the possibility of a request for a recommendation from the judge.

A last area of discussion is the transcribed proceedings – some do, some do not. But since a recent decision reversed an expired tag conviction because of a lack of information on rights advisement, it appears that all need now do so, to determine compliance.

In sum, though uniformity and subject matter is clear in other courts there seems to be somewhat vast differences in municipal court practice as well as an area usually reserved to a lengthy superior court investigation.

Disorder in the Court

These are things actually said in court, word for word, taken down and now published by court reporters — who had the torment of staying calm while these exchanges were actually taking place.

Q: Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?

Free Computer Software Available to Cities

Judge William M. Coolidge, III

The Georgia Courts Automation Commission (GCAC) and the Administrative Office of the Courts have free case management software or programs and technical support available to Municipal Courts. GCAC offers the Traffic Court Information System, which handles record keeping for traffic and local ordinance cases, forms, reports, electronic submission to DMVS, and accounting. At least 36 courts with traffic juris-

diction (primarily Municipal Courts) now have this program and at least 36 more have signed up. GCAC also has the state license for SUSTAIN, a case management program that is intended to serve any level of court and is currently in use in several Municipal Courts. For more information, please call (404) 651-6328, or check the GCAC website at <http://www.gcasite.com>

Beginning soon, the AOC will have an on-line surcharge calculator that will allow courts to correctly calcu-

late the surcharges that are to be paid with every fine (except for seatbelt cases). The program is currently being tested in several courts and once it is online, you can use it while court is in session. If that is not feasible, at a minimum, it can be used to confirm whether your fine and bond schedules and/or computer programs correctly calculate the surcharges that are due. When the program is fully activated, we will send further notices about it.

Minutes from Fall Council Meeting continued

provide indigent defense on their own. GMA would like to take some traffic offenses and decriminalize them and remove the power of incarceration for violations. The position of the Municipal Court Judges Council is that it opposes taking this action. Judge Coolidge noted that the Task Force has also considered the issue of mandatory training and certification for municipal court clerks and determined that it will support formalization of clerk training.

In addition, Judge Coolidge reported on the activities of the Georgia Courts Automation Commission. The Commission met several times. Because of budget cuts the Commission has consolidated its staff with AOC. It provides technical services about which many municipal courts are not aware. Judge Coolidge volunteered to do an article for the newsletter in an attempt to get the word out. In particular, he noted that a traffic court program is available to use in computing and reporting fees. This is a valuable tool available at no cost to municipal courts.

The final item of business was a presentation by Kevin Tolmich from

the budget office of the AOC. He gave an update on the status of training for the collection of fees and fines. In the past, there had been no one to monitor training and many courts were improperly collecting and allocating state mandated fees. Mr. Tolmich advised that there now two people available to come to municipal courts to help train clerks and otherwise solve problems. A training program on court fee basics has been devised. Other classes are also being developed, one on collections, one on technology, and one on accounting practices. Mr. Tolmich has also been working with the Georgia Courts Automation Commission to develop a court fee calculator which will be available on line next month. He agreed to prepare an article for the newsletter so as to provide this information to all municipal court judges.

After much discussion, the spring meeting of the Council was set for May 2, 2003, in Macon. There being no further business, the meeting was then adjourned.

Respectfully submitted,
Kathryn Gerhardt

Watch Out for the Four C's

At the January meeting, the Municipal Courts Training Council addressed the issue of conduct guidelines. These guidelines concern the standards of courtesy impacting course attendees at training sessions. After much discussion and interaction with the ICJE, the Council made the decision to enforce four major rules which are as follows:

- (1) Children are not to be in the meeting room,
- (2) Cellular telephones and pagers are to be turned off or set on low volume (vibrate),
- (3) Conversation should be kept to a minimum and,
- (4) Clothing should be appropriate (shirt and shoes).

These rules, also known as the 4 C's, will be addressed by the moderators of the Municipal training sessions.

The Joys of Jury Duty

by: John Doyle, juror

(John Doyle is a part-time TV weatherman with Channel 46 in Atlanta. He's lived and worked in Atlanta since 1964 and served on a jury three times. He states that this time was the most exciting)

I'm probably a better weatherman than a juror. But, it's possible that my years of observation and attention to detail may have stood me in good stead when I sat on the Gwinnett jury September 23 and 24 of this year.

Naturally, not many people relish the idea of "jury duty," and my experience with the process in years past was Beyond Dull. It was 25 years ago in DeKalb County, and the case we sat on concerned whether one driver was more reckless than the other. Two days. Whew.

This most recent case, however, at the Justice Center in Lawrenceville was something out of "Law and Order"!

In this early Fall divorce case, the lawyers could not have been more interesting nor more diverse.

THE MAN (Plaintiff): His lawyer was a petite blonde who knew the law backwards and forwards.

THE WOMAN (Defendant): Her lawyer was an older gentleman, a seasoned veteran of real wars and innumerable courtroom battles.

Ours was a movie script jury.

We were all there: The Salesman, the White Collar Professional, the Outspoken Man, the Quiet Man, the Quiet Woman, the Housewife, the

Repairman, the Professor...you get the idea. There were at least three races represented, several creeds and both sexes. And smart! No dummies on this one.

And who would have believed that the BAILIFFS were going to be fun, informative and friendly? Luther and John were so helpful in herding the thirteen of us (12 plus an alternate) from the main assembly area to the court room to the jury room and back and forth over and over again. Yep, it felt like being in first grade and going on a field trip with your



teacher, but we were not required to hold hands.

When we got down to cases, it was surprising how objective I was able to remain, given the apparent obvious facts of the case:

SHE wanted half of everything: house, business, plus alimony.

HE had already given her two vehicles and spending money on at least three get-aways which apparently involved other men.

The first day was a cliffhanger, since we heard only **HIS** side. I genuinely could hardly wait to get back for the second and final day to hear **HER** side of the story.

It quickly became clear that **HE**

had little or nothing to hide, while it was hard to tell where the **Truth** left off and **Whimsy** began when **SHE** began to talk.

When all the arguments were over, it really came down to: **Who Do You Believe?** There was never a doubt among the jurors that **HE** was the victim here. We awarded **HER** no alimony and no part of the house or the business. Our jury's Professor did a splendid job of suggesting equitable solutions and wrote a truly impressive verdict.

I have now served on exactly one divorce case, but I certainly feel that this one was a bit out of the ordinary: Drama, betrayal, intrigue. Not all cases can be as interesting or entertaining, but this was a good shot in the arm for Justice Served.

Given my experience on the jury, here are some Do's and Don'ts for lawyers who may have to try a similar divorce case:

DO listen to the judge and obey him respectfully. When he says "Next question!," it's probably a pretty good idea to start the next question immediately. A lawyer's respect for the judge earns respect from the jury.

DON'T become argumentative with the judge. It creates doubt within the minds of the jurors.

DON'T encourage your client to make faces of unbelievable disbelief and disdain whenever her opponent/husband (or opponent/wife) makes an accusation. These expressions look improvised and make jury members think you're hiding something.

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Interpreters Registry to be Published for Hearing Impaired

Deaf people face special problems in Georgia's courts and criminal justice system. According to Jennifer Whitcomb, executive director of the Georgia Council for the Hearing Impaired in Decatur, 20% of the cases her agency deals with relate to individuals who have problems with the legal system. The problems include lack of access to interpreters in court rooms and serious miscommunication regarding consequences.

Requirements

The Americans with Disabilities Act (ADA) requires courts to make accommodations to ensure that deaf people have full access to justice and equal treatment under the law. Deaf people cannot be charged for the cost of "auxiliary aids" needed for effective communication. These are considered general expenses of court administration.

Auxiliary aids include qualified

interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), and videotext displays. However, many courtrooms in Georgia are not equipped with the necessary assistive listening devices for hearing impaired individuals who do not use interpreters, Whitcomb said.

The Georgia Supreme Court Commission on Equality and the Administrative Office of the Courts are working to help courts find qualified interpreters for the deaf and hearing impaired. A "qualified interpreter" as defined by the U.S. Department of Justice, "... an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary." According to Georgia law (OCGA § 24-9-104) interpreters are mandated in administrative and judicial proceedings for the hearing impaired, particularly when legal

counsel has been appointed.

Ms. Stephanie Chambliss, Program Director, Georgia Commission on Equality is to publish a comprehensive list of certified interpreters for the deaf. The list is to be published on the Georgia Supreme Court website (www.georgiacourts.org) in early winter. However, during the interim, should you need or require an interpreter for the hearing impaired; you may contact her at (404) 463-3927 or chamblis@gaaoc.us. She currently has a list of referral agencies that provide professional certified and qualified interpreters.

Interpreters and/or courts presently utilizing sign language interpreters are encouraged to contact Ms. Chambliss if they would like to be listed on the registry.

Interpreting Resource International, Inc.
(770) 982-1141
(available 24 hours a day)
(770) 247-2531 Pager
(770) 982-1149 Fax
Website: iri@3DWord.com

Sign Language Interpreting Specialist, Inc.
(770) 531-0700
(available 24 hours a day)
(770) 947-0894 Fax
Website: www.slisinc.com

Georgia Interpreting Services Network
(404) 521-9100
(404) 521-9121 Fax
Website: www.gisn.org

Registry of Interpreters for the Deaf
www.rid.org

The Joys of Jury Duty continued

DO provide as much paper work and documents as possible to prove your case, but make sure that it's all understood by the jurors and the court in a timely manner. Otherwise, there will be some jury room decisions based on the judge's last-minute advice, rather than hard-fought courtroom arguments.

DO maintain personal dignity and professional stance no matter what the judge or clients say. The jury is impressed with sweeping integrity.

DON'T badger clients. No one likes a bully.

DO bring the client's reading glasses to court when he has to read his tax returns!

More Disorder in the Court

Q: So the date of conception of (the baby) was August 8th?

A: Yes.

Q: And what were you doing at that time?

Probation: Changing People, Changing Communities

Over 150 years ago, a shoemaker from Boston, Massachusetts, named John Augustus, convinced a Boston Judge to release into his custody a man convicted of being a “common drunkard.” Instead of the usual penalty for the offense, 30 days in the House of Correction, the judge released the offender to Augustus’ custody on condition that Augustus help the man find a job, enforce a pledge that the man signed agreeing to stop drinking, and insure that the man paid a fine (the fine was \$3.76!).

Augustus kept an eye on the man, helped him in finding employment, and otherwise saw to it that he avoided further problems that could result in his being arrested and brought back before the judge. Augustus was encouraged by the progress of the offender and, with the court’s approval, soon began to offer supervision and assistance to other offenders appearing before the court. He believed, and proved, that many offenders who were being locked up for their offenses could change their behaviors with the right blend of oversight and assistance in the community. In 1878, Massachusetts enacted the world’s first probation system, based on the success of the efforts of John Augustus. Augustus came to be known by criminal justice professionals as the “Father of Probation.” From that very humble beginning came probation as we know it today, with nearly 70% of all criminal offenders now being placed on probation instead of being locked up for their offenses.

The fundamental philosophy of probation has remained essentially the same since the time of John

Augustus: Determine the offender’s risk to himself and to others, then look for the solutions that will help keep the probationer from committing new offenses. John Augustus did not have the nationally recognized research-based programs that we currently use to effectively bring about change in the offender; electronic monitoring, drug and alcohol testing, and a computerized case management system would have been far beyond his imagination. But, as we know today, and Augustus knew then, fines and jail time are not always the “complete answer” for some offenders.

Augustus demonstrated that many offenders can alter their behavior. The advanced methods and tools we use today in probation work make this possibility more often a reality. We have the means to offer a more “complete probation” than Augustus would have ever believed possible in 1841 when he took on his first probation caseload. Undoubtedly, he would have believed, as we do, that the complete array of probation services can protect communities and change offender behavior. We recognize at that we have an opportunity in our work, to change people and to change communities for the better. In the spirit of John Augustus, we in the private sector of misdemeanor probation supervision should always remember that this is the core of our mission and purpose.

Larry Anderson,
SE Regional Director
Field Services Division
BI, Inc.

West’s Georgia Code Update

West Publishing has introduced its own version of the Georgia Code. It contains everything that is included in the Michie Code (the official state code.) In addition to the official annotations which are specified by the Georgia Code Commission, West editors have added other annotations where indicated.

The West Code also provides references to its own publications, using West’s proprietary topic and keynotes where appropriate. Since West has purchased the Harrison Company, the new Code refers to specific sections of those popular publications, such as the William “Bubba” Head book on DUI defense.

More Disorder in the Court

Q: How old is your son, the one living with you.

A: Thirty-eight or thirty-five, I can’t remember which.

Q: How long has he lived with you?

A: Forty-five years.

Q: Can you describe the individual?

A: He was about medium height and had a beard.

Q: Was this a male or a female?

Judge: “Well Sir, I have reviewed this case and I’ve decided to give your wife \$775 a week.”

Husband: “That’s fair, your honor. I’ll try to send her a few bucks myself.”

Indigent Defense Report Delivered to Supreme Court

On December 12, 2002, the Chief Justice's Commission on Indigent Defense issued its full report to the Supreme Court of Georgia, with recommendations to improve the fairness of the Georgia courts. The report calls on the state to assume responsibility for paying for indigent defense services and to establish and enforce basic standards for indigent defense programs.

"The concepts of fairness and equal justice are basic to our American system of government and to our identity as Americans," said Charles R. Morgan, chairman of the commission. "This report is in essence about ensuring fairness for all citizens."

Under current Georgia law, the primary burden of paying for indigent defense services falls on county governments. In 1999 – the most recent year for which complete figures are available-- Georgia counties spent \$40,591,424 to pay for legal representation for defendants charged with a crime, while the state contributed \$5,893,227, or 11%, over the relevant period. An additional \$4,115,772 came from interest on special funds. State funds and interest income are administered by the Georgia Indigent Defense Council (GIDC).

The Commission concluded that the state is failing to meet its consti-

tutional duty to protect the rights of indigents and to fund indigent defense. Georgia ranks second from the bottom among 10 comparable states in per capita funding of indigent defense. Because the system is fragmented, the quality and delivery of indigent defense varies widely from one county to another. The Commission found there is no effective state-wide structure in place to enforce compliance with guidelines on indigent defense.

In 76 counties, indigent defendants are represented by lawyers drawn from a county-appointed panel of private attorneys. In 55 counties, indigent cases are assigned to contract attorneys who often must take on more clients than they can effectively represent. Full-time public defenders — the system the Commission considered most likely to result in fair and effective representation — are employed in 21 counties.

The Commission found that indigent juvenile defendants are especially vulnerable to the inadequacies of the current system. In addition, there is no uniform approach to identifying and assisting indigent defendants with mental disabilities. It is estimated that indigent persons represent about 80% of all criminal defendants in Georgia.

The Commission's report recommends that the state take over responsibility for paying for constitutionally adequate indigent defense. It calls for Georgia's indigent defense system to be reorganized on the basis of the state's 49 judicial circuits, instead of its 159 counties. The system, to be phased in over a three-year transition period, would be administered through a Georgia Indigent Defense Board representing all regions of the state.

The Commission's findings were based on testimony from 65 witnesses, including county commissioners, sheriffs, judges, public defenders, prosecutors, and spokespersons for minority groups. The Commission also drew on the expertise of officials from other states, site visits to courtrooms and a special report prepared by The Spangenberg Group of Newton, MA, a nationally recognized criminal justice research group which has conducted studies in all 50 states.

The Supreme Court of Georgia established the Commission in December, 2000 "to study the status of indigent defense in Georgia, to develop a strategic plan and to set a timetable for its implementation."

The 26-member Commission was chaired by Charles R. Morgan, Executive Vice President and General Counsel, BellSouth Corp. Paul M. Kurtz, Associate Dean, University of Georgia School of Law, served as Reporter.

The Commission's report can be viewed at the AOC's website, <http://www.georgiacourts.org/aoc/idcreports.html>

More Disorder in the Court

Q: What was the first thing your husband said to you when he woke up that morning?

A: He said, "Where am I, Cathy?"

Q: And why did that upset you?

A: My name is Susan.

Q: Doctor, how many autopsies have you performed on dead people?

A: All my autopsies are performed on dead people.

Computer Tips

There are two methods for saving E-mail in Amicus Attorney. One method will save a single E-mail, while the other is effective for saving multiple E-mails after conducting a Search. To save an individual E-mail: 1. Open the E-mail Details dialog by double-clicking on a selected E-mail in the list. Or, right-click on a selected E-mail and choose Open. 2. From the E-mail Details dialog, make any associations with a Contact and/or a File as required. 3. Click the Save button at the bottom of the dialog. Note, if you click SAVE without first making the associations, Amicus will prompt you to create a new contact card for the sender. This is a quick method of adding a new contact to your database without first creating the contact card. However, if you know that there is another person in the database with the same information (i.e. address, company, phone, etc.), you will first need to create the new contact card for the sender by pulling up the contact who is already in your database, clicking NEW and selecting SAME INFORMATION. Then, go back to the ComCenter and make the association as above to the newly created contact card. The E-mail has now been saved and will appear on any Contact or File card with which it has been associ-

ated. To view the e-mail after it has been saved, it will still be in the ComCenter Outstanding view until you mark it "Dealt With" or 15 days has elapsed (presuming you haven't changed the standard preference settings) However, once saved, it will be in the File under Communications and in the Contact Card for the person who sent it to you under Communications and in your calendar on the day received (Change To-Do to Communications). Remember DO NOT DELETE the e-mail from the ComCenter as that will DELETE the e-mail from the Amicus Attorney database. To remove it from the ComCenter but preserve the e-mail as above, right click on the e-mail and select DEALT WITH. To save multiple E-mails after conducting a search by defining the search in the ComCenter Search view: 1. From the Search view, select a series of unassociated E-mail. 2. Click the and/or buttons and make your associations as desired. Click the Make Associations button to associate the E-mail with the File and/or Contact you have chosen.

There are many new software products and services this year, including:

Active Words. Similar to explanation codes that auto expand, Active

Words does much more. This unique Windows utility launches programs, jumps to websites, sends email, and substitutes text. You can use Active Words to add explanation codes and simple commands to any program, including Amicus Attorney. Simply enter or select self defined code words in any context and your computer immediately delivers the results you want!

CaseMap/TimeMap. - CaseMap makes it easy to organize and explore the facts, the cast of characters, and the issues in any case. Unlike a traditional case management program, this program organizes the FACTS of your case. From your first meeting with a prospective client, CaseMap helps you capture your thinking and communicate it to everyone on the trial team. The TimeMap add on will take the facts and turn them instantly into a time line for presentations to juries or to help you organize your understanding of the case.

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More Disorder in the Court

Q: Doctor, before you performed the autopsy, did you check for pulse?

A: No.

Q: Did you check for blood pressure?

A: No.

Q: Did you check for breathing?

A: No.

Q: So, then it is possible that the patient was alive when you began the autopsy?

A: No.

Q: How can you be so sure, Doctor?

A: Because his brain was sitting on my desk in a jar.

Q: But could the patient have still been alive nevertheless?

A: Yes, it is possible that he could have been alive and practicing law somewhere.

Chris' Financial Corner

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USING WHOLE LIFE TO INCREASE RETIREMENT INCOME

When you mention the word “diversification,” a common definition such as a “mix of assets from bonds, stocks (all types), and cash” comes to mind for most people.

The reality is that most people do not understand that diversification also involves one other key financial vehicle: whole life insurance.

The fact is, whole life is good once you understand how to use it and what it can do. The problem is most people don't take the time to learn the opportunities.

Pre-Retirement

Contrary to what you have heard in the past, whole life can be designed so that cash values build very quickly in the early years. Because of this, whole life can take the place of a money market account providing better returns on a tax-deferred basis. Also, because death benefits are provided, past term insurance premiums that were being paid can be redirected into a favorite mutual fund. This will provide a great deal of additional wealth over time that would have been otherwise transferred away.

As cash values build, money can be borrowed for other investment opportunities that may have a greater return than the cash value account. (Remember, loan interest that occurs for investment reasons may be a deductible expense.)

Diversification is now enhanced,

resulting in more systematic monthly contributions; a liquidity fund that all financial planners recommend; and additional benefits that include: disability continuation on premium deposits, tax deferral and additional suit protection in most states, just to name a few.

After Retirement

The other serious misconception is that whole life insurance does not benefit people during retirement. Let's face it; you don't need insurance, right? Wrong. You may not need it, but if you have it, your retirement can provide greater income because of “diversification.” Here's how:

Assuming a retirement nest egg of \$3 million invested conservatively (which is usually the case), that earns eight percent. Two hundred and forty thousand may net \$144,000 after taxes (assuming a 40 percent tax bracket). During retirement, potential problems include (a) adequate income today and (b) adequate future income as inflation chips away and life expectancy increases. The reality is that people do not spend principal during retirement because of the fear of running out of money in future years. If proper diversification is in place, whole life insurance can eliminate these fears.

Now, let's assume the same \$3 million nest egg, but \$2.4 million invested at eight percent and \$600,000 cash value insurance. Two million four hundred thousand is now distributed over a 20 year period including interest and principal. Each year the taxes go down because more of each distribution is principal.

The result is more after tax income from age 65 to age 85 (starting at \$167,645 in year one and growing to \$237,202 in year twenty).

What happens if the retiree dies before age 85 or lives past 85? Properly designed, the insurance death benefit will replace all of the spent principal, providing for his heirs if he dies before age 85; and if he lives past age 85, the tax-free compounding cash value can be utilized for income replacement.

Tax-free compound growth is a marvelous feature offered by the whole life contract, and that's what is happening to the \$600,000 cash value while the retiree incurs no taxes on the growth inside the policy. More income at the start of retirement, fewer taxes, and safety all add up to maximum diversification. True diversification that gives you the permission to enjoy your wealth and your retirement more abundantly.

The truth is: Whole Life can be the vehicle that allows you to spend your wealth during retirement instead of just spending the interest.

CHRIS ELLINGTON specializes in estate planning and maximizing wealth utilizing velocity of money principles. He joined Peachtree Planning Corporation in 1990 and currently serves as vice president of the North Fulton office servicing Fulton and Gwinnett counties. Chris specializes in planning with professionals and small business owners. 770-998-5327

Legislative Tracking

The Administrative Office of the Courts would like to take this opportunity to inform or remind everyone of the Legislative Tracking link. The link, which is a web based tracking system has been put into place and updated daily to receive input and provide information to individuals across the state regarding legislation. The tracking link also provides access to current events in the news, contact information for various organizations, and resources to aid in the search for legislation that may otherwise prove difficult to find.

When navigating the website, there are some links you may find of great importance. One of the links is the tracking level, which explains what stage legislation is on at that present time. The other levels are self explanatory, but there are two levels

that should be defined. The first level is hot legislation, which means the bills are moving and the second level is work legislation, which means there is a need for input on the Legislative Analysis form. Furthermore, at the very top of the homepage you will find a bar with several link options and one important link is the calendar. The calendar link furnishes committee meeting notices and agendas which are updated throughout each day to reflect the most recent agendas.

If you have not had the opportunity to go onto the website, please take the time and do so. You will find that it is very convenient, informative, and reliable when tracking legislation. You may log onto the website by typing www.georgiacourts.org and a blue arrow will point to the

Legislative Tracking link. Debra Nesbit of the AOC is the Assistant Director of Legislative and Governmental Affairs and maintains the website with the aid of her staff and the Legislative Advisory Group. Ms. Nesbit would like for you to know if you are unable to visit the website or require more assistance, the staff at AOC will be happy to track any legislation you find of interest.

If you have any questions and/or concerns please feel free to contact Debra Nesbit at 404-651-7616 or nesbitd@gaaoc.us



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