



MUNICIPAL COURT Judges Bulletin

Fall 2008 • The Georgia Council of Municipal Court Judges Newsletter • Vol. 9, No. 3

Officers 2008-09

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President's Corner



Tammy Stokes
Recorder's Court of Chatham
County

Here we are with the start of a new year for the Council of Municipal Court Judges, and the Council is off and running to a great start! I am your new President, and I am glad to follow Judge Bill Clifton, who laid a great foundation for this year with the successes of last year. I would like to thank Judge Clifton for the hard work and excellent job

he did during his term as president.

I also want to thank each of the municipal court judges who have stepped up to serve as officers of the executive committee, as committee chairs, as members of our many committees, and as district representatives. Many of our members dig deep and serve on multiple committees and in multiple capacities. I am so pleased to have the opportunity to work with other municipal judges who are committed to the good of the whole. I urge each of you to take a look at our commit-

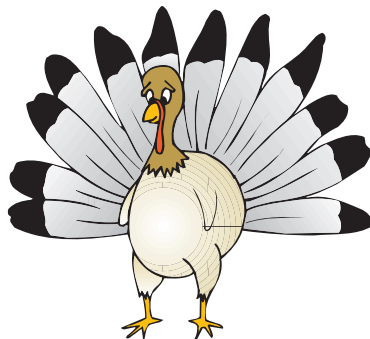
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Holiday Humor

A game warden was driving down the road when he came upon a young boy carrying a wild turkey



under his arm. He stopped and asked the boy, "Where did you get that turkey?"

The boy replied, "What turkey?"

The game warden said, "That turkey you're carrying under your arm."

The boy looks down and said, "Well, lookee here, a turkey done roosted under my arm!"

The game warden said, "Now look, you know turkey season is closed, so whatever you do to that turkey, I'm going to do to you.

If you break his leg, I'm gonna break your leg. If you break his wing, I'll break your arm. Whatever you do to him, I'll do to you. So, what are you gonna do with him?"

The little boy said, "I guess I'll just kiss his cheek and let him go!"

*May your stuffing be tasty
May your turkey plump,
May your potatoes and gravy
Have never a lump.
May your yams be delicious
And your pies take the prize,
And may your Thanksgiving dinner
Stay off your thighs!*

Happy Belated Thanksgiving everyone!
Margaret Gettle Washburn, P.C.

NEXT MEETING DATE

January 26th, 2009: CMCJ at State Bar Headquarters in Atlanta.
Watch website for more details.

Check out "Short Takes" in this issue,
and the CMCJ website:
<http://www.georgiacourts.org/councils/municipal>

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Judge Kenneth E. Wickham
Norcross

District 10
Judge Chip Hardin
Tignall

Judge C. David Strickland
Porterdale

In Memory of...

Judge Charles A. Gravitt, Sr., 71, of Fayetteville died June 5, 2008. Judge Gravitt served the Municipal Court of Lake City and as the Treasurer of the Council of Municipal Court Judges since June of 2006.

Judge Alvin Bell, age 62, of Waynesboro, Ga., passed away on Aug. 12, 2008 after a lengthy illness. Judge Bell served as Magistrate Judge for the Burke County Magistrate Court from Jan. 1, 2001 until the present time fulfilling all duties and responsibilities in an honest and honorable manner. Judge Bell additionally served as Municipal Judge for Sardis, Midville and Keysville.

Judge William Shingler, age 61, of Donalsonville, passed away on Wednesday, August 13, 2008 as a result of a motor vehicle accident. Mr. Shingler served as the Municipal Court Judge for Donalsonville and was the attorney for the Iron City and Jakin City Councils.

Judge Robert B. Whatley, 57, of LaGrange died Sunday, August 10, 2008, at Hospice LaGrange. He was a former President of the Council of Municipal Court Judges.

Judge Michael G. Leeper, 56, of Stone Mountain passed away on September 26, 2008. He served as a judge of the Municipal Court in Stone Mountain.

Benchbook Needs You!

Judge Glen Ashman, East Point Municipal Court

It's not too early to think about contributing forms, suggestions and information for the 2008 update. One thing that would be extremely useful is for Judges, when they read a new and important case, to email me a short (few sentence) summary, and the full citation. With the volume of cases that appellate courts generate, it is easy to miss some important rulings.

Court forms (in English or Spanish) are also useful. It is helpful if they can be sent in Word Perfect (12 or less) or Word (2003) format. These can be emailed to geaatl@msn.com

President's Corner cont.

tees on our website, and take an active role in any that interest you. The Council needs you. A little work from each of us goes a long way to improving and advancing us as municipal court judges and our roles within the court system as we serve the public.

These are exciting times for the council. In this past year, we accomplished much. Here is a partial list:

- We obtained an ex-officio seat on the Judicial Council
- We increased the number of courts reporting caseload data
- We have posted the Pandemic Flu – Continuity of Operations Plan to the website
- We have identified the means to a marketing plan through the University of Georgia
- We have gotten closer to finalizing our uniform rules of court

Although we have accomplished much, there is more to do. This past August, the council held its strategic planning session where every executive committee officer and several district representatives actively participated.

As our starting point, we used the Strategic Business Plan which was created in 2007 to serve as a guide for two to five years. From this session, the Council set out several goals to be accomplished this year.

With Judge Jim Anderson and Judge Jim Matoney at the helm, the Council aims to finalize and adopt the Uniform Municipal Court Rules, proceed through the vetting process as all other court rules, and seek adoption by the Supreme Court. In moving forward, we are mindful that we will consult with the Georgia Municipal Association to ensure our success in this endeavor.

We aim to move forward with our legislative proposals to establish minimum judicial qualifications and to establish terms of service for judges. Judge Barrett is the Chair of our legislative

committee and is open to any members who would like to serve. We are meeting with Debra Nesbit and Tonya Griesbach of the Administrative Office of the Courts to discuss our goals for this legislative session.

We are considering hiring a lobbyist, although that won't likely happen for this legislative session but certainly is a goal for the next. A lobbyist would be expensive but would promote legislative trust, and would be available to attend legislative functions in a way that working judges and attorneys cannot.

Along those same lines, I would strongly encourage as many municipal judges as possible attend GMA meetings and to contact members of the Board of Directors in support of our proposals. We are determined to have at least ten judges attend the various meetings. As many of you know, Judge Tommy Bobbitt has done a wonderful job of maintaining a relationship with GMA on behalf on the Council promoting our interests and staying in the know, but he can't do it alone and, frankly, should not have to. And, there is power in numbers, and at more than 400 judges strong, we have the numbers. Remember, 80% of success is showing up. (Woody Allen) We just need to do a better job of showing up to represent ourselves and promote our interests. The next GMA meeting is Jan. 25, 2009 at the Atlanta Hilton. We really need to attend the Public Safety and Municipal Policy meetings. Stay tuned for additional information!

Thanks to Judge Kay Giese, we will role out a marketing campaign with the help of the University of Georgia's Department of Advertising and Public Relations. It is a wonderful win-win situation. The graduate students under the supervision of their professors gain experience, and we get a marketing campaign without the usual expense!

Thanks to the help of many but particularly with the persistence of Judge Michael Cielinski working with Justice Hines and others, we have a seat on the

Judicial Council. Next step...become a voting member of the Judicial Council. I attended my first Judicial Council meeting this past August.

With regards to our Automated Data Transmission Project, we have decided not to ask for funding to fully implement the project at this time due to the statewide budget challenges. Nevertheless, the data elements and the transmission method have been developed and are already available.

The Governor's Office of Highway Safety will provide grant dollars in October to report citations on the web as aggregate data. The money will be to pay the case management vendors to develop the reporting system to the AOC. Eventually the programming will include all citation data from beginning to end, including the disposition, as well as financial date and ordinance data. It is important to be able to track how the citation is changed.

We as judges must support the project. The courts may begin sending test data at any time through their caseload management software providers. If your vendor is not aware of this project, please have them contact Ms. Johnson or Ms. McQueen at the Administrative Office of the Courts for more information.

And, finally, the executive committee will meet on October 10, 2008. Before the start of the meeting, Kevin Tolmich of the AOC will facilitate a discussion regarding performance measures as they apply to us and as we define them. A new model of court processes includes how to handle more cases, collect and process more fees, use less staff and how to do so more "efficiently," whether we like it or not. Therefore, our thinking is we should proactively decide for ourselves what appropriate measures are, rather than wait for someone else to do so.

All in all, we are looking forward to a great year! Come join us!

COUNCIL IN BRIEF — April, June Minutes

(Editor's note: These minutes are abbreviated. You may view the approved minutes in entirety on the Council's website: <http://georgiacourts.org/councils/municipal/publication.html>)

April 24, 2008 AOC Macon Office

Proxy Votes

The Council approved the motion to allow written proxy votes and also to allow votes through telephone participation.

Election of Officers

The members elected Judge Tammy Stokes to the position of President-Elect for Judge Roberts' unexpired term, and elected Judge David Strickland as the Vice President for Judge Stokes' unexpired term.

President's Report

Judge Clifton appointed Judge Strickland to Chair the Administrative Jurisdiction Committee and work with Justice Hines, Judge Lanier, and others to outline ways to relinquish authority over administrative matters such as contracts and uniform rules to the Judicial Council and Supreme Court, while retaining the autonomy of the municipal courts and Council. They are to report in the fall.

The Court Collaborative Committee is asking the four training councils to move toward more uniform standards for training and more cross-court training opportunities especially for traffic issues.

The members discussed legislative efforts in 2008 and the need to reach agreement with the Georgia Municipal Association. A larger presence of judges at the GMA meetings would help underscore the need for an independent judiciary.

Municipal Courts Training Council

Judge Bobbitt reported that the Municipal Clerks Advisory Committee is developing a training policy for the certification of municipal clerks. It will be approved by the Training Council before implementation. Other sources of training are also being considered.

Committee Reports

• Benchbook Committee: Judge Ashman's written report requested examples of favorite forms, new case law, or statutes of interest for the Benchbook.

• Legislative Committee: Judge Barrett's report also emphasized the need to work with GMA before the 2009 session begins. Also, the Department of Transportation will have an oversight committee to approve all applications for red light cameras, including any already in existence as of December 31, 2008. Security Committee: Judge Bobbitt reported that the Committee will develop a minimum security standard for municipal courts. Intermediate standards and aspirational standards will also be provided as guidelines for use when municipal improvements are undertaken.

• Caseload Committee: Judge Cielinski reported there are still problems with reporting of municipal court data. A committee of judges and clerks will review the current caseload reporting form with assistance of the AOC Research Department.

• IT Committee: Mr. George Nolan gave a short overview of the Judiciary-wide Strategic Technology Plan. All levels of court developed individual IT plans, and then met to combine a statewide plan. The members voted to adopt the Judiciary-wide Strategic IT Plan and will work to meet its goals.

• Public Relations Committee: Judge Giese introduced herself as the new Chair of the Public Relations Committee. She reported several ideas already under discussion and asked for additional committee members.

• Prosecutors for Limited Jurisdiction Courts: Judge Hilliard reported that his committee is working to authorize solicitors for municipal courts. The Committee will work directly with GMA and ACCG to demonstrate the benefits and cost-savings to the courts.

• Uniform Rules: Judge James Anderson reported that he has reviewed the rules that were adopted at the June 2007 meeting, and offered several ideas for improvement. After discussion, Judge Anderson stated he would incorporate the changes and post the rules to the listserv for comment. A vote will take place at the June meeting.

Liaison Reports

• Mental Health Task Force: Judge Mecklin's written report provided the following issues under discussion: mental health training for judges in all courts, development of local networks to identify local resources, a

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COUNCIL IN BRIEF — April, June Minutes cont.

pilot program called JAMHA – Judge Appointed Mental Health Advocate that will function like the CASA program, and development of a judge’s handbook for dealing with mentally-challenged defendants.

New Business

Automated Data Transmission Project: Mr. Vince Harris presented a two-page summary of a 37-page White Paper requesting funding in FY2010 for an AOC automated data project to collect municipal court data for aggregate reporting. The proposal was approved by the Council and will be presented to the Judicial Council Budget Committee in May.

June 26, 2008 Business Meeting, Savannah Riverfront Marriott

Report of Executive Committee:

Judge Clifton reported several items of interest to the general membership:

- The ex-officio membership on the Judicial Council has provided many opportunities for networking, and helpful relationships have been initiated. It is hoped that full membership on the Judicial Council will occur in the near future.
- There are assurances that legislative efforts to establish terms and minimum qualifications for municipal judges will pass if agreed upon by GMA prior to the legislative session in 2009.
- Grant funds to reimburse software vendors for programming costs are being sought for the Automated Data project.

Committee Reports

• IT Committee: Judge Cielinski reported that out of 400 municipal courts, 145 have reported caseload numbers for all of 2007; another 240 have reported half-year figures. This is a vast improvement, but Judge Cielinski reiterated the need for the courts to submit their caseload numbers and salary survey information.

• Prosecutors Committee: Judge Hilliard related that the committee wishes to introduce legislation in the 2009 session that will make it permissible for any jurisdiction to have a Solicitor if it wishes, but will not mandate same.

• Probation Advisory Council: Judge Ward reported that CMPAC is now overseeing all misdemeanor probation programs whether private or governmental. Probation officer training has been identified by CMPAC staff as a high priority item to implement.

• Public Relations Committee: Judge Giese reported an opportunity for the Council of Municipal Court judges become a client of the UGA School of Journalism. The students will develop a public relations plan as a class project, at no cost to the Council. The members voted to proceed.

• Social and Vendor: Judge Andrews reported that six vendors provided \$2,000 in fees, and both receptions were fully sponsored. The Council voted to charge \$350 per vendor next year to include a table and two chairs, with no charge for an extra person.

Municipal Court Training Council

A training policy has been adopted for municipal court clerks, patterned after the judges’ training policy. ICJE is the provider of training for certification, but credit will be given for training from a pre-approved list of providers other than ICJE every other year. Also, judges without full training hours for 2008 will be reported to the JQC in January without prior notice.

Old Business

Approval of Uniform Rules for Municipal Court: A vote on the Rules was tabled because GMA has expressed concern about how rules will affect the budgets of the municipalities.

New Business

The Council voted to contribute \$1,000 to the State Bar’s Mock Trial Competition in memory of Judge Charles Gravitt, and an additional \$1,000 contribution to the same group in memory of Judge Glen Thomas.

The results of the Election for Executive Committee of the Council were announced. (See box on page 2 for current officers)

Members of the Municipal Courts Training Council elected for a two-year term were Judge Thomas Bobbitt, Judge Maurice Hilliard, and Judge Dennis Still. Judge David Mecklin and Judge Nelly Withers complete the Council membership.

Attorney General Opinion — Fingerprinting

OFFICIAL OPINION 2008-6

To: Deputy Director, Georgia Crime Information Center
Wednesday, August 27, 2008

Re: Fingerprinting in regard to 2008 legislative amendments to O.C.G.A. § 40-5-20 and O.C.G.A. § 40-5-121.

You have requested, in your letter of July 14, 2008, my opinion whether certain violations of O.C.G.A. § 40-5-20 and O.C.G.A. § 40-5-121 should be designated as offenses for which persons charged with violations are to be fingerprinted.

As you have noted, Senate Bill 350, passed by the 2008 session of the Georgia General Assembly, greatly increased certain penalty provisions under these code sections, creating felony violations for the fourth offense of certain violations of both

code sections. O.C.G.A. § 40-5-20 (Supp. 2008) now provides as follows:

(a) No person, except those expressly exempted in this chapter, shall drive any motor vehicle upon a highway in this state unless such person has a valid driver's license under this chapter for the type or class of vehicle being driven. Any person who is a resident of this state for 30 days shall obtain a Georgia driver's license before operating a motor vehicle in this state. **Any violation of this subsection, except the violation of driving with an expired license, or a violation of Code Section 40-5-29 if such person produces in court a license issued to such person and valid at the time of such person's arrest, shall be punished as provided in Code Section 40-5-121. Any court having jurisdiction over traffic offenses**

es in this state shall report to the department the name and other identifying information of any individual convicted of driving without a license.

O.C.G.A. § 40-5-20(a) (Supp. 2008) (emphasis indicates 2008 amending language).

Code section 40-5-121, which before the 2008 amendments provided enhanced penalties for "driv[ing] a motor vehicle on any public highway of this state at a time when his privilege to do so is suspended, disqualified, or revoked . . . ," has been amended to include the offense of driving "without being licensed as required by subsection (a) of Code Section 40-5-20 . . ." O.C.G.A. § 40-5-121(a) (Supp. 2008). The 2008 amendments also add a fingerprint requirement, to be "taken upon con-
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Financial Report

COUNCIL OF MUNICIPAL COURT JUDGES –Q3 FY 2008
7/1/2008 through 10/09/2008

Beginning Balance 07/23/2008	\$60,440.25
Income	7,720.00
Expenses	- 164.73
 BALANCE 10/09/2008	 \$67,995.52

Cash Inflows: Membership dues for 241 judges – \$7,230.00
Sponsor/vendor fees - \$400.00

Cash Outflows: Dues Refund - \$90.00
Expenses Reimbursed (flowers) \$ 74.73

Signed: James M. Anderson, III, Treasurer

Attorney General Opinion — Fingerprinting

viction,”[1]and provide that “[f]or the fourth or subsequent conviction within five years . . . such person shall be guilty of a felony . . .” Id.

What was previously treated in the statute as a misdemeanor traffic offense – driving without a valid license – now has been amended by the General Assembly to provide for an enhanced penalty, including felony status for a fourth or subsequent offense, for violations unless the driver’s license is simply expired or the driver is licensed but does not have the license in his immediate possession. Thus, if the operator of a vehicle is unlicensed, i.e., is not a person with an expired license or a licensed driver who simply does not have the license in his or her possession, the enhanced penalties apply. Such unlicensed persons charged with this offense rather than the excepted offenses should be fingerprinted. As you point out in your request letter, without designating these offenses as fingerprintable a fourth or subsequent conviction would never appear on an offender’s criminal history record, making it a practical impossibility for an offender ever to be charged with a felony.

This does not change my previous designations in regard to persons charged with driving on expired licenses and persons who are licensed but simply do not have driver’s licenses on their persons.

Persons violating O.C.G.A. § 40-5-121 for driving while suspended, disqualified, or revoked should also be fingerprinted. Again, the felony status required for fourth and subsequent convictions by the General Assembly mandates this result for any person driving with a revoked or suspended license. It is also clear from the legislation that the intent of the General Assembly is for fingerprints to be taken for violations of both of these offenses. Inasmuch as such fingerprinting currently occurs under Georgia law, regulation, and practice at the time of arrest rather than after conviction, this should render the language calling for taking fingerprints “after conviction” superfluous since the intent of the General Assembly to capture these designated offenses in order to treat repeat offenders more harshly will be carried out.

I trust that the designations of these

offenses for which persons charged with violations are to be fingerprinted will aid you in discharging your duties pursuant to the Georgia Crime Information Act.

Prepared by:

JOSEPH DROLET

Senior Assistant Attorney General

[1] The uniform practice throughout the State is for fingerprinting to occur at the time of arrest, not following conviction. Georgia law already requires that the Georgia Crime Information Center “[o]btain and file fingerprints . . . on persons who . . . [h]ave been or are hereafter arrested or taken into custody in this state” for certain offenses, including felonies and offenses designated by the Attorney General. O.C.G.A. § 35-3-33(a). However, as discussed further in this opinion, fingerprinting at the time of arrest according to common law enforcement practice should suffice to comply with the General Assembly’s directive that fingerprinting occur in order to track offenses and offenders.

NCSC Graphic Novel Educates the Public about Courts

Two cases - downloading music and eminent domain - are woven into one story to illustrate how our courts work.

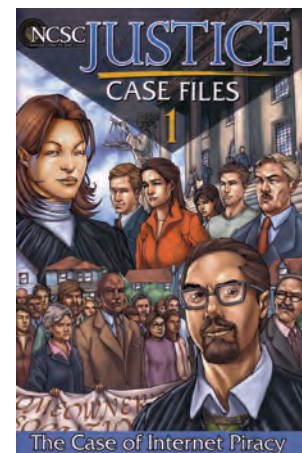
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CITY OF BREMEN RECOGNIZED FOR TEENAGE DIVERSION PROGRAM

By Judge David Mecklin, Bremen Municipal Court

The City of Bremen was recently recognized by the Georgia Municipal Court Clerks Council for an innovative plan called the "Teenage 2nd Chance Program". The program is especially well suited for the smaller municipal jurisdictions within the State where there may be close interaction between local law enforcement, the Court, and the citizenry. The purpose of the program is to engage young people who have committed minor offenses to accept responsibility for their error and to involve them in a process to avoid repetition of the error. The program is specifically intended to give those teenagers who receive a citation for shoplifting, non-driving drug and alcohol offenses, and City ordinance violations (disorderly conduct, criminal trespass, etc.) an opportunity to avoid the establishment of a local offense record.

Upon receipt of such a violation the teenager (19 and under) is advised of the opportunity to participate in the Teenage 2nd Chance Program. Upon acceptance into the program, the offender and the offender's parents meet with the Chief of Police and are advised of the conditions of the 2nd Chance Program and counseled on the importance of adherence to local and state laws. During this conference there is a frank and honest discussion of the impact that a criminal record can have upon the individual's future.

The next step in the process is for the offender to write an essay of the circumstances of the offense, the way they felt upon being caught and charged with the offense, and how the offense has affected their family

and school life. The essay must be a sincere effort upon the offender's part, given their level of ability, to adequately express remorse for the offense.

After receipt of the essay, the offender is required to spend time with the Chief of Police or his designee to complete an awareness



Ms. DeAnne Worthy, Clerk, receives the Program of the Year Award for the city of Bremen.

program designed by the Chief of Police to fit the particular violation of the offender. This awareness program may include community service work, alcohol awareness classes, or other steps specifically designed to make the teen aware of the gravity of their particular offense and the impact their offense has upon the community. A fourth and final step would be for the offender to observe an intake session at the local Department of Corrections Boot Camp. This session, which generally consists of offenders entering the boot camp for the first time, is often an extremely eye-opening experience for local youths. Our local experience has been that the observance of one of the intake sessions is often enough to keep them "scared straight".

Once all of the steps of the Teenage 2nd Chance Program have been successfully completed, the Chief of Police and Clerk would then advise the Court of the successful completion and the court dismisses the charge.

It has been the experience of the Police Department, the Court, and the local community that the program has been successful. The program has given the Police Department an opportunity to interact with the youth of the community and their parents and has permitted a free exchange of communication between the participants. Since the implementation of the program seven months ago, several individuals have elected to go through the program with beneficial results for all.

During the interaction, the Chief of Police has been able to connect with the offenders to identify factors (problems at home, bullying at school, or other problems) that may have led the young people to their wrongdoing or association with the wrong crowd. By receiving constructive advice on how to deal with those problems, the youthful offender receives the benefit of community resources which might not otherwise have been made available. We believe that this may contribute to the offender's well-being and have a positive impact on their life. The primary cost of the program has been the time and effort put into it by the Chief of Police and other officers. The City has made the conscious determination that this investment of time and effort is beneficial in that it

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Meet Your Leaders!

Judge Gary E. Jackson



Judge Gary E. Jackson is a native Atlantan, having graduated from Northside High School (now North Atlanta) in 1968. Judge

Jackson received a BS from the Wharton School of the University of Pennsylvania in 1972 and graduated cum laude from the University of Georgia School of Law in 1975, where he was a senior editor on the Georgia Law Review.

Judge Jackson was an Assistant Legislative Counsel to the General Assembly of Georgia in 1975-76 and opened his private law practice in 1977. Judge Jackson returned to General Assembly to serve as Legal Aide to Lt. Governor Zell Miller in 1978-79, and continued practicing law, concentrating in commercial

collection matters, for over 25 years.

In 1984, Judge Jackson was appointed by Mayor Andrew Young as a hearing officer for the Atlanta Bureau of Taxi Cabs and Vehicles for Hire and later by Fulton State Court Chief Judge Charles Carnes as a pro hac Magistrate Judge in Fulton County. In 1988 Judge Jackson was appointed as a pro hac Judge to the City Court of Atlanta and in 1995 as a pro hac judge in the Municipal Court of Atlanta. Judge Jackson became a full-time judge in the City Court of Atlanta in 2000 and on June 30, 2005, was appointed by Mayor

Shirley Franklin as a judge in the Municipal Court of Atlanta.

Judge Jackson has been a featured lecturer for the Atlanta Bar Association, Institute of Continuing Legal Education, Institute of Continuing Judicial Education, and the National Business Institute. He hosted the "Legal Action with Gary Jackson" program on WSB radio for eight years and was the founder of the Gate City B'nai B'rith "Pinch Hitter Project", the recipient of President George H. Bush's 335th point of Light Award.

Bremen cont.

will prevent future criminal activity which would negatively impact the community.

The Bremen Teenage 2nd Chance Program is one which is particularly well suited for small jurisdictions where the law enforcement community can devote personal attention to a small volume of cases. It is a model that has probably been followed on an informal basis in small towns across Georgia for many years. By giving the program a more formal structure, however, we believe that we may have provided for a more uniform application for any eligible participants.



Judge Michael Cielinski, Recorder's Court of Columbus-Muscogee County, is pictured at the July 11, 2008, unveiling of a Fallen Heroes monument in uptown Columbus. After losing two friends in the Global War on Terrorism, Judge Cielinski approached local politicians and professionals to drum up support for a monument to honor service members killed in combat. (picture by Bridgett Siter, *The Bayonet*)

Judicial Disqualification in Georgia

By Richard D. Reaves, Executive Director, ICJE

This first in a series of essays to address different aspects of judicial ethics in Georgia and it focuses on judicial disqualification. The series begins with Canon 3, because that norm for professionalism addresses the various regular duties of judging that most citizens understand when thinking about the routine daily work of a judge. Authorities relied upon in these essays will be, predominately, the Georgia Code of Judicial Conduct, relevant judicial disciplinary cases, and pertinent official Advisory Opinions of the Georgia Judicial Qualifications Commission.

Judicial Disqualification in Georgia

Disqualification of a judge . . . is called for whenever the impartially of that presiding officer “might reasonably be called into question”. See Georgia Code of Judicial Conduct, Canon 3E (1). Practically speaking, this rule of general reasonableness invests vast personal discretion in the judge to decide whether to step out of further involvement in handling an assigned case.

Normative Grounds for Judicial Disqualification

While Canon 3E(1) goes on to delineate particular circumstances that give rise to questioning a judge’s impartiality, the code does not regard these illustrations as defining the full array of conditions for judicial disqualification. Note Canon 3E(1) and its Commentary. Per se grounds for judicial disqualification stated at Canon 3E include: (1) (a) personal

bias or prejudice about the parties, lawyers, or facts of a case, (b) prior professional association as a lawyer with a pending case, and (c) certain family member connections or interests with the adjudication of a current case. Other circumstances, such as from permissible involvements with Canon 4 (law, legal system, and improving administration of justice) and Canon 5 (civic, religious and charitable organizations) activities, may also arise, even if only perceived by the judge, that present equally compelling bases for disqualification.

A Legal Standard for Judicial Disqualification

Neither Georgia’s Code of Judicial Conduct nor general law sets out a standard that prescribes the proper perspective from which to determine what is reasonable in questioning a judge’s impartiality. Nevertheless, nationwide, the predominate test or assessment standard postulates a reasonably informed lay person, one not trained in the law or necessarily familiar with the nuances of legal advocacy or concerned about expeditious case disposition by the courts. Only Louisiana (insert case cite) has interpreted this judicial ethics code provision to refer to a reasonable judge as opposed to a reasonable man.

The Director of Georgia’s Judicial Qualifications Commission, Atty. Cheryl Custer, has opined... “It has always been my view that the standard we are using is that of a reasonable person, the average man, so to speak. Using that interpretation,

one can more fully appreciate what the Code states in its Preamble: ‘Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.’ I believe that, first and foremost, judges have a duty to maintain the public’s trust in our legal system. To use a lawyer’s or judicial insider’s standard as to what is reasonable seems to go against what the Code strives to emphasize. It would appear to present “special rules’ that only insiders would understand.... I do not believe that is what the Supreme Court intended in promulgating this Code.”

Judicial Disqualification Relating to the Practice of Law

Law practice connections to the court and to judicial disqualification can be particularly vexing for the busy judge. Their varied factual aspects aptly illustrate the difficulties in isolating the better practice to be followed concerning judicial disqualification. For example . . .

Reasonable Questioning of Judicial Impartiality

Familial Connections Close Enough to Require Disqualification - Canon 3E(1)(c)(ii) prohibits a judge from handling a case in which the judge’s child, or any person within the third degree of kinship, is acting as a lawyer. Canon 3E(1)(c)(iii) prohibits a judge from handling a case in

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Judicial Disqualification in Georgia cont.

which the judge's child, or any person within the third degree of kinship, possesses more than a "de minimis" interest that could be substantially impacted by the proceeding. Nevertheless, a judge should not preside over a case in which one of the attorneys is a member of a law firm in which the judge's son or daughter practices law, even though no fee connected with the outcome of the case will benefit such child. See JQC Advisory Opinion #20. The facts of Opinion #20, while not per se grounds for disqualification, present circumstances that would appear to a lay person so closely aligned with the Canon 3E(1)(c)(ii) & (iii) stated grounds for disqualification that they might reasonably call into question the judge's impartiality.

Similarly, where a judge's spouse is employed as a secretary by a law firm with a case pending before that individual, while this is not a per se ground for the judge's disqualification, the circumstances might be such to reasonably question the judge's impartiality, and the judge should disqualify. See JQC Advisory Opinion # 128.

A judge should not adjudicate a case in which one of the attorneys is the judge's step-child, or is a lawyer who practices law in a firm with the judge's step-child. See JQC Advisory Opinion #140. Canon 3E(1)(c) prohibits a judge from handling a case in which any person within the third degree of kinship is acting as a lawyer. The facts of Opinion #140, while not per se grounds for disqualification because the step-child may not be a person within the third degree of kinship, present circumstances that would appear to a lay person so closely

aligned with the Canon 3E(1)(c) stated grounds for disqualification that they might reasonably call into question the judge's impartiality.

By contrast, non-disqualifying judicial involvement in a case, despite some arguable connection to it includes instances of

Permissible (Non-Disqualifying) Judicial Involvement

Case Connections that Do Not Require Judicial Disqualification - More factors than a familial relationship, or other allegation of bias, are required to justify judicial disqualification in the following situations.

Administrative Decisions Not Requiring Disqualification - Serving as an administrative judge and scheduling hearings for a case in which the judge's child serves as a prosecuting attorney, albeit for decisional handling by another judge, is permissible judicial involvement. See JQC Advisory Opinion #33. It's worth noting that lawyer relatives of a judge who work for a governmental agency, such as the prosecuting attorneys office, do not ordinarily have an association with other lawyers employed by that agency that would automatically trigger the judge's disqualification. Note Commentary to Canon 3E(1)(b). See JQC Advisory Opinion #182.

Spousal Connections that Do Not Require Disqualification - Where a business enterprise that employs a judge's spouse is the respondent in an action for money damages pending in the judge's court, disqualification of the judge is not automatically required. The judge may continue to

preside, provided that the relative's interest in a proceeding's outcome is de minimis. See JQC Advisory Opinion #71.

While the judge's spouse is also a legal aid attorney, permissible judicial involvement includes adjudicating a case in which legal counsel is affiliated with that spouse's governmental legal aid organization. See JQC Advisory Opinion #72. Note Commentary to Canon 3E(1)(b).

The fact that a judge's spouse shares office space with another lawyer does not create a basis for the routine disqualification of the judge when that other lawyer appears in the judge's court. See JQC Advisory Opinion #153.

The fact that a judge's spouse holds a contract with the local prosecutor's office to litigate its child support enforcement cases will not require disqualification by the judge when that local prosecutor handles a case in the judge's court. See JQC Advisory Opinion #182.

Other Non-Disqualifying Family Connections - When the first cousin of the judge's spouse is a lawyer in a proceeding, judicial disqualification is not automatically required. See JQC Advisory Opinion #84. The following persons are relatives within the third degree of relationship, whose presence in a case would present per se grounds for judicial disqualification: child, parent, sibling, grandchild, grandparent, great-grandchild, great-grandparent, uncle, aunt, nephew or niece. Note Canon 3E(1)(c).

Judicial disqualification is not required when the divorced husband of the judge's niece, or any member

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Judicial Disqualification in Georgia cont.

of this attorney's law firm, appears in a case. See JQC Advisory Opinion #188.

Previous Lawyer Service Connected to the Judge that is Non-Disqualifying - Simply because an attorney appearing for a party in a case previously represented the judge in a legal matter, a judge is not disqualified to preside. See JQC Advisory Opinion #54.

Simply because a defendant/violator appearing in court was previously represented by the judge when a lawyer, or by that judge's former law firm, a judge is not disqualified to preside in a case See JQC Advisory Opinion #119.

Other Non-Disqualifying Legal System Connections to the Judge - The fact that a judge's former law clerk is counsel for one of the parties appearing before the court is not a per se ground for the judge's disqualification. See JQC Advisory Opinion #136.

A part-time judge, who also engages in the practice of law, is not required to disqualify from presiding in a case because an attorney involved serves as opposing counsel to the judge in other litigation. See JQC Advisory Opinion #142.

Merely because an attorney of record has previously represented a client who filed a lawsuit against that judge, the judge is not required to disqualify from presiding over a case. See JQC Advisory Opinion #135.

While there is no fixed rule as to the period of time throughout which a judge should disqualify when former law firm attorneys appear at court, the remittal for disqualification procedure is commended for use appropriately. See JQC Advisory Opinion # 223.

Practice of law connections to the issue of appropriate judicial disqualification present only one arena of potential conflict of interest that might merit a judge stepping aside. Other disqualifying conflicts, that

might arise under Canons 4, 5 and 7 will be discussed in another essay.

Remittal of Disqualification

Finally, the presence of grounds for judicial disqualification, either per se or generally reasonable, do not always mandate a judge's removal from a case. See Canon 3F. The procedure for remittal of disqualification affords a practical means for judges' to acknowledge their eligibility for removal, yet to remain available to dispose of a case when approved to do so by the interested parties. Specifically, this procedure will be the topic of the next essay.

Disqualification, Remittal of Disqualification, Responding to a Motion for Disqualification, and Norms for Part-time Judges will be the first four topics addressed in this essay series.

Short Takes!!!

CHANGE OF COURT PERSONNEL?

The AOC tracks judges, court clerks, and city clerks, and provides this information to several other agencies.

Download a Municipal Change of Address form from CMCJ website: www.georgiacourts.org/councils/municipal/ or from the Georgia Municipal Court Clerks Council (GMCCC) website: www.georgiacourts.org/councils/gmccc/

DDS SUSPENSION CHEAT SHEET

Now available in the Behind the Bench section of the Council website: www.georgiacourts.org/councils/municipal/ (password protected. Contact municouncil@gaoc.us for assistance)



GCIC has created a new email address, askgcic@gbi.ga.gov, which can be used to ask any GCIC related question. This email box will be monitored and answers will be provided quickly.

EMERGENCY PREPAREDNESS COURSE AVAILABLE ONLINE NOW

This self-paced, free course includes presentations by court professionals who are experts in emergency management preparedness -- many as a result of facing an emergency themselves. Find it here: http://www.ncsconline.org/D_Research/coop/curriculum.html
http://www.ncsconline.org/D_Research/coop/index.html Continuity of Court Operations Planning Guide
More free resources:
http://www.ncsconline.org/D_ICM/freeresources/index.asp

Do Their Ethics Trickle Down To You?

By Judge Robert L. Whatley, Powder Springs Municipal Court

A judge in the metro Atlanta area brandished a baseball bat to judgment his authority. It is as if you had done it. Another couple of judges recently had DUI charges. Has anyone seen you at a social judge gathering and assumed you drove there and then had a few? Another judge in the South Georgia area was brought before the JQC and then indicated in federal court for rewarding his friends and punishing his enemies. Can anyone infer a favor because you appointed a former law partner to too many appointed cases? Likewise another judge took a “poll” of the courtroom audience to decide an issue in a case. Likewise a defeated superior court judge a few years back was suspended and denied senior judge status for refusing to hear evidence and ordering the court reporter to cease taking down testimony along with other ethical infractions as specified in 261

Ga. 537. Surely, the latter two would not befall you. But you are a judge and the reputation of a few trickles down in some way to you. And it is hard to determine if their conduct is undermining your credibility. But it is. And you cannot defend against an unseen enemy.

We can require ethics education. We can insert ethics in our seminars. We can ask opinions on ethics and have them published in the Bar Journal by bar counsel. The JQC is very helpful with general advice. And the judicial canons are very instructive. But to “do” ethics is a process that sometimes requires us to conjure up a solution on a moment’s notice. And the old bar adage of “doing the right thing” may sometimes elude us.

One may question the wisdom of a proscribed act of collecting money for the Cancer Society or taking up a collection as usher in church. You

probably could not be faulted for that. But in a recent Court of Appeals race mass comments about an opponent’s family problems raised some issues far deeper than in the canons or seminars. But in the absence of specifics, “doing the right thing” becomes a struggle of conscience.

In summary, one may exercise ethics to a fault. But others not doing so trickles down to you, which could reach a torrent if it is too close or too high profile. The bar frequently asks the question as to the difference between ethics and professionalism. Answer: one is the minimum; the other is going far beyond the minimum. Just as slight evidence, clear and convincing, and preponderance are varying forms of standard of proof, surely we should strive for the reasonable doubt standard.

Do you Understand Your Constitutional Rights-And You are a Judge?

By Judge Robert L. Whatley, Powder Springs Municipal Court

I have silently wondered for no small time as a judge and attorney whether or not the above question is realistic though required and sanctioned by our founding fathers and years of precedent. Do we fully understand them? Go into any law library and see hundreds of bookshelves where some of the most astute judges ran afoul and were reversed.

Recently, at the more opposite extreme, a visiting judge vitiated a triple murder case in Fulton County where some BOYKIN rights were

omitted. In a less celebrated case a “no-left-turn” case was reversed because some right to counsel issue was judicially impaired. Question: If these judges and the judges in the law stacks missed it, how about the poor, uneducated, and illiterate defendant that stands before you. But basically in most cases, it will be upheld that he knew them if he says he knew them, absent extraordinary circumstances.

I sometimes mull the fantasy world and ask what if a judge would ask him to define the scope of self-

discrimination, confrontation, keeping silent, habeas corpus limitations, impact on probation and parole, deportation, indigent counsel and what counsel can do for him. The otherwise “Yes Sir” would probably lend itself to fumbling and mumbling with no real conclusions and no real answers. Yet it is institutionalized and sacred.

His law “exam” would probably surprise most judge veterans. And if we do not read law every day, we may surprise ourselves.

More Short Takes!!!

TRAFFICJUDGES LISTSERV – HOW TO UPDATE!

The Council of Municipal Court Judges has added all municipal judges to the TrafficJudges listserv as of the end of April. Used responsibly, this is a great way to receive instant feedback for a problem, or to share new caselaw, or to discuss the fine points of law with your colleagues. If you are not receiving the messages, or would like to receive these e-mails at a different e-mail address, please update your information by e-mail to municouncil@gaaoc.us, or by phone to Leslie Johnson, 404-651-6327.

PAC NEEDS NAMES OF SOLICITORS!!

The Prosecuting Attorneys Council (PAC) reports that they are largely unaware of which attorneys are filling the position of Solicitor/Prosecutor for municipal courts. You can help!! Please send the name and mailing address of your Solicitor/Prosecutor in Municipal Court, on letterhead, to the Prosecuting Attorneys Council (PAC), 104 Marietta Street NW, Suite 400, Atlanta, Georgia 30303-2743. 404-969-4001 phone; 404-969-0020 fax; info@pacga.org.

See <http://www.pacga.org/training/pac.shtml> for upcoming classes. Check back often. New classes are posted as they become available.

MUNICIPAL COURT CLERK TRAINING

Judges, don't forget that the Chief Court Clerk* must now meet mandatory training requirements. If there are any changes in personnel at the municipal courts, have them contact ICJE for Registration Forms and Schedules. 706-542-7402

* The chief clerk is "the primary person most directly responsible for the administration of a municipal court other than a judge of the municipal court."

CHECK OUT

www.AAAfoundation.org/
products for brochures on
driver safety for teens, night driving,
road rage, elder drivers, etc.

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