



MUNICIPAL COURT

Judges Bulletin

Fall 2002 • The Georgia Council of Municipal Court Judges Newsletter • Vol. 4, No. 2

Council of Municipal Court Judges Officers 2000 - 2001

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President's Corner



Viviane Ernestes

One of the best things we do as judges is to remain patient. "A good judge must have an enormous concern

with life, animate and inanimate, and a sense of its tempestuous and untamed streaming... Show me an impatient judge and I will call him a public nuisance to his face... Worse than judicial error is to mishandle impatiently the small affairs of momentarily helpless people, and judges should be impeached for it." Curtis Bok, *I Too, Nicodemus*.

With the decision in *Alabama v. Shelton*, 122 S. Ct. 1764, 2002 WL 1008481, (May 20, 2002), our class of courts is getting quite a lot of attention and I would anticipate that our patience may be tested in the near future on *Shelton*-related issues.

When all the dust settles, the real change wrought by *Shelton* is a change in the definition of the term "actual imprisonment." For most, "actual imprisonment" meant immediate imprisonment. The controlling rule as announced in *Argersinger v. Hamlin*, 407 US 25 (1972) was that absent a knowing and intelligent waiver, a criminal defendant is entitled to counsel if the conviction would actually lead to imprisonment. With the decision in *Shelton*, the term "actual imprisonment" now means possible

imprisonment. As a result, if a suspended jail sentence at some future point may be activated upon a defendant's violation of the terms of probation, then absent a waiver, the indigent defendant is entitled to appointed counsel.

With the decision in *Shelton*, a lengthier individual colloquy with almost every defendant who comes before you will be required. This is where patience comes into play. Court sessions will be longer, cities are going to have to budget for public defenders and in a lot of cases, if there is going to be a public defender it only makes sense to have a solicitor. It also means that the lawyers in our courtrooms will have to exercise a similar degree of patience when it takes longer to reach their cases.

Patience and money issues are manageable, but several issues remain, particularly, how we handle those cases that arose prior to *Shelton*. I am told that this first message is supposed to define our goals for this year. As I see it, the primary goal of the Council this year is to help Municipal Courts deal with *Shelton*. So what do we do? Here are a few thoughts.

1. Sit down and read *Shelton*, *Tucci v. State*, 255 Ga. App. 474, (2002 WL 1013509) (May 21, 2002); *Godlewski v. State*, 256 Ga. App. 35, 567 S.E. 2d 704 (2002); *Thompson v. State*, 2002

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President's Corner *continued*

WL 1477809 (Ga. App. July 11, 2002); *State v. Johnson*, 2002 WL 1941435 (Ga. App. August 23, 2002); *Serio v. State*, 2002 WL 1968625 (Ga. App. August 27, 2002); and *Jackson v. State*, (2002 WL 31191794 (Ga. App. October 3, 2002).

2. Read your waiver form and revise it accordingly. Lots of courts have revised their forms and would be glad to give you a copy of what they have drafted, as there is absolutely no need to reinvent the wheel. Bill Coolidge, 770-932-3552, CARMITCH@mindspring.com and Robert B. Whatley, 706-884-3059, rwat@robertwhatley.com, have significantly revised their forms and would be glad to email samples for

you to consider.

3. Take a long hard look at what you tell defendants. You are going to have to spend some time talking with each defendant before you allow a defendant to plead guilty without a lawyer if probation or immediate imprisonment is part of the sentence.

4. Develop a system to determine indigency and create an affidavit of indigency. The Georgia Indigent Defense Council has a good bit of material that you may find helpful at www.gidc.com

5. Absent a knowing and intelligent waiver, and if the defendant is indigent, appoint counsel in cases of "actual" imprisonment. This will require that you spend some time

with your city officials because the city will have to allocate the funds to provide counsel. You may want to tap into your circuit's public defender system or you may want to simply hire some local lawyers on a fee basis. You may even bind your jail and probation cases over to the local state and superior courts.

In keeping with our goal, our Training Council is committed to making *Shelton* and its progeny a focus for our continuing education, and for the next newsletter, I intend to solicit advice from you to share with everyone else about possible solutions, good forms, etc. As with every year, this year will prove to be interesting and I look forward to working with each of you.

3rd Annual Council of Municipal Court Judges Golf Tournament

Several stalwart municipal court judges braved the humid Augusta heat and ventured forth onto the fairways and putting greens of the River Course, North Augusta, SC. Of course, several of the wives bested some of the fellows, but that was to be expected. Our participants were Claude and Vicki Mason; Maurice and Jo Ann Hilliard; David Mecklin; Robert Pirkle; Jeffrey Arnold; Charles Brooks; John Adams; Leon Braun; Jim Payne.

The winners are as follows:

- 1st Place Leon Braun
- 2nd Place Robert Pirkle
- 3rd Place John Adams

Longest Drive on Holes 8 & 18

Leon Braun

Closest to the Pin on Hole 7

Vicki Mason

Closest to the Pin on Hole 17

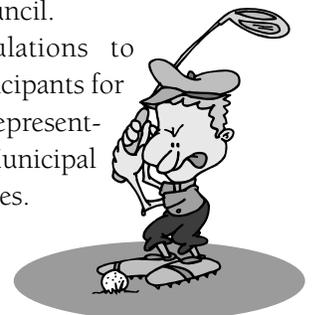
Jim Payne

A special thanks to Judge Gayle Hamrick for recommending The River Golf Club, which is located in North Augusta, right across the river from the Radisson Hotel; Claude Mason for his assistance and donation of 2 dozen AAC golf balls as prizes; Aaron Blinstrob from Cobblestone Golf Course, Acworth, Georgia, for donating 4 dozen A10 golf balls; and P.E.T.S. Trophies in Acworth, Georgia for the good prices

on the trophies. Without the assistance of these people, the tournament would not have been a successful as it was.

The Annual Tournament is not only a good way to play golf on a beautiful course and get to know your fellow Judges, but also to raise money for the Council of Municipal Court Judges. This year, we made a net profit of approximately \$ 220.00 for the Council.

Congratulations to all the participants for gallantly representing the Municipal Court Judges.



Minutes from July Council Meeting

Executive Committee of the Council of Municipal Court Judges • July 9, 2002 • Augusta, Georgia.

The Annual Meeting was called to order at 10:35 AM by President Williams.

The Minutes of the Executive Committee meeting held on April 12, 2002 were approved by a unanimous vote.

The Treasurer gave a written report, which was attached to the agenda. As of June 30, 2002, the Council had \$18,478.38 in its non-state appropriated funds account. Robbie Foote of the AOC reported that the \$6,992.66 remaining in the state appropriated funds account as of June 30, 2002, will be carried over to pay for newsletters.

Judge Cielenski reported that the benchbook is in the final review stage.

Judge Barrett reported that House Bill 1169 had passed the legislature and was now in effect and also noted that the state surcharge on probation cases had been increased from \$3.00 to \$9.00.

Judge Washburn addressed the Council on the newsletter and recognized the assistance of Marla Moore, LsShawn Murphy and Robbie Foote for their help. President Williams also recognized Judge Washburn for her hard work on the newsletter.

Judge Pierce of the nominating committee presented the following nominations to the Council:

President: Viviane Ernstes

President-Elect: Charles Barrett

Vice-President: William M. Coolidge, III

Secretary: Kathryn Gerhardt

Training Council: Roger Rozen, Dennis Still, Margaret Washburn

District 1 Representatives: Martha Kirkland, Willie Yancey, II

District 2 Representatives: John K. Edwards, Jr, William M. Shingler, Sr.

District 3 Representatives: J. Michael Greene, David M. Pierce

District 4 Representatives: Angela T. Butts, Warren W. Hoffman

District 5 Representatives: Elaine L. Carlisle, Calvin S. Graves

District 6 Representatives: John Clayton Davis, Robert B. Whatley

District 7 Representatives: Rick Crawford, Phillip P. Taylor

District 8 Representatives: Thomas C. Bobbitt, III, Charles Merritt, Jr.

District 9 Representatives: Diane M. Busch, Dennis T. Still

District 10 Representatives: Chip Harden, C. David Strickland.

The floor was opened to additional nominations. There were none. A motion was made to approve the nominations and elect the above-referenced nominees to the offices indicated. The motion was seconded and passed by a unanimous vote of the Council.

President Williams reported on the Council's continued efforts to gain membership on the Judicial Council and urged that those efforts continue in the coming year. He also noted our participation in the Council's meetings and efforts to make informal contacts with various Council members.

Judge Bobbitt reported on our work with the GMA.

Judge Ward reported that the Probation Advisory Council was functioning properly and was "fully staffed."

Judge Still reported that the Training Council was open to any suggestions from the membership and also announced to hold next year's summer seminar at Sea Palms.

Marla Moore reported that there was still no Municipal Court member on the Automation Commission, although Judge Carlisle has been recommended for that position by our Council. Ms. Moore also reported that the AOC will continue to fund a traf-

fic court data program.

Judge Still requested that the agenda item relating to funds held by the Association of Municipal Court Judges be tabled. It was tabled.

Without opposition, the Council authorized Judges Barrett and Coolidge, with the approval of the Executive Committee, to pursue legislation addressing bindovers, preliminary hearings in traffic cases and pre-trial diversion programs.

Judge Still presented a proposed amendment to Article V, Section 2 of the by-laws to facilitate voting in the annual election of officers and district representatives by those who do not attend the summer seminar. The proposed amendment was attached to the agenda. The amendment was approved without any opposition.

The following persons were recognized for their service to the Council by the awarding of plaques: Tommy Bobbitt, David Mecklin, Maurice Hilliard (referred to as a "Municipal Court Icon"), Margaret Washburn, Roger Rozen, David Whatley, Frost Ward, Rich Reaves, and Kathy Mitchum.

Judge Coolidge led a discussion of the effects of the recent *Alabama v Shelton* and *Tucci v. State* cases.

President Williams then gave his final remarks as such and thanked the members for their support and noted that it was very significant to him that our Council would elect an African-American to be its President.

Judge Ernstes then exercised her newly assumed Presidential powers for the first time and promptly adjourned the meeting at 10:34 AM.

Respectfully Submitted,
William M. Coolidge, III
Secretary

Case Law Update

ARTICULABLE SUSPICION/ ARREST

St. v. Calhoun, A02A823 (6/12/02)
As long as the stop was based upon conduct the officer observed, not a mere hunch, and it was not pretextual, arbitrary, or harassing, an officer may act on a legitimate concern for public safety in stopping a driver.

St. v. Picot, A02A129 (5/23/02) A Gwinnett police officer was authorized to stop Picot for speeding in the city of Snellville, pursuant to 40-13-30 and 17-4-23(a).

St. v. Pinckney, A02A138 (5/22/02)
Even though an officer fails to maintain his POST certification, a misdemeanor committed in his presence still would authorize a search of Pinckney's car.



Swearingen v. St., A02A0086 (4/16/02) Defendant was in Lenox Square parking lot behind a limo, and continuously honked his horn and shouted obscenities; officer asked defendant to pull over, but defendant left parking lot driving erratically. His manner of driving in the parking lot gave officer articulable suspicion to stop.

Bius v. St., A01A2045 (4/1/02) This stop was before the new law regarding expiration dates on drive out tags. Officer testified he stopped Bius simply because he wanted to see if more than 30 days had elapsed since the purchase. Held: No articulable Suspicion to stop.

CHEMICAL TESTING

St. v. Braunecker, A02A309 (6/7/02)
Braunecker took the state test, but was not advised as to when he needed to exercise his right to an independent test; 30 minutes after taking the breath test, he asked booking officer if he could take the independent test; the officer replied he could not; Braunecker testified at the

motions hearing; Held: Police violated Braunecker's right to an independent test, and therefore the state's test was properly suppressed.

Jarriel v. St., A02A566 (5/9/02)
Jarriel claimed in part that since the machine had not been inspected quarterly, the test results were inadmissible. Held: Just like the 20 minute observation, any deviation from GBI rules goes to weight of evidence rather than its admissibility.

CONSTITUTIONAL QUESTIONS

State v. Pittmon, S02A691 (4/15/02) 40-6-392(a) (2) is constitutional under *St. v. Kachwalla*.

FIELD SOBRIETY

St. v. Foster, A02A848 (6/10/02)
Trial court suppressed field sobriety test on the grounds that a reasonable person in Foster's position would have thought he was in custody, and Miranda should have been read to him. Foster had been told by officers previously on the same evening that if Foster left the bar driving, he would be arrested for DUI; he did drive, and was arrested. Held: A reasonable person would not have thought he was in custody, and since officer did not force or compel him to perform tests, Miranda was not necessary.

EVIDENCE

Sagenich v. St., A02A530 (5/22/02)
The implied consent card may be sent to the jury because it is a recitation of the law and does not depend on the credibility of the officer testifying about the traffic stop; likewise, a video of the stop may be sent out

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Municipal Judges Training

All Municipal Court Judges are required to complete at least 12 hours of judicial training in each calendar year. These requirements may be completed by attending appropriate courses at the National Judicial College and relevant courses with prior approval with the Municipal Judges Training Council. There are three courses scheduled during the calendar year 2003, which appear to meet that requirement.

May 5-9, 2003

Traffic Issues in the 21st Century

August 25-28, 2003

Sentencing Motor Vehicle Law
Offenders

November 3-4, 2003

DUI Primer for New Judges:
Impaired Driving Case
Fundamentals.

Case Law Update continued

Money Watch



with the jury because a video is “independent and original evidence in and of itself” and does not depend on the credibility of its maker for its value.

Ricks v. St., A02A68 (4/30/02) Ricks conviction for DUI was overturned as evidence was insufficient. Ricks was stopped for speeding, he had red glassy eyes but was not unsteady nor had did he have slurred speech and was cooperative. The officer testified he would not have arrested Ricks but for the fact he was under 21. The state did not charge Ricks with underage per se DUI.

IMPLIED CONSENT

Furcal v. St., A02A792 (5/21/02) Furcal moved to suppress breath test on grounds the officer should not have read implied consent in English, because Furcal’s native language was Spanish and a telephonic translator was readily available. Held: The law only requires the officer to read the warning, not that the defendant understand the warning.

ROADBLOCKS

Perdue v. St., A02A402 (4/3/02) Roadblocks are constitutional under LaFontaine. Perdue’s argument that the state failed to show any empirical data upon which a roadblock is based is adversely controlled by Dymond.

SPEEDING

Odum v. St., A02A784 (4/15/02) Admissibility of evidence obtained from laser speed detection devices are controlled by 40-14-17 not 40-14-14.

Judge Frost Ward, Treasurer
frostw@bellsouth.net

I would like to begin this report by thanking Judge Henry Williams for a job well done as President of The Georgia Council of Municipal Court Judges. I would also like to thank him for his personal attention and assistance with my duties as treasurer.

Also, I would like to welcome Judge Vivian Ernestes and congratulate her as our new President of the Council of Municipal Court Judges.

I want to thank the Council and all the judges who paid their dues that paid for the beautiful plaque that I was given at the seminar in August. It was a very humbling experience. What make it also very nice is that I know that their were others who deserved it more than I did. Again thanks to all of you very much.

Now back to the business of money, it is a new year for dues. For new judges and some senior judges who might have forgotten, dues are \$30.00 a year for ALL sitting judges. The dues were voted in by the Council beginning July 1 1999.

According to when you took office as a judge or judge’s assistance will be how much you should have paid.

The first year was July 1,1999 to June 30, 2000.....\$30.00
The second year was July 1, 2000 to June 30, 2001.....\$30.00
The third year was July 1, 2001 to June 30, 2002..... \$30.00
The fourth year is July 1, 2002 to June 30, 2003.....\$30.00

The AOC will be sending out dues notices very shortly for the for the year July 1, 2002 to June 30, 2003. If you are not up to date look above for the amount you owe. If you do not know how much has been paid for your dues, you can find out two ways. One, call 770- 960-3012 and give your name and telephone number to Mrs. Essie West, court administrator for the city of Morrow and I will call you back. (Remember, just your name and phone number, Mrs. West does not have the records, they are on my home computer). You can also get that information from the website www.georgiacourts.org Click on Municipal Courts and then, click Links to Municipal courts. From July 1, 1999, until about two months ago I was the only person who had the information available of who had paid and who had not. NOW ANYBODY CAN FIND OUT.

As of June 30, 2002 the balance in our checking account was \$18,478.38.

I was re-elected as Treasurer for the coming year at our meeting Augusta, I look forward to serving you. Thanks for your confidence in me.

Until next time stay healthy, we need you.



Bind-over without the Defendant's Consent

Judge William M. Coolidge, III
Vice President
Council of Municipal Court Judges

The opinion that a municipal court may not bind over a defendant to a higher court without the defendant's consent, a matter now on appeal to the Georgia Court of Appeals (*State v. West*, A02A1049), may have been resolved in favor of the view that consent is not required in two recent cases from the Court of Appeals involving bindovers from the Gwinnett County Recorders Court. (*State v. Serio*, A02A1460; *State v. Johnson*, A02A1109).

In both *Serio* and *Johnson*, the Recorder's Court Solicitor moved for and was granted orders binding the cases over to State Court. The State Court transferred both cases back to Recorder's Court on grounds that OCGA §40-6-376 does not authorize the prosecuting attorney to request that cases be transferred to courts of record. Noting that the offenses (DUI) were charged as state offenses, the Court of Appeals found that OCGA §40-6-376(b) only applies if the charges are cited as local ordinance violations. In *Serio*, the Court of Appeals found that there was "no authority prohibiting the prosecutor from shifting Serio's prosecution to State Court, where the charges could have unquestionably been brought in the first place...On the contrary, this practice was apparently approved in

Mattarochia v. State, 200 Ga.App. 681, 409 S.E.2d 546 (1991). There, the state initially brought DUI charges against the defendant in a city court under a local ordinance, but the charges were later bound over to state court and pursued as state law violations, presumably at the solicitor's request. The defendant opposed the transfer, but this court held that it was proper because "the solicitor's decision to charge [the defendant] with state violations was duly authorized by OCGA §40-6-376(a)." Since oral argument in *West v. State* has already occurred, a decision from the Court of Appeals should be forthcoming soon.

Assuming that it has been clearly

decided that a municipal court can bind over a case to a court of record without the defendant's consent, the traditional practice of binding over cases where appointed counsel is requested may be validated. However, since the state courts have not addressed the issue of whether municipal courts are required to establish indigent defense programs in the wake of *Alabama v. Shelton*, there is absolutely no guarantee that because the defendant's consent is not a prerequisite to binding over a case, requests for appointed counsel by qualified indigents can be satisfied by binding the case over to a court that has an indigent defense program.

Robert L. Whatley
Judge Pro Hac Vice
Austell Municipal Court

Much has been said in recent articles about binding a case over without the defendant's consent. It now appears that the matter has been addressed judicially and partially resolved. Due to two recent Court of Appeals cases, the matter will be briefly covered with full references to the cases.

In *State v. Johnson*, case A02A1109, August 23, 2002, 02FCDR 2509, the Court succinctly states that "The state contends that the state court erred in granting Johnston's motion to dismiss based on a finding that the solicitor lacked authority to move for a transfer of the case to state court (without an election by the defendant). We agree with the state." This is ratified further and confers that judges on their own motion do the same: "We also note that the

recorder's court judge has authority on his own motion and within his own discretion...therefore, removal to state court can be accomplished without any election by the defendant."

Similar reasoning was applied in *Govert v. State*, A02A0930, August 20, 2002, 02FCDR 2516. In that case, *Govert* contended that she did not agree to a transfer and had not asked for a jury trial. The court held that it could be transferred regardless because there is no exclusive jurisdiction in Municipal Court. Moreover, In *State v. Serio*, A02A1460, August 27, 2002, FCDR 2579, there are similar applications of law, however, because of time and space constraints only a reference will be made.

It can only be assumed that bind-over can be effectuated for such reasons as indigent defense or psychological evaluations.



Traffic Safety Courses

2003 CUTTING-EDGE TRAFFIC SAFETY COURSES AT THE NATIONAL JUDICIAL COLLEGE

The National Judicial College invites the nation's traffic court judges, magistrates, and hearing officers who currently handle motor vehicle related cases to attend cutting-edge traffic safety courses at The National Judicial College in 2003. The National Judicial College is located in Reno, Nevada and is the premier judicial education institution in the nation.

At The National Judicial College, judges benefit from the interactive, problem-solving educational experience rarely found in single state-based judicial education and training programs. The state programs, while

Shaver v. City of Peachtree City

The Supreme Court has scheduled oral argument on October 28, 2002 in the appeal from the decision of the Court of Appeals in *Shaver v. City of Peachtree City*, which held that a municipal court had no jurisdiction to adjudicate a non-traffic case charged on a uniform traffic citation. Even though the legislature corrected this matter on a going forward basis when House Bill 1169 was enacted, the effect of *Shaver's* holding regarding the municipal court's lack of jurisdiction on previously adjudicated cases has not been squarely addressed.

Judge William M. Coolidge, III
Vice President
Council of Municipal Court Judges

unquestionably worthwhile and productive, cannot provide the opportunity for a meaningful exchange of ideas among judges from diverse jurisdictions.

To register for any of the Traffic Safety courses listed here, or to discuss having a course scheduled in your jurisdiction, please contact The National Judicial College at 775-784-6747 or 800-25-JUDGE.

Traffic Issues in the 21st Century

When: May 5-9, 2003

Where: Reno, Nevada

Cost: \$795 (early registration)*
\$895 (late registration)

**Early registration is considered registration 60 days prior to the courses start date.*

This course provides an overview of legal and evidentiary issues related to plea taking, searches, seizures, arrests, and confessions. The course also provides information on the role of the traffic court judge in the community; ethical judicial outreach and bridge building; new approaches to aggressive driving offenses; techniques in dealing with the aging driving population; racial profiling issues; pretextual traffic stops; and new challenges in commercial motor vehicle cases. Participants will analyze and discuss current and emerging issues in blood alcohol pharmacology and sobriety testing; scientific evidence in motor vehicle cases; effective sentences; sanctions and dispositions; and addictive behavior. Pedestrian motorcycle and bicyclist safety issues are examined, and discussion groups combine with an interactive mock trial to provide proactive study. In addition, participants are encouraged to develop

ideas for implementing successful partnerships with national, state, and community based traffic safety entities.

Sentencing Motor Vehicle Law Offenders

When: August 25-28, 2003

Where: Reno, Nevada

Cost: \$675 (early registration)
\$775 (late registration)

This course focuses on the objectives and philosophies of sentencing, such as basic due process law, and rehabilitation, restitution, retribution, and deterrence. The history of probation is evaluated as are innovative probation conditions such as mandated evaluation, treatment, community service, and the use of bumper stickers and zebra license tags. Participants analyze the right to counsel, double jeopardy, the use of prior convictions for enhancement, and judicial liability and immunity. The course also provides information on the appropriateness of sentencing options for older drivers, young drivers, and addicted drivers. Communication styles, personality types and methods of dealing with the media in high-profile cases are explored and evaluated.

DUI Primer for New Judges:

Impaired Driving Case

Fundamentals

When: November 3-4, 2003

Where: Reno, Nevada

Cost: \$450 (early registration)
\$550 (late registration)

Participants in this course are new traffic court judges who handle impaired driving cases. Of all types

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Traffic Safety Courses *continued*

of criminal cases, impaired driving cases are among the most complicated in terms of the legal and evidentiary issues that they present to judges. The course addresses substantive Fourth and Fourteenth Amendment questions; search, seizure, and arrest issues; and methods of dealing with drug and alcohol addicted defendants. Case management techniques are examined, and participants are introduced to the use of mass arraignment techniques, written plea forms, bar coding, pre-printed probation and disposition forms, and areas of congestion and sources of delay are identified. Participants evaluate the results of field sobriety tests and motions directed to exclude them, the application of the Miranda doctrine to traffic stops, and the distinction between custodial and non-custodial

interrogation. Also discussed are some of the scientific principles that serve as foundations for the admissibility of evidence in impaired driving cases such as; horizontal gaze nystagmus, retrograde extrapolation, Widmark's formula, blood/breath partition rates and infrared spectrometry. In a sentencing workshop, participants review sentencing parameters and options, including fines, incarceration, license revocation and probation conditions such as evaluation treatment, abstinence and restitution.

OTHER COURSES AVAILABLE

The National Judicial College has also developed Traffic Safety Faculty Development Workshops to train judges on presentation skills, adult learning theory and the use of cut-

ting-edge technology. Upon request, The National Judicial College will work with state entities, judicial election offices and others to make these courses available in specific jurisdictions. Additionally, in 2002, The National Judicial College was awarded the National Commission Against Drunk Driving Adjudication Award for its award-winning Courage To Live Program. The Courage To Live Program is a judicial outreach program to combat underage drinking and driving. The National Judicial College is also available to provide Courage To Live Faculty Development Training Workshops for judges on how to replicate this award-winning program in their jurisdiction.

Never Say to a Cop...

- I can't reach my license unless you hold my beer. (OK in Texas)
- Sorry, Officer, I didn't realize my radar detector wasn't plugged in.
- Are You Andy or Barney?
- I thought you had to be in relatively good physical condition to be a police officer.
- You're not gonna check the trunk, are you?
- When the Officer says "Gee Son...Your eyes look red, have you been drinking?" You probably shouldn't respond with, "Gee Officer your eyes look glazed, have you been eating doughnuts?"

While on Probation

Judge Frost Ward
frostw@bellsouth.net

First let me say thank you to Debra Nesbit for providing the information about our new council appointees in the last Judges Bulletin for me. I did not have all the information so she did what she has done all year, make me look good when I have done nothing. We now have a total of eleven members on the council.

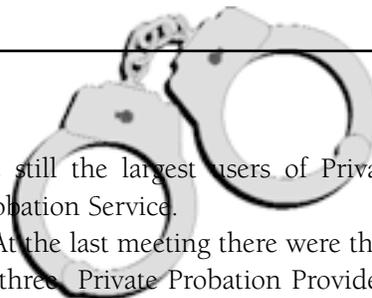
The number of people going on private probation continues to grow. Municipal, Recorder, and City Courts

are still the largest users of Private Probation Service.

At the last meeting there were thirty three Private Probation Providers registered with the State. Don't forget that the fee for crime victims fund has increased to nine dollars per month.

At our next meeting in August we will be electing new officers for the Council.

If you have any questions or concerns about private probation please call me at 770-210- 4013, or Debra Nesbit at the AOC 404-651-7616.



Freedom and Responsibility Under the Law

How Your Conduct Affects You, Others, and Society

How Your Conduct Affects Yourself

1. Creating a future record that will affect you forever.
2. Becoming involved in a serious accident that could affect you forever.
3. Creating insurance burdens on you.
4. Preventing your transportation to your job because of your license status.
5. Impairing your social life in lack of transportation to social events.
6. Preventing you from a career such as the military or similar security type position.
7. Depletion of personal resources due to large fines.
8. Elevation of your misdemeanor to a felony as in the case of recidivist shoplifting or DUI.
9. Impairment in enrolling in schools where a "lark" may be serious enough for rejection.
10. Denial of enrollment in professional schools where the minor offense may be one of "moral turpitude."
11. Invasion of personal rights such as mandated drug testing, intensive probation where ALL conduct is monitored or even simple probation where restrictions are mandated such as drinking beer, association with certain friends, curfew, leaving the state, or contacting certain people.

12. Losing respect in front of your friends.
13. Loss of job already obtained because company policy may forbid certain conduct.
14. Inability to engage in carrying a weapon due to commission even for legal game hunting or self-protection.
15. Forfeiture of certain professional license due to even a small amount of drug contraband.
16. Incarceration.
17. Reputation in front of friends.
18. In certain cases denial of rights to drive friends past or to a certain place because of a "stay-away" order.
19. Denial of educational learning due to a school suspension for bringing a small knife to school or fighting even though a court dismisses it.
20. Losing an asset due to forfeiture because of a drug violation.
21. Losing the right to adopt a child due to a certain violation.
22. Losing your right to vote.
23. Losing your right to shop at a certain store because of a previous infraction there.
24. Prohibition of serving on a jury.

Note: These impairments can equally apply to a "minor" offense as well as a major felony. Example: Under federal law a simple domestic altercation can

ban one from EVER carrying a weapon. Thus an armed forces or FBI career is thwarted. A "simple" less than an ounce of marijuana could devastate entrance to many professions. A first offender plea is not guaranteed.

The Effect of Your Conduct on Others

1. Injury or death to another and accompanying grief.
2. Property damage that insurance will not cover.
3. Creating conditions whereby others may have heavy restrictions: your accident led a cry for no after midnight driving for teens.
4. Heavy disappointments to parents or others who may see you as an example.
5. Inconvenience to parents who must transport you everywhere.
6. Inconvenience to others who depend on you for transportation.
7. Financial burdens incurred because of obligations you incurred on your family under the Family Purpose Doctrine.
8. Employers who must pay because your conduct was in the scope of business.
9. Increased insurance burdens to parents because of increased violations.

continued on page 10

Freedom and Responsibility continued

10. Financial injury to others because of depleted family resources due to large fines or incarceration.

11. Emotional injury when children or wives are involved.

12. Injury to children when no child support is paid.

13. Depleted resources of others due to theft and possible financial and personal ruin.

NOTE: These factors can equally apply to the most minor of offenses to the major felonies. Example: A parent who sends a teenager on a simple family errand suffers severe financial ruin under the Family Doctrine Act if the teenager fails to yield a right-of-way and causes a major accident with injuries. A Manslaughter charge speaks for itself.

The Effect of Your Conduct on Society

1. Costs for jails, courts, police, medics, etc.

2. Negative collective image of teenagers and young people.

3. Institutionalizing of lack of authority (respect of).

4. Building of more negative institutions such as jails, juvenile courts, etc.

5. Denial of privacy such as increased need for metal detectors, drug dogs, police in schools, searches, etc.

6. Increase in prices due to shoplifting and theft.

7. High litigation costs for accidents that are spread among society.

8. Aggressive conduct in driving which not only affects drivers but extends to all aspects of society.

9. Rising taxes for facilities, which are spread among taxpayers.

10. Fear created by a crime spree that affects daily lives.

11. Mistrust of government if officials are involved.

12. Interference with efficiency of schools when crimes and offenses occur there.

13. Overburdening of public resources in cases where the offense in mass destruction.

14. The fostering of family decline in the case of domestic crimes.

15. Fostering and enhancing future generational behavior when a cycle is created from present behavior.

16. Creating mass physical and emotional problems for large numbers of people who must deal with wrongful behavior — and the extended toll on others such as wives and children. Various plane crashes and bombings are examples of this.

17. The effect on children when they see mass evil.

NOTE: Again these factors can be extant from the simplest offenses to the most serious conduct. Example: One who extensively vandalizes a school can create a societal grave reaction which include costs, loss of facilities, young images, need for privacy invading measures such as cameras, and foster disrespect for institutions.

Court Forms

The Council of Municipal Court Judges has established a committee to review guilty/nolo plea forms and waiver of counsel forms for trials with the goal of developing a set of suggested forms that will be made available on the Council's website. The other members of the committee are: Judges Edwards (Valdosta), Graves (Atlanta), Butts (DeKalb Records Court), Williams (Dawson, Bronwood, Lumpkin). If you have any good forms and if you have any ideas about how to handle the requirements of Tucci v. State, 255 Ga.App. 474, 565 S.E.2d 83 (2002) and a new

case released on November 1, 2002, McAdams v. State, __Ga.App.__, 2002 WL 31436097 (Case No. A02A1439), please send them to me and the committee will study them. Our goal is to have this project completed by sometime in December.

William M. Coolidge, III
Vice President, Council of Municipal Court Judges
4350 South Lee St.
Buford, GA 30518

2002-2004 Directory Information Form

PLEASE RETURN THIS FORM WHEN YOU HAVE YOUR PICTURE TAKEN

Municipal Court Judges Directory
2002 - 2004

CITY (List all) _____

NAME _____

OFFICE ADDRESS _____

OFFICE PHONE _____

SECRETARY OR CLERK (List only one) _____

FAX NUMBER _____ EMAIL ADDRESS _____

HOME ADDRESS _____

HOME PHONE _____

BIRTHDAY: MONTH _____ DAY _____

SPOUSE _____

Initial Term Began on: _____

College/University: _____

Law School: _____

Other Public Offices: _____

PICTURE: NEW PERSONAL (You mail in your personal picture to address below)

PICTURE ON FILE:

Council of Municipal Court Judges
Suite 300, 244 Washington Street, SE
Atlanta, Georgia 30334-5900

Court Fee Training Program

The AOC is proud to announce a series of training courses on court fees assessment, collection and disbursements. This training will be tailored to the Municipal Courts and the fees that affect them. The subjects that will be included in these workshops include:

- What are court fees?
- How do you assess court fees
- Collection practices to increase your collection rate
- Where to send court fees
- Web fee calculator demonstration
- Court fees and the Future

The first *Court Fees – The Basics* program will be presented on November 13, 2002. The AOC plans to have a training session every month and additional trainings will be scheduled at a later date. The times and places of these trainings will be placed on the AOC website (www.georgiacourts.org) and post-cards will be mailed prior to the events.

If you have any questions and/or concerns, please feel free to contact Kevin Tolmich at 404-463-3822 or tolmichk@gaaoc.us

Mark Your Calendar!

The Legislative Breakfast and the Mid-Year Counsel Meeting will be conducted on February 5, 2003. More information to come!!!!

Council of Municipal Court Judges

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What a Difference 30 Years Makes

1972: Long hair
2002: Longing for hair

1972: KEG
2002: EKG

1972: Growing pot
2002: Growing a pot belly

1972: Screw the system
2002: Upgrade the system

1972: Disco
2002: Costco

1972: Passing the drivers' test
2002: Passing the vision test

1972: Whatever
2002: Depends