



MUNICIPAL COURT Judges Bulletin

Fall 2005 • The Georgia Council of Municipal Court Judges Newsletter • Vol. 6, No. 4

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MARK YOUR CALENDAR

**2006 Legislative
Breakfast/Annual
Business Meeting**

February 23, 2005

**Sloppy Floyd
Building • Atlanta**

President's Corner

John K. Edwards, Jr.
City of Valdosta

It was a privilege to represent our Council at the first meeting of the Strategic Planning Committee on Courts Automation for Municipal Courts held September 27th through 30th at Callaway Gardens sponsored by the Georgia Courts Automation Commission (GCAC). Those in attendance experienced several days of intense work as we helped formulate technology that will ultimately allow for the seamless interaction and sharing of information throughout Georgia's Judiciary. Our representatives were asked to identify each and every day-to-day and week-to-week function performed by municipal court judges, court administrators and clerks. In addition, each function was broken down to identify: every data element necessary; stakeholders to the information; dependents of the information; and security requirements for the information. George Nolan, Executive Director, GCAC and their independent IT facilitators from the North Highland Group did a great job in helping us to achieve consensus on these points. Special thanks to those in attendance who did an absolutely outstanding job: Judge Kathryn Gerhardt, Judge Clay Davis, Judge Michael P. Cielinski, Clerk Karen Fricke, Clerk Beverly Evans, Clerk Essie West, Clerk Cindy Norwood, and Court Administrator Cindy Walker. Our final meeting, which will be the strate-

gic planning session, will be held December 13th through 16th at Callaway Gardens. We do have vacancies for additional judges who wish to participate and you should contact my office as soon as possible if you have any interest in attending.

The Executive Committee of the Council of Municipal Court Judges had a very productive meeting at the Administrative Office of the Courts (AOC) office in Macon on October 21st. In addition to our regular business, lengthy discussions were had on pending legislation, Judicial Council membership, the possibility of a municipal court clerks association, nominations to fill our Training Council vacancy, as well as various special committee reports. Guest speakers included George Nolan of GCAC regarding the Strategic Planning Committee on Courts Automation for Municipal Courts; Deborah Nesbitt, Associate Director of Legislative and Governmental Affairs of the AOC regarding legislative issues; Wade Herren of the AOC Research Division; and Macon Municipal Court Clerk John Patten regarding the Georgia Municipal Court Clerks Association, also in attendance was David Ratley, Director of the AOC.

There are a great number of pieces of legislation at various stages which, if enacted, may deeply affect municipal courts and their judges. I encour-

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Minutes of the Summer Meeting

The summer meeting of the Executive Committee of the Georgia Council of Municipal Court Judges was held on June 22, 2005, at the Savannah Marriott in Savannah, Georgia. Judge John Edwards called the meeting to order at 5:00 p.m.

The first order of business was the consideration of the minutes of the Spring Meeting held in Macon on April 15, 2005. Upon motion duly made and seconded, the minutes were approved as submitted.

Judge Edwards then asked for the financial reports. Mr. Steve Nevels of the Administrative Office of the Courts (AOC) reported that as of May 31, 2005, \$8,844.60 of the state appropriated funds had been spent, leaving a balance available of \$11,155.40. The only expenses remaining to be paid from those funds are the expenses for this meeting and the receptions to be held in conjunction with the traffic court seminar. A recommendation was made that funds from this year's budget be encumbered to pay for certain anticipated expenses. Judge Edwards decided to defer taking action on this recommendation until after committee reports have been given.

Judge Ward gave the financial report with respect to private funds held by the Council. As of May 31, 2005, \$42,981.03 remained on deposit in the private funds account. Judge Ward noted that a \$1,000.00 contribution had been made by the Council to the Georgia Mock Trial competition in memory of Judge Coolidge and that he had received an acknowledgment letter from Mr. Robert McDonald of the Younger Lawyers Division High School Mock Trial Committee thanking the Council for its support of the mock trial program. Judge Washburn requested a copy of the letter to be placed in the newsletter.

Judge Edwards advised that he was not going to give a president's

report and instead called for committee reports. The following reports were then given.

1. Bench Book. Judge Ashman was not present but gave a written report stating that work has begun on the 2005 update for the Bench Book and completion is planned for the Fall. He asked that judges provide him with copies of any useful court forms they would like to see included, preferably by email at geaatl@msn.com. Judge Washburn requested a copy of the report to be placed in the newsletter.

2. Golf Tournament. Judge Adams reported that the tournament was held at the Savannah Harbor Golf Course the day before the seminar began with only five people participating. They were as the following: Judge John Adams, Judge Charles Brooks, Judge Lawrence Dilliard and Judge Maurice Hilliard and wife. Judge Charles Brooks was the winner of the tournament. Judge Adams recommended that in the future the tournament be held in the afternoon after class and suggested that perhaps the schedule could be adjusted so that the seminar ended earlier in the day to allow time for the tournament in the late afternoon. Training Council members present agreed to bring the discussion re: changing the schedule up at the next meeting.

3. Hospitality and Entertainment. Ms. LaShawn Murphy reported that a reception would be held in the evening after the first and second days of the seminar to give judges an opportunity to mix and mingle with the other judges. The food for the reception would be provided by the Municipal Court Judges Council.

4. Legislative. Judge Barrett provided a handout of a synopsis of all legislation which related in any way to municipal courts. He reminded the Council that the pretrial diversion

bill had not been passed even though it had good support in the Rules Committee but expects that it will pass next year.

5. Newsletter. Judge Washburn reported she has been Editor of the newsletter for eight years, which she has enjoyed, but would like to change the format of the newsletter. Specifically, she requested approval to improve the paper quality and to change the ink to black and gold. It is her opinion that the added expense would be well worth the cost. Judge Washburn requested the AOC to obtain quotes for the changes. She would also like to begin a series of feature articles focusing on judges who are making a contribution to the Council and would also like to include more articles that apply specifically to municipal courts.

6. Nominations. Judge Pierce reported that the nominating committee had compiled a slate of candidates for officers, training council representatives and district representatives with the election to be held at the annual meeting. For the first time, the offices of president-elect and vice-president were contested.

7. Uniform Rules. Judge Edwards emphasized that the Council needs to move forward with finalizing the uniform rules for municipal courts. He recommended that the current draft, after some editing, be put on the web site with a request for feedback from the membership. Mr. Keith Scott has worked on the rules as a consultant and he would be asked to continue his efforts until a draft was ready for submission to the Council for approval.

Reports on liaisons with the following agencies were then given:

1. Judicial Council. Judge Edwards reported he attended the meeting held June 8, 2005 where he had

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Minutes continued

advised the Judicial Council that the Municipal Court Judges Council was working on uniform rules. He believes that the adoption of uniform rules might help in getting municipal courts a seat on the Judicial Council. He also reported that Judge Haynes Townsend, out going president of the Council of Magistrate Court Judges, shared in his address to the Council his thought that the municipal judges should have a seat on the Council.

2. Probation Advisory Council.

Judge Ward reported that more municipal courts have private probation services than any other class of courts although state courts have more persons on probation. The Probation Advisory Council is currently working to establish rules and standards for private probation services.

3. Georgia Courts Automation Commission (GCAC).

George Nolan, Executive Director for GCAC, made a presentation on the need for strategic plans for automation for courts at all levels. He pointed out that data is collected locally and sent to the state as mandated but there is no sharing of data with other courts in the same class or from courts of one class to another. GCAC has funds to be used to help develop strategic automation plans for courts so that they may make sure they have the information they need, that it is collected correctly, and that it can be shared in ways that are beneficial. Mr. Nolan proposed that municipal courts take advantage of this opportunity. A motion was made and seconded to form a strategic planning committee on \ll also be given out at the Business meeting. Judge Edwards suggested proposing to the training council to consider Indigent Defense as a track for future training.

Judge Cielinski announced that the Municipal Court Judges Training

Council was having a meeting to set training for the coming year. The meeting was scheduled for June 23rd. Plans are still being made for a class of courts cross section training session to be held in either November or December.

OLD BUSINESS

As an item of old business, Judge Cielinski reported the Institute of Continuing Judicial Education (ICJE) will not have any involvement with vendors exhibiting at meetings. Judge Edwards asked for input as to how vendors could be of benefit to the Council at seminars. One possibility would be that vendors would be charged a fee to set up booths at meetings and another is they could sponsor receptions or other events. It was decided to table this discussion until the next meeting.

NEW BUSINESS

Next under new business, Judge Edwards expressed a desire to see more interaction between judges within districts. He encouraged dis-

trict representatives to get together to discuss the scheduling of district level meetings. He also called for better attendance by district representatives at executive committee meetings.

As a final order of business, Judge Edwards re-opened the discussion about encumbering funds from this year's allocation of state appropriated funds. After discussion, it was approved to encumber funds for the following: \$1000.00 to contract consultant, Keith Scott, for drafting the uniform rules; to change the printing of the newsletter i.e. paper and ink; and to purchase a laptop computer to be used by the Council at meetings and other events held around the state. These actions are to be handled by the AOC.

After announcing that the next meeting of the Executive Committee would be held in Macon on October 21, 2005, Judge Edwards adjourned the meeting.

Respectfully submitted,
Kathryn Gerhardt, Secretary

WANTED: INSTRUCTOR JUDGES

REWARD OFFERED!!

- Great feeling of helping others succeed
- Opportunity to learn and grow professionally
 - Earn up to 6 hours MCJE credit yearly
 - FREE Travel
- Great resume builder!

QUALIFICATIONS

- love your job
- willing to share your knowledge
- like meeting new people, visiting new places

To sign up to be an instructor, send an e-mail to Kathy Mitchem at kathy@icje.law.uga.edu or call 706-542-7402.

PHOTO GALLERY FROM JUNE TRAFFIC SEMINAR



Implied Consent

The Georgia Supreme Court Answers When a Driver Has to be Under Arrest to Compel Testing Under the Doctrine of Implied Consent

By: Judge Hammond Law, Municipal Court of Gainesville

Most are aware that the Georgia Supreme Court has ruled a portion of O.C.G.A. §40-5-55 unconstitutional in *Cooper v. State*, 277 Ga. 282 (2003). In *Cooper*, the court held a driver who had been involved in a serious injury but not charged with an offense cannot be compelled to give a sample of his blood, breath or urine pursuant to the doctrine of implied consent.

That case did not answer the question of whether or not the same driver who gives an arresting officer probable cause or reasonable suspicion to believe the driver is under the influence, can be compelled to give a sample of his blood, breath or urine. In the recently decided case of *Hough v. State*, decided October 3, 2005 by the Georgia Supreme Court, the court has held that a person may be compelled to give a sample of his blood, breath or urine when he or she has been involved in a traffic accident and the investigating officer has probable cause to believe that the driver was under the influence of alcohol or drugs.

The court reached its conclusion by undertaking a balancing test of an individual's Fourth Amendment interests against the State's right to promote "legitimate governmental interests".

The court held that the State has a strong governmental interest in attempting to protect citizens against impaired drivers, and that by its express terms, O.C.G.A. §40-5-55 does not require a DUI suspect to be arrested in order to trigger his or her implied consent to testing following a traffic accident resulting in serious injury or fatalities.

In *Hough*, the investigating officer noticed the driver had a strong smell of alcoholic beverage. *Hough's* passenger fled the scene after telling a witness that he and *Hough* had been drinking, and the nature of the one car accident supported a suspicion that *Hough* was impaired.

The Georgia Supreme Court, under such circumstances, determined that the balancing interest is resolved in favor of the State in such a scenario. However, a totally different result was reached by the Georgia Supreme Court in a situation where a driver was involved in a motor vehicle collision which did not cause serious injury and was never placed under arrest before the implied consent rights were read.

In such a case, the Supreme Court, in *State v. Handschuh* decided October 3, 2005, as part of a consolidated ruling on both *Handschuh* and *Hough*, clearly held that a driver must be under arrest before he has impliedly consented to a test of his blood, breath or urine for purposes of determining any level of alleged intoxication.

The Georgia Supreme Court affirmed the Georgia Court of Appeals ruling in the *Handschuh* case, *Handschuh v. State*, 270 Ga. App. 676 (2004).

The significance of this ruling is that there had been along line of cases prior to *Handschuh* which had held that if there were probable cause to believe that a driver was under the influence of alcohol or drugs, it was immaterial as to whether or not the driver had been arrested, he or she was still compellable to give a breath, blood, or urine sample. Even after the *Handschuh* Court of

Appeals decision, the Georgia Court of Appeals had issued an opinion seeming to undercut and contradict *Handschuh* in the ease of *Evans v. State*, Ga. Court of Appeals, Case No. A05A1497, decided July 29, 2005.

In *Evans*, the Court of Appeals attempted to distinguish *Handschuh* by noting that in *Handschuh*, the driver was in an emergency room after an accident and refused testing but was not arrested until six days later. In the *Evans* case, the Georgia Court of Appeals noted that the defendant was arrested immediately after obtaining consent for testing.

The current state of the law now is that such distinctions between *Evans* and *Handschuh* cannot be made. The Georgia Supreme Court has announced the true rule that all of the Georgia statutes which discuss and enact the doctrine of implied consent clearly state that a defendant must be under arrest for a driver to impliedly consented to a test of his blood, breath or urine as a condition of his ability to use the highways of this state.

In short, the Georgia Supreme Court seems to have arrived at both of these conclusions in each of these cases by simply reading the statute. The Georgia Supreme Court has basically laid out the rule that a driver who has been involved in a serious motor vehicle collision and who has given the investigating officer reasonable suspicion that he is under the influence of alcohol or drugs, then in such a case, the driver does not have to be under arrest for implied consent rights to be read and implied consent testing can take place, even if the defendant has not been formally

DUI Case Law Update

By: Mickey Roberts, Esq. Duluth, Ga.
(770)923-4948

The Georgia Court of Appeals has rendered a decision in the case of *State v. Dyer*, A05A1289; Sept. 28, 2005, holding that a person convicted of §40-6-391a-5 (over .08) MUST serve 24 hours of imprisonment. This is the result of an appeal by the Gwinnett Solicitor's Office, following the guilty plea of a purportedly pregnant woman. The prosecutor argued that the trial court judge did not require the Defendant Dyer to serve the full 24 hrs imprisonment. It appears that if a Defendant pleads to the per se violation, and he or she pleads guilty to that code section, then he or she will have to do the full 24 hrs imprisonment. If a Defendant pleads to "less safe," then does this case holding apply?

There are two new cases involving when is the Implied Consent



warning valid, pertaining mainly to §40-5-55 and whether the IC warning was made "at the time of arrest." In *State v. Hough*, S05G031, 2005 WL 2413094, Ga., Oct 03, 2005, Hough was in an accident with serious injuries to himself; taken to hospital and never formally arrested.

Yet, he was read the implied consent and agreed to a blood test. The Supreme Court held because there were serious injuries AND probable cause to arrest for DUI, the blood test results were valid. In *State v. Handschuh*, S05G0640, there were NO serious

injuries; *Handshuh* was taken to hospital, read the IC, refused, was released and arrested for DUI six (6) days later. The Supreme Court held that the IC reading was in no way contemporaneous to his arrest and the Defendant's refusal to submit to the state test should have been suppressed. *See Handschuh v. State*, 270 Ga.App. 676 (607 S.E.2d 899) (2004) (disapproving *Hough*, supra).

President cont.

age you to review and stay aware of each bill's progress and status including: SB-203, HB-718, HB-719, HB-730, and HB-1455. In addition, each of you should take the time to review House Resolution 515 which created a Study Committee on the "decriminalization" of certain traffic offenses and may have a broad impact on municipal courts throughout our State.

Our Council continues to pursue membership on the Judicial Council and this coming year may hold excellent opportunities for us in this endeavor. If you know representatives on the Judicial Council, now is the time to discuss your concerns with them. The next meeting of the Judicial Council will be held on December 7th in Atlanta.

Our next annual meeting of the Council of Municipal Court Judges will be held in February 2006 in conjunction with our annual Legislative Breakfast in Atlanta. The specific dates will be forwarded to the membership as soon as they become available. We need a strong showing at this breakfast so I urge all Executive Committee officers, District Representatives and our membership at large to please make plans to attend!

I hope that any of you with questions, suggestions or concerns will contact me at (229) 293-3171 or jedwards@valdostacity.com

Implied Consent cont.

arrested for an offense.

On the other hand, if the driver has not been arrested for driving under the influence, and if the driver has not been involved in what legally constitutes a serious motor vehicle conclusion as outlined above, then an officer may not compel implied consent testing. In such a case, the defendant must be under arrest before implied consent rights are read and/or implied consent testing follows.

The distinction made by the court may be a temporary distinction. There is a bill pending in the legislature which would allow the police to read implied consent, and test without an arrest, if probable cause existed for a DUI arrest. Since the Supreme Court based its decisions on the language of the statute, this would presumably be acceptable.

A Little Known Parole Rule — How it Applies to Municipal Court

By: Judge Robert L. Whatley, Austell Municipal Court

Attorneys usually have little understanding of the complex rules of the Parole Board. But they had better learn. Recently there was a case where the attorney misadvised a defendant on the possibility of parole and sentence review on a serious violent felony charge. It was thus reversed. (*Davis v. Murrell*, S05A0744, 9-19-05, 05 FCDR 2843). The court stated that had he not been so advised, he may have chosen trial. Other cases have so held under the nomenclature of “collateral matters”.

But this is really a side note not affecting our role a Municipal Court Judge. Few lawyers and judges knew that parole rules allow for parole consideration for anyone whose sentence exceeds 12 months. However, there is a legal catch. The right does not apply unless the board knows of the existence of the defendant and his location. In felony cases the clerk transmits the record to the Department of Corrections and once it is in State hands, it eventually reaches the Parole Board. But not always, in some counties they just “serve their time” in a local jail if the felony sentence is only a few months. This is contrary to law.

When a Municipal Court judge sentences one to, say 14 months or a consecutive 12 month sentence, the Parole Board *MUST* conduct a review and parole consideration. If the attorney notifies the Board of his name, sentence, place of confinement, he then gets a “non-custodial” number and a visit from a parole investigator. Needless to say, they hope this “secret” does not get spread. The author, in his attorney role, has provoked frustration for the many resources used in doing so. Though this was not intentional, it

appears that this role is a nuisance. In most instances they have provided relief. They rarely see one not charged with a felony. Therefore one charged with trespass, repeat speeding, or minor shoplifting tends to provoke

“riddance” because of mammoth paperwork. Judges, solicitors, and transmitting clerks need to be aware so as to respond appropriately if called upon for input or a record construction.

Council of Municipal Judges Financial Report July 1, 1999 - August 31, 2005

TOTAL MUNICIPAL BANK DEPOSIT	\$58,668.99
<i>Dues, Golf, Coffee Mugs Sales and Judge Association Dues</i>	
REFUNDED AMOUNT	- \$210.00
<i>Seven \$30.00 checks for overpayment of dues. 1001,1002,1004,1005,1006 1007,1008. Check #1016 Voided.</i>	
TOTAL COUNCIL DEPOSIT	\$59,458.99
EXPENSES	
Bank Charges	
<i>checks and deposit slips</i>	-\$104.50
Coffee Mugs	-\$557.69
Legislative Breakfast (ck.#1003 dated 02-09-01)	-\$1014.88
Legislative Breakfast (ck.#1009 dated 01-10-02)	-\$710.54
Legal Fees (ck.#1010 dated 05-13-02)	- \$ 65.92
Benchmark Trophy Center (ck.#1011 dated 07-10-02)	-\$774.44
Legislative Breakfast (ck.#1012 dated 01-31-03)	-\$821.25
President's Plaque (ck.#1013 dated 10-03-03)	-\$ 43.00
Judge Cielinski (ck.#1014 dated 10-03-03)	-\$ 58.32
Legislative Rec. Dep. (ck.#1015 dated 10-28-03)	-\$625.00
Legislative Reception Final (ck.#1017 dated 03-05-04)	-\$1922.00
Judicial Council Reception (ck.#1018 dated 08-19-04)	-\$564.57
American Heart Association (ck.#1019 dated 11-03 -04)	-\$100.00
Legislative Breakfast (ck.#1020 dated 01-26-05)	-\$637.50
Legislative Breakfast (ck.#1021 dated 02-03-05)	-\$468.35
State Bar Donation (ck# 1022 dated 05-16-05)	-\$1000.00
Bank Correction Fee (08-29-05)	-\$5.00
Petty Cash	-\$50.00
PETTY CASH PAYMENT	
Long Distance Calls	\$15.50
Office Supplies	\$34.50
TOTAL EXPENSES	-\$9,522.96
Bank Balance as of August 31, 2005	\$49,936.03
Bank Balance at last report MAY 31, 2005	\$42,981.03

AG's Unofficial Opinion • U2005-4 • 7/12/05

SYLLABUS: [*1]

The additional monetary penalties provided in O.C.G.A. § 15 21 73 may not be added to the civil monetary penalties imposed pursuant to O.C.G.A. § 40 6 20.

REQUEST BY:

To: City Attorney

OPINION BY:

KATHERINE DIAMANDIS, Assistant Attorney General

OPINION:

You have requested my opinion on whether the additional monetary penalties imposed pursuant to O.C.G.A. § 15 21 73 can be added to the civil monetary penalty authorized under O.C.G.A. § 40 6 20.

In 2001 the legislature amended O.C.G.A. § 40 6 20 to provide for the use of traffic-control signal monitoring devices. 2001 Ga. Laws 770. These devices work in "conjunction with a traffic-control signal to produce recorded images of motor vehicles being operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal." O.C.G.A. § 40 6 20(f)(1)(C). For enforcement purposes, the "driver of a motor vehicle shall be liable for a civil monetary penalty of not more than \$ 70.00 if such vehicle is found, as evidenced by recorded images produced by a traffic-control signal monitoring device, to have been operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal." O.C.G.A. § 40 6 20(f)(3)(A). Any court having jurisdiction over a violation of O.C.G.A. [*2] § 40 6 20(a) or any ordinance adopting its provisions shall be authorized to impose the civil monetary penalty "of not more than \$ 70.00" provided by O.C.G.A. § 40 6 20(f)(3)(A). O.C.G.A. § 40 6 20(f)(6).

The cardinal rule of statutory construction is to ascertain the intention of the legislature. In attempting to discern the intent of the legislature, certain presumptions are utilized. One of those presumptions is that the legislature was aware of the state of the law at the time it enacted the legislation in question. *Davis v. State*, 246 Ga. 761-62 (1980). It is clear that the legislature has chosen not to treat this civil monetary penalty as a "fine." While the legislature has provided for the imposition of fines throughout Title 40, it has specifically prescribed here that a civil monetary penalty, and not a fine, be imposed for a violation. Evidence of the legislature's intent to distinguish between a civil monetary penalty and a fine is also found in the 2003 amendments to O.C.G.A. § 40 14 21 (traffic-control signal monitoring device use) and O.C.G.A. § 40 14 24 (traffic-control signal monitoring device reporting) where "civil monetary penalty" [*3] was substituted for "fine." 2003 Ga. Laws 597, § § 3-4. This distinction is relevant to an analysis of O.C.G.A. § 15 21 73(a)(1).

Legislative intent may further be determined by examining related laws since the legislature is presumed to know all pertinent laws existing at the time legislation is enacted. *Spence v. Rowell*, 213 Ga. 145, 150 (1957). Code section 15 21 73(a)(1) provides for additional penalties for certain offenses; among these offenses are "civil traffic violations." Civil traffic violations were included among offenses subject to additional penalties during the 2004 legislative special session. H.B. 1EX, § 5, 2004 Gen. Assem. Extra. Sess., 2005 Ga. Laws ES3. However, the legislature did not change the condition precedent to the additional penalty that the court impose a fine. Under O.C.G.A. § 15 21 73(a)(1), the imposition of a fine is a prerequisite to the imposition of any additional penalty. Because O.C.G.A. § 40 6

20(f)(3)(A) permits the imposition of a civil monetary penalty only, the condition precedent of having a fine imposed under O.C.G.A. § 15 21 73(a)(1) cannot be met and the additional penalty cannot be imposed.

Moreover, [*4] the limitation found in O.C.G.A. § 40 6 20(f)(4) clearly indicates that an additional penalty cannot be assessed. This subsection provides that the civil monetary penalty shall not be considered "a moving traffic violation," shall be deemed "non-criminal," and "shall not be deemed a conviction." This proviso prohibits the assessment of points, the reporting of a violation on a person's driving record, and the use of a violation for any insurance purpose. The language of this subsection further supports the conclusion that the penalties under O.C.G.A. § 15 21 73 should not be assessed.

Because O.C.G.A. § 15 21 73 can only apply to a case where there is a "conviction," and because a violation of O.C.G.A. § 40 6 20, for which a civil penalty is imposed, is specifically deemed not to be a conviction, O.C.G.A. § 15 21 73 cannot apply. *Accord* 1983 Op. Att'y Gen. 83-80 (if sentence imposes neither costs nor traditional fine, no penalty can be imposed under O.C.G.A. § 15 21 73; further, O.C.G.A. § 15 21 73 requires "conviction").

Therefore, it is my unofficial opinion that the additional monetary penalties provided in O.C.G.A. § 15 21 73 may not be added [*5] to the civil monetary penalties imposed pursuant to O.C.G.A. § 40 6 20.

Research Division Strives for 100% Participation

The Administrative Office of the Courts' Research Division would like to remind the Municipal Courts that research services are available. The Division's primary responsibilities are caseload collection, demographics analysis, records management, court personnel studies and judicial resource studies. Legal and legislative research is also conducted.

The goal of the Research Division is to gain 100% participation in salary surveys and caseload reporting from the Municipal Courts. Based on past and current responses, the reporting rate for the Municipal Courts has been relatively low. As of October 20, 2005, the percentage of reporting municipalities is approximately 14%. The low volume of responses has left the Division concerned and much more determined to increase the level of participation of the Courts. The Division fully understands the challenges of submitting additional reports and gladly offers assistance.

The Research Division also conducts an annual salary and case count survey. Your assistance in preparing a complete and comprehensive view to the compensation of trial court judges and personnel, and the approximate caseload in Municipal Courts is important. Your response helps guarantee that the survey results are both accurate and functional.

The Research Division strongly believes the goal of 100% caseload and salary survey participation is attainable with the cooperation of the Municipal Court Judges and Clerks. Your sugges-

tions on ways of increasing the report percentage rate as well as improving communication among the courts and the Division are both encouraged and valuable. We greatly appreciate the submission of your caseload reports and salary surveys.

If you require assistance in data collection or have additional questions, please contact Bernadette Smith, AOC Research Associate, at (404) 656-5171 or via email at smithb@gaaoc.us. Please log onto <http://research.georgiacourts.org/> to find out what the Research Division can do.

How to Submit Reports:

Mail:

Research Division
Administrative Office of the Courts
244 Washington Street, S.W. Suite 300
Atlanta, Georgia 30334

Fax: (404) 651-6449

The Listserv ... Is Ready to Serve You!

If you have not joined, do so now. For those of you who are not aware here are a few reasons to join listserv.

Listserv's purpose is to automatically send information out as well as provide interaction between all Traffic Court and Municipal Judge Subscribers.

- 1) Its an inexpensive way to interact with fellow City Judges and discuss issues concerning your class of court,
- 2) Great way to seek out advice on

unusual cases or cases you may have not experienced before and,

- 3) It's a quick way to send urgent notices that may other wise require sending postcards, making long distance calls (faxes) and playing phone tag (remember the cost buildup).

The Council encourages you to subscribe to this list. It is convenient, informative, and not to mention, it can be used as a great reference in referring to past events. Subscribing takes one call or e-mail. Once you have sub-

scribed, you will receive a welcome message, providing a pass code and instructions on using the service. If you have any questions about this service, please contact AOC Webmaster Brian Collins at (404) 463-3804 or collinsb@gaaoc.us To subscribe to the Traffic Court Listserv, please contact LaShawn Murphy, AOC, at (404) 651-6325 or via email at murphyla@gaaoc.us

Welcome aboard to all new subscribers!

Program-Based Budgeting

By: Kevin Tolmich, Budget Administrator

The State of Georgia made a drastic shift in the way budgets are appropriated to state agencies. In the past, budgets were determined and assigned by using object classes or major categories of expenses (i.e. personal services, travel, rent, etc.) for an entire agency. Today, budgets are determined by programs within that agency. These programs are specific functions, activities, projects that are performed by the agency.

Program-based budgeting is based on what you do and what resources are needed to meet the goals and objectives of specific programs. Program-based budgeting allows for the “bang for the buck” factor. Organizations can use performance measurements to track how well a program is meeting goals and objectives. This allows for better justification for any future increases and/or decreases in funding.

As an example, the Judicial Council of Georgia has five different programs: Judicial Council, Office of Dispute Resolution, Institute for Continuing judicial Education, Judicial Qualifications Commission and the Resource Center. Within the program of Judicial Council, there are several projects: Administrative Office of the Courts (AOC), Council of Magistrate Court Judges, Council of Probate Court Judges, Council of Municipal Court Judges, Council of State Court Judges, Victims of Domestic

Violence, etc. Then within the AOC project there are 39 different activities: Director's Office, Administration, Finance, Court Services, Judicial Liaison, General Counsel, etc.

As you can see from the example above, the AOC is budgeting based on what services the organization provides.

This allows for better control of the budget by individual managers and allows for a clear picture on the funds expended for certain operations. Each of these activities will have performance measures that can be tracked to ensure the success of the activity.

FY 2006 General Appropriations

<i>Supreme Court</i>	7,647,980
<i>Court of Appeals</i>	12,537,586
<i>Superior Courts</i>	51,488,656
Council of Superior Court Clerks	144,925
Council of Superior Court Judges	800,000
Judicial Administrative Districts	2,253,718
Drug Courts	1,000,000
Superior Court Judges	47,290,013
<i>Prosecuting Attorneys</i>	43,925,448
District Attorneys	39,495,618
Prosecuting Attorneys' Council	4,429,830
<i>Juvenile Courts</i>	6,233,940
Council of Juvenile Court Judges	1,519,101
Grants to Counties	4,714,839
<i>Judicial Council</i>	13,176,292
Georgia Office of Dispute Resolution	362,494
ICJE	1,126,382
Judicial Council	10,629,370
JQC	258,046
Resource Center	800,000
<i>Georgia Public Defender Standards Council</i>	42,079,060
Public Defender Standards Council	10,607,210
Public Defenders	31,471,850
TOTALS FOR THE JUDICIAL BRANCH	\$177,088,962

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SUSTAIN OVER CITRIX (SOC): Case Management at no Expense

Case Management Over the Internet

By: Kriste Pope and Byron Branch, AOC Information Technology

The best case management system available to any court — SUSTAIN Justice Edition® — has been around in Georgia since 1993 and its biggest weakness is that most courts do not realize that the Administrative Office of the Courts (AOC) provides this case management software to any court — at no cost. SUSTAIN JE® is installed locally in 107 courts (30 Superior, 16 State, 20 Juvenile, 15 Magistrate, 12 Probate, 4 Municipals, 3 District Attorney's, 5 Solicitor-Generals, and 1 Recorders' Court). There are currently 14 courts pending local installation of the SUSTAIN JE® software.

Last year with the signing of HB1EX, it became necessary to re-evaluate the Court Information System (CIS) products that were developed in-house for Probate, Magistrate, and Traffic Courts, as well as adjust the accounting features at existing local sites. The CIS products were simple programs for simple times. In order to meet the demands of today's comprehensive fine and fee laws, the AOC turned to an industry standard computer model that has been used by other State agencies for several years. Citrix® allows powerful servers to be purchased and maintained at a central location yet the software that runs on those servers is available to any Court with an Internet connection. SUSTAIN® over Citrix® is a more comprehensive program to address the comprehensive needs of the modern court in Georgia.

Citrix also addresses a very serious situation that exists in many of the Courts in Georgia. Funding restraints prevent these Courts from running their choice of software at its full potential, thus, the birth of SUSTAIN® over Citrix® (SOC). By using one of the AOC's five (5) Citrix servers, courts only need a high-speed Internet connection, an average speed computer and a laser printer to take full advantage of the same software package used by courts with local area net-

works (ex. Douglas, Floyd counties).

A team consisting of Byron Branch, Deborah Gunn, Richard Denney and Kriste Pope with the AOC IT Division were charged with the task of re-configuring SUSTAIN® to address HB1EX as well as replace the current CIS products. SUSTAIN® has been modified to meet the requirements of SB50 (electronic transmission of criminal dispositions to GCIC), SB176 (electronic transmission of civil filings and dispositions to GSCCCA), and HB1EX (partial payments and priority of fees and fines).

The team worked on this project for approximately six months and walked away with a product that could not only completely address HB1EX, but also give the court a complete, comprehensive case management system. SUSTAIN® offers a complete accounting package so clerks can receipt fines and fees, collect restitution, print checks in batch, reconcile bank statements and soon

- print invoices to attorneys and volume filers. Currently 1 Juvenile Circuit, 12 Magistrate, 8 Probate, and 9 Municipal Courts are using SOC in their court. There are 27 pending sites that will "go live" on SOC after their database is setup and they have completed training.

When multiple courts in the same jurisdiction share SUSTAIN®, they can take advantage of the built-in data exchange feature. This feature enables data to be exchanged between multiple databases, thereby eliminating redundant data entry (ex. Solicitor sends data to State Court database and State Court sends disposition and sentencing data back to Solicitor database).

Any court that is interested in taking advantage of the state-provided software, should submit a request by contacting the Client Service Center at 1-800-298-8203.

State Accounting Office to Explore Consolidated Banking

By: Thomas Randall Dennis, CPA, CGFM, Chief Accounting Officer

The State Accounting Office (SAO) is developing the systems to facilitate the implementation of a consolidated banking model in response to the Commission for a New Georgia's recommendations on cash management for the State of Georgia. This model involves new functionality in PeopleSoft (the state's accounting system) and business process changes in the SAO, Office of Treasury and Fiscal Services, and at all State Agencies.

The Administrative Office of the Courts (AOC) has been identified by the SAO as a strategic agency in order to identify the range of banking and cash management business process. AOC Chief Accounting Officer,

Randy Dennis, will participate with the SAO and their consultants during the analysis phase of this project. The analysis phase will begin the week of October 24th with the following actions considered:

- Develop and implement cash management policies that begin bank account consolidation.
- Leverage PeopleSoft functionality to streamline the banking processes, bank information reporting, reconciliation, and cash management.

Hopefully these efforts, as well as many others, will assist in achieving the Governor's vision of "Best Managed State".

Georgia Judicial E-filing and Data Exchange Project Update

By: Rex McElrath

Appellate:

Supreme Court: A production implementation is in place for the Supreme Court. The system allows for appellate transcript filings from trial courts. Test filings into the system have been received from the 11th Federal Trial Court, Fulton County, Douglas County, and Butts County. The system was initially built in response to a need for a more efficient way to receive the many hundreds of pages of trial transcripts associated with death penalty appeal cases, but the system can receive many other types of appeals. The filing process has been tested from remote sites as far away as Utah and California and sending and response times remained very fast despite the large geographic distance from the court. Large trial transcripts have been sent over a dial up speed connection in a matter of seconds. The project is also listed on the Office of Justice Program's Website as an organization using the GJXDM.

Superior Courts:

Bibb County: The Bibb County Superior Court agreed to take part in the project to help handle the volume of child support cases that are received into the court and on October 14th received a gemstone server with the e-filing and data exchange system. Bibb County is the 4th largest county in Georgia with a population of over 190,000 persons with second highest rates of child support related cases in Georgia. New child support related filings comprise 54% of all new civil filings in Bibb County Superior

Court. Also a forward thinking court, Chief Judge Wilcox and Chief Superior Court Clerk Diane Brannen have been very receptive to the project as well as have Child Support Enforcement Manager Don Mince who has helped push for an automation of the child support enforcement processes. Bibb County Superior Court has also signed a court order allowing the use of digital signatures in the court.

Walker County: The Walker County Superior Court will be receiving a gemstone system with the e-filing and data exchange system in November. Chief Judge Wood and District Court Administrator Jody Overcash have paved the way for this court to receive the system and have even built a relationship with the Walker County Sheriff's office to allow for integration of the system with the Sheriff's office to save the Office of Child Support Enforcement, the court, and the sheriff's office time, money, and man hours.

Washington County: A Gemstone is installed and functional in Washington County Superior Court. The application is functional and is ready to receive filings from the Office of Child Support Enforcement. This court was chosen due to the progressiveness of Superior Court Clerk Joy Connor and Chief Judge McMillan. It is a technologically advanced court that will be a great initial site for this project in a Superior Court. The Washington County

Superior Court will be receiving child support related filing from the Office of Child Support Enforcement during the initial implementation phase. The project is also listed on the Office of Justice Program's Website as an organization using the GJXDM.

Summary:

The project's product is installed in two Superior Courts and the Supreme Court. We have seven different fully XML document types that can be filed in and this number will be growing quickly as expanding document processing capability is a priority for the next update to the system. The project's current product has been demonstrated for and very well received by seven states across the US, is listed on the Office of Justice Programs website, and has received attention from the National Center for State Courts. We are working on a module to allow Judge's to digitally sign court orders, a sole practitioner/pro se filing module, and fully XML documents to allow richer workflow automation from key words and sections of legal documents. The fully XML documents can help save time and expense greatly with courts that use forms heavily, such as in the probate courts, by allowing smaller document size, higher security documents, less reliance on paper, and more robust full text searching and document retrieval

TIPS: Traffic Information Processing System

By: Kelly McQueen, System Placement and Program Planner

The deadline to change from paper to electronic citation transmission has passed - July 1, 2005

Federal law mandates that all driving convictions must be reported to DMVS within 30 days at present and within 10 days by 2008. If not, Georgia risks losing millions of dollars in federal highway funds.

In an effort to help Georgia courts come into compliance with Federal and State laws

regarding electronic citation transmission, the AOC information technology staff developed a web-based program called TIPS. This program was funded by the Governor's Office of Highway Safety and was completed in close collaboration with DDS. TIPS allows Georgia courts to file traffic citations in the electronic format required by the Georgia Department of Driver's Services (DDS) at NO COST to the court.

TIPS not only correctly processes the cita-

tion, it also calculates and manages the fees that must be paid to different funds by each county, as mandated by state law and local ordinances. The web page that appears on the screen is modeled after the paper citation, for ease of use by the court clerk. The AOC offers training courses and on-site assistance as requested.

For information about TIPS, contact Kelly McQueen at mcqueenk@gaooc.us or (404) 463-5420.

Behind the Badge Temporarily Asleep or Permanently Comatose?

Taken from: Voices4Victims

There is comfort in knowing that no matter how invasive a surgery might be, we can depend on anesthesia to keep us from actually feeling any pain. Most people have experienced or we know someone who has awoken from surgery without any sensation of pain or memory of what took place. Anesthesia prevents us from the sometimes grueling details that are involved in a surgical procedure. Surgery, while always a serious matter, is certainly less stressful with the advent of the now common place Anesthesiologist. But, as always, just when things seem to be in a perfect world, something happens to destroy that security. Such is the case with anesthesia. In something known as anesthesia awareness, we now have reports of people waking up during surgery after having been anesthetized. According to a recent article in U.S. News & World Report (8-5-05), patients are aware of what is going on and can actually hear conversation, but based on the fact that they are drugged, they are unable to speak or alert the medical personnel that they are far from being asleep. In other words, they can feel the procedure, including the

sensation of pain, but can do nothing about it. As I read this article, I was reminded that this phenomenon is exactly what is affecting our country. We are in a state of anesthesia awareness.

There is so much going on to corroborate this theory. Think about it. This must be true or someone would do something about some of this mess that is so prevalent in our world. We know about it, we can feel the pain, but we are apparently unable to say or do anything about it. And based on this somewhat unconscious state, the surgeons in this case are those who intend to do our country harm. They continue to cut away the flesh of what our country has always stood for.

For example, our borders are as porous as any time in history. The evidence of this leaking levy is obvious all around us. We sit back and watch it as it crumbles our infrastructure. Everything from our schools, to our medical facilities, to our national security. The unchallenged illegal aliens walk, run, jog and swim toward us as we watch from the sideline. We see it, but we can not seem to do anything about it.

We continue to sit by and watch an entire culture of children who have bought into this thug type of

mentality that has apparently been blessed by the national media as not being harmful. We see it but we just can not seem to utter the words of disapproval.

We treat offenders in high profile criminal cases as celebrities rather than what they really are; criminals. This worship of those who are the most undeserving of all, leads others to believe that the crimes really are not all that bad. But, in the process we forget all about the actual victim. Well, we do not really forget, but we just can not seem to muster up the words to come to their defense.

The examples go on and on. We know that something is just not right. We can feel the cutting as it separates the flesh of right and wrong. We can see the results of a procedure that has gone terribly wrong. However, we just lie there quietly without the ability to do anything. Something is bad wrong here! We are either in a state of anesthesia awareness or we simply just do not give a rip anymore. I pray it is not the later. Oh well, Nurse, more drugs please, I am starting to have some feeling come back. We would not want that?? Would we?

System Overload

By: Stan L. Hall
Chief Investigator, Gwinnett County
District Attorney Office

I, as well as many of you, have watched with much interest the recent missing person case in Aruba involving Natalee Holloway. The case has been a tragic event that continues to take turns that make this case quite confusing as to what really may have happened. Somewhere during my observation of this case, I also began to become interested in the Aruban judicial system and how it differs from the one that I have spent the last 26 years in as an active participant. For those of us who are not familiar with the Dutch system, it can be confusing, frustrating and somewhat baffling as to why they may or may not do certain things. I have heard many negative comments about how the Arubans should have done this or done that and that if the case was in the American system, it would have probably been solved by now. Granted, most of the comments about the case, as well as the Aruban system, have come from television pundits who have very little knowledge about the American system in a practical sense, much less the Dutch system at all. But, despite this they are sure that the case is being handled by a bunch of Caribbean buffoons in swimming trunk shorts and flip flops.

The fact that the Dutch system is different does not necessarily mean that it is inferior. It means that it is different. But, rather than look at the differences, lets look at the comparisons. It has been alleged that one of the suspects might get preferential treatment because his father is an Aruban Judicial officer. Now, as you well know, no one in our country would ever get preferential treat-

ment. Everyone is treated the same, despite their backgrounds, their income levels or their celebrity status. I think that the only comment that I would add to that is Hello, does anyone remember the Michael Jackson case or the countless other celebrity/professional athlete cases where preferential treatment was just a tad obvious?

Critics are quick to point out that the investigation has been flubbed due to bad police work involving searches, questioning, investigative techniques, and etc. Maybe so. I, like everyone else, have no idea of the facts of the police investigation. Time will tell whether it was flubbed or not. Surely, in our country, we have never had cases that were tarnished based on inaccurate information given to police. American informants and those involved in criminal enterprise are always such reliable sources.

The police in Aruba are accused of not giving out enough information. The Arubans do seem to be tight lipped about the biggest criminal investigation that has ever occurred on their island. One that may have long term ramifications as to their countrys economy. We are different in this country about information. We have everyone and their brother who are willing to talk about our cases. Knowledge of the case is not necessarily required, and the fact that this information, or misinformation, may harm the credibility of the case plays second fiddle to a good news break.

The Arubans are accused of not putting enough pressure on the suspects to make them talk. Ever heard of Miranda? In our country, once this word is uttered, there is not a law on the books that can make anyone accused of a crime say another word. The old line...We have ways to make

you talk is just as illegal in Aruba as it is in our country. Government cannot legally make anyone confess to a crime even if the evidence is glaring. That is why we have trials.

As Americans, we are quick to criticize anything that seems a little different than the way we do things. We are this way based on the fact that we believe that we simply are the best at what we do, what ever it might be. Even though I can not speak for everything we do as Americans, I can speak for our criminal justice and judicial system and I think that we do better than anyone else in the world. But, our system is not without flaws. And as long as we are humans performing this task, it will never be perfect. So, if we admit that our system is imperfect, we must be careful about what we say about other systems.

Basically, if this case had occurred on American soil and the victim was Aruban, how much do you think that our law enforcement and judicial officials would listen to Aruban demands about how the case should be worked? How long would we listen to them say, Well if we were working it, it would have been done this way or that way. The answer to both of those questions is not very long. We would tell them or anyone else who tried to tell us how to do our jobs to take a hike. Amazingly they have not as of yet told us to do the same. If we are not very careful, they might! By criticizing, demanding and publicly chastising the very system that has jurisdiction in this case, the search for a missing girl may get lost in a literal sea known as politics, pride and prejudice.

Council Vacancies

- Judge Hammond Law, III, Representative for the Ninth District on the Council of Municipal Court Judges Executive Committee has relinquished his position. Judge Law was reelected at the 2006 Annual Business meeting. The successor, from the ninth district, shall serve the remainder of his one year term.

- Additionally, Judge Charles Merritt, Jr., one of the five voting members of the Georgia Municipal Courts Training Council has relinquished his position. His two year term began with his election at the 2004 summer annual meeting.

In accordance with OCGA § 36-32-22, vacancies on the Training Council shall be filled in the same manner as the original appointment and successors shall serve the remainder of the unexpired term.

These vacancies will be filled by election at the next annual meeting of the Council of Municipal Court Judges to be held in Atlanta, February 2006 in conjunction with the Legislative Breakfast. If anyone wishes to be considered for these positions, or has nominations, please advise me as soon as possible.

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