



MUNICIPAL COURT Judges Bulletin

Fall 2006 • The Georgia Council of Municipal Court Judges Newsletter • Vol. 7, No. 3

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President's Corner

Michael P. Cielinski
Recorder's Court of
Columbus-Muscogee County

At the Executive Committee meeting held October 13th I appointed a Technology Committee to further our technology strategic planning initiative, which was developed with assistance from the Georgia Courts Automation Commission (GCAC). The committee is scheduled to meet December 1, 2006 at the AOC Macon office to develop a Business Plan for the Municipal Courts.

Looking forward, I am hopeful we will know something concrete as to whether we will get a seat on the Judicial Council. Justice Hines has assisted us with obtaining a meeting with Chief Justice Sears. We have a tentative date of December 4, 2006, in Atlanta to discuss the business of the Council of Municipal Court Judges. The Judicial Council is scheduled to meet the following day. I must make a report to the Judicial Council at this meeting on some of our pursuits. We need to lead with a business plan for our class of courts, Uniform Rules for our class of courts, the municipal court clerks certification, along with many other

issues. I urge all of you to contact your Superior Court Judges, and every other judge who might lend us a hand. Justice Hines seems to be the prime mover as to our Council with the Supreme Court and other judges. What ever happens, we owe him and many others a word of thanks!

Our next Council meeting is scheduled for February 1, 2007, in Atlanta. This is the meeting in conjunction with the annual legislative breakfast. We need as many of you as possible to attend, especially the Executive Council and District Representatives. At the last Council meeting held in Macon there was not a quorum present. Thus, we who meet there literally accomplished nothing. We could not vote on anything. To those who made the trip, I can only say, thank you! If we are unable to transact any business at our meetings, how do you think we will be looked upon by the Judicial Council? Please make it to the meeting in Atlanta on February 1, 2007. It is imperative we have a quorum. We are striving to make this Council beneficial to you and it can only happen with everyone's participation.

See you in January!

*Please
Recycle*



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President
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President-Elect
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Treasurer
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770-478-1114/F 471-1091

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Immediate Past President
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District 1
Judge Tammy Stokes
Recorder's Court of Chatham County
Chatham County Courthouse
133 Montgomery Street, Rm. 104
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912-652-7429/F 652-7412

Judge Willie Titus Yancey, II
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2821 River Drive
Thunderbolt, GA 31404
912-629-4669/F 629-4668

District 2
Judge Willie C. Weaver, Sr.
Albany
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PO Box 646
Albany, GA 31702-0646
229-438-9455/F 438-0674

Judge Henry E. Williams
Lumpkin
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PO Box 71747
Albany, GA 31708-1747
229-888-2600/F 888-3330

District 3
Judge S.E. Moody, III
Montezuma
PO Box 220
Perry, GA 31069
478-988-3114/F 988-0063

position vacant

District 4
Judge Angela T. Butts
Recorder's Court of DeKalb County
3630 Camp Circle
Decatur, GA 30032-1394
404-294-2635/F 294-2148

Judge Warren W. Hoffman
Stone Mountain
922 Main Street
Stone Mountain, GA 30083
404-377-9277/F 377-3006

District 5
Judge Elaine Lynn Carlisle
Atlanta
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Atlanta, GA 30303
404-954-6794/F 658-6994

Judge Calvin S. Graves
Atlanta
150 Garnett Street, SW
Atlanta, GA 30303
404-658-7049/F 658-6586

District 6
Judge John Clayton Davis
Morrow
2670 Emerald Drive
Jonesboro, GA 30236
770-715-5912/F 320-8930

Judge David J. Turner, Jr.
Manchester
PO Drawer 450
Manchester, GA 31816-0450
706-846-8427/F 846-5241

District 7
Judge Robert L. Whatley
Austell
3959 Janet Street
Lithia Springs, GA 30122
770-941-5833

Judge Diane M. Busch
Marietta
800 Kennesaw Ave., NW, Suite 400
Marietta, GA 30060
770-424-4343/F 424-1892

District 8
Judge Thomas C. Bobbitt, III
Jeffersonville
101 N. Jefferson Street, C55
PO Box 1676
Dublin, GA 31040-1676
478-272-5010/F 275-0035

Judge Charles W. Merritt, Jr.
Madison
155 S. Main Street
Madison, GA 30650
706-342-9668/F 342-9843

District 9
Judge Kenneth E. Wickham
Norcross
65 Lawrenceville Street
Norcross, GA 30071
770-714-6894

Judge William F. Brogdon
Lawrenceville
PO Box 390997
Snellville, GA 30039
770-978-1181/F 978-1145

District 10
Judge Chip Hardin
Tignall
105 Andrew Drive
Washington, GA 30673
706-678-4404/F 678-4404

Judge C. David Strickland
Porterdale
PO Box 70
Covington, GA 30015-0070
770-786-5460/F 786-5499

Minutes of the Summer Meeting

June 29, 2006 • Hyatt Regency Savannah

The annual meeting of the Georgia Council of Municipal Court Judges was held at the Hyatt Regency in Savannah on June 29 2006. Acting president Michael Cielinski called the meeting to order at 11:15 a.m.

The first order of business was the consideration of the minutes of the business meeting held on February 23, 2006. Upon motion by Judge Ward, the minutes were approved as submitted.

Judge Cielinski then called for the financial reports. Chris Patterson gave the report with respect to the state appropriated funds. He noted that, as of June 15, 2006, \$15,503.91 of the funds appropriated for this fiscal year had been spent leaving a balance of \$4030.09. Of this amount he had encumbered \$2,500.00 for printing and the remaining balance was to be encumbered to the ICJE to be used for costs associated with the benchbook.

Judge Ward gave the private funds report. The balance in the private funds account, as of May 31, 2006, was \$50,036.80.

The next item on the agenda was the election of officers, training council members and representatives to the executive council for the coming year. Judge Pierce submitted a slate and asked for nominations from the floor. Hearing none, he moved that nominations be closed. This motion passed and he then moved that the slate of nominations be approved. This motion also passed. The only contested position being that of vice president, a motion was made that the remainder of the slate be accepted by acclamation. This motion passed unanimously and a

vote was taken on the election of the vice president.

The following judges were elected as officers to the Executive Committee:

President Elect: Bill Clifton
Vice President: John A. Roberts
Secretary: Kathryn Gerhardt
Treasurer: Charles A. Gravitt

Training Council representatives elected were as follows:

Thomas C. Bobbitt, III
Dennis T. Still
Tammy Cox Stokes
C. David Mecklin

Judges Bobbitt, Still and Stokes were elected to two-year terms and Judge Mecklin was elected to fill an unexpired term of one year.

The following were elected as district representatives to the Executive Committee:

District 1
Tammy Cox Stokes
Willie T. Yancey, II

District 2
Willie C. Weaver, Sr.
Henry E. Williams

District 3
S.E. Moody, III
David M. Pierce

District 4
Angela T. Butts
Warren W. Hoffman

District 5
Elaine L. Carlisle
Calvin S. Graves

District 6
J. Clayton Davis
David J. Turner, Jr.

District 7
Diane M. Busch
Robert L. Whatley

District 8
Thomas C. Bobbitt, III
Charles W. Merritt, Jr.

District 9
William F. Brogdon
Kenneth E. Wickham

District 10
Chip Hardin
C. David Strickland

Judge Cielinski reported from the Executive Committee that a strategic planning meeting had been scheduled for August in Macon. Anyone interested in attending should let him know as soon as possible.

Brief committee reports were given as follows:

Benchbook: Judge Ashman submitted a written report advising that the 2006 update to the Benchbook should come out in August. Judge Cielinski noted that next year's Benchbook would be a complete revision as opposed to a supplement.

continued on page 4

Minutes cont.

Golf Tournament: Judge Cielinski reported for Judge Adams that the golf tournament would be held at 1:00 this afternoon at the Harbor Club. Anyone interested in playing should sign up at the registration table.

Legislative: Judge Barrett announced a complete legislative report was printed in the municipal judges Bulletin.

Social and Vendor: Judge Brogdon stated that there were not too many vendors at this year's seminar but that he was already working to secure more for next year. He announced that one of the vendors, Syscon, Inc. would be hosting a social at the Hyatt that evening.

Uniform Rules: Judge Weaver has agreed to chair this committee, though he was not present at the meeting, he is requesting volunteers to assist him in finalizing the draft of uniform rules that could be presented to the membership for comment. A lot of work remains to be done and it is too much of a task for him to complete without help.

Next Judge Ward introduced Ashley Garner, Staff Director of the County and Municipal Probation Advisory Council (CMPAC), who addressed the meeting. She informed those present that recently enacted legislation brought all misdemeanor probation services in the state, including those run by city and county governments, under the regulatory authority of CMPAC. The Council is now composed of eleven members of whom five are judges, five are appointees of the governor

and one is a designee of the Commissioner of Corrections. The new law brings many more services under the auspices of CMPAC and it is working through the process of amending its rules, scheduling and planning training sessions for cities and counties on its rules and regulations to make sure they are in compliance with the requirements of state law.

Judge Bobbitt then reported with respect to the Training Council. He noted that fewer judges are registering for seminars and this has impacted the training budget. He asked that all those present check the list of judges at the registration desk to make sure the information about the judges and the cities they represent is correct. He also mentioned that the Training Council is responsible for the mandatory training for clerks required now by state law and the TC is presently devising courses to provide this training. In addition to clerks training the Council will also address training on pretrial diversion. In final, he requested feedback on the attendance sheets as to where judges would like the traffic court seminar to be held next year.

While he had the floor, Judge Bobbitt went on to report that he had attended the Georgia Municipal Association (GMA) convention the previous weekend. He pointed out that the GMA has taken positions on several issues of interest to Municipal Courts. For example, the GMA is opposed to decriminalization of traffic offenses and also favors a single fine add-on, as opposed to the present system.

With respect to the Georgia Courts Automation Commission (GCAC), Judge Strickland advised

that he was submitting a written report (attached). The report states that the strategic planning sessions had been productive and thanked the participants. Drafts of both a Data Definitions Summary Report and a Strategic Plan for Information Technology for Municipal Courts had been produced and were available for comment. Comments can be made until June 30, 2006, as after that date, the consultant will prepare and publish the final document.

In final, Judge Barrett with respect to the Georgia Public Defenders Standards Council reported that SB503 passed and legislatively defines indigence. It does provide for a \$50.00 application fee and defines indigent, with respect to misdemeanors, as someone who earns less than 125% of the Federal poverty guidelines.

Under the heading of New Business, Judge Cielinski advised that proposed rules for maintenance of evidence have been promulgated. As a minimum, these rules will have to be adopted by all classes of courts, although courts are being encouraged to adopt more rigorous uniform rules. The rules will be forwarded to the Uniform Rules Committee for review.

Next, Judge Cielinski then presented two awards for judicial leadership in education given on behalf of the Training Council and ICJE. The two recipients were Judge Maurice Hilliard and Judge Thomas Bobbitt. Both judges were required to pose for a photo op with Judge Cielinski.

As the final order of business, Judge Cielinski announced that the next Executive Committee meeting

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Financial Report

JULY 1, 1999 THROUGH MAY 31, 2006

TOTAL MUNICIPAL BANK DEPOSIT	\$60,808.99
Dues, Golf, Coffee Mugs Sales and Judge Association Dues	
REFUNDED AMOUNT	- \$210.00
Seven \$30.00 checks for overpayment of dues.1001,1002,1004,1005,1006 1007,1008. Check #1016 Voided.	
TOTAL COUNCIL DEPOSIT	\$ 60,598.99
EXPENSES	
Bank Charges checks and deposit slips	-\$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 Reception Deposit (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
Legislative Breakfast (ck# 2001 dated 02-18-06)	-\$892.50
Legislative Breakfast (ck# 2000 dated 02-23-06)	-\$157.73
<u>PETTY CASH</u>	-\$50.00
<u>PETTY CASH PAYMENT</u>	
Long Distance Calls	\$15.50
Office Supplies	\$34.50
TOTAL EXPENSES	-\$10,562.19
BANK BALANCE AS OF MAY 31,2006	\$50,036.80
BANK BALANCE AT LAST REPORT MARCH 31, 2005	\$50,006.80

Traffic Law Update

By: MICKEY ROBERTS

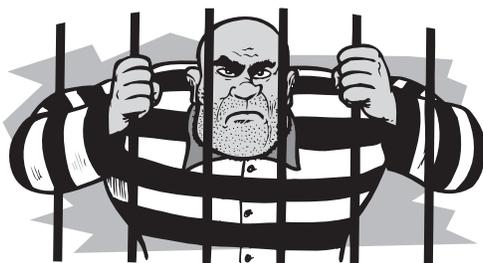
On October 6, 2006, in *Dozier v. Jackson*, A06A1437, The Court of Appeals finds that under 40-5-63(a), a conviction for DUI and for DUI/Child Endangerment (40-6-391(1)) are 2 separate convictions for purposes of driver's license suspension, even if they happened in the same incident. The DDS has been interpreting the law this way for a while, and effective July, 2006, 40-5-63(a) now says, "each charge for which a conviction was obtained shall be treated as a separate transaction for the purpose of imposing a license suspension, even if said convictions arise from a single incident."

Thus, a person who is charged with a DUI, and has 2 children in the car, and then is convicted of DUI and the 2 DUI/child endangerment charges will automatically become a habitual violator and lose their license for 5 years. Is that the intent of this case?

"UNDER THE LIMIT, STILL UNDER ARREST"

In Georgia, it is illegal for a person to have a blood alcohol concentration of over .08 grams within 3 hours of driving a moving vehicle. Also, the standardized field evaluations on the side of the road (HGN, One leg stand, Walk and turn) are designed to show the officer that a person's blood alcohol level may be above a .08. thus, the average citizen should assume that if their blood alcohol level is below a .08, they are legally driving. Not so.

Examples: There are some cases pending in Gwinnett County now; in one case, a person was stopped for speeding on I-85; she registered a .07 on the State's computer; will the State dismiss the charges? Not likely. Is there any evidence she was "legally drunk?" Not according to the possible defenses in that particular case.



The other case: A fellow is on I-85 southbound when an officer stops him for "swerving into my lane." All field tests are passed; client blows 3 times into portable breath test on the road, and registers as ".07." The officer did not let him go and the prosecutor has not dropped the charges at this time.

A NEW CHALLENGE TO THE INTOX:

A Cherokee County Magistrate Judge filling in for a State Court Judge granted a defendant's Motion for "Full Information" pursuant to OCGA § 40-6-392. Specifically, the defense is requesting the source code for CMI's Intoxilyzer 5000. The Judge has indicated that he will grant the State's interlocutory appeal making this Georgia's test case on the matter. The same litigation has already taken place in Florida and it ended with the legislature enacting a

law that limited the information the defense is entitled to. Check back for more information.

2006 RESULTS (AS of 10/1/06)

THE MICKEY ROBERTS 4 SIMPLE RULES IF A CITIZEN IS STOPPED BY POLICE:

1. DON'T ADMIT DRINKING (OR ANYTHING ELSE)
2. DON'T DO ANYTHING ON SIDE OF ROAD
3. DO TAKE BREATH TEST IF YOU'VE REALLY HAD 2 DRINKS
4. DON'T TAKE TEST IF MORE THAN 2 DRINKS*

* Refusing to take the State test (at jail or hospital) could result in losing your license for a full year; the only way of getting the license back earlier is to win the DUI; on the other hand, if the officer does not try to suspend the license because of a refusal, the State does not have a blood alcohol level to use against you!

As always, my practice is dedicated exclusively to aggressive defense of those accused of DUI and serious traffic offenses. EMAIL: mickey@mrgadui.com. I welcome any response from fellow Defense lawyers and those that find themselves working for the prosecution.

Mickey Roberts, Esq.
6340 Sugarloaf Pkwy., Suite 200
Duluth, GA 30097
Phone: 770-923-4948

The Curious Equity Powers of Municipal Courts in Georgia

By: Judge Robert Whatley

All judges and lawyers know the basic jurisdiction of Municipal Courts. Traffic, trespass, underage drinking, marijuana, ordinance violation, shoplifting, D.U.I., and license matters are just few. And realize the Equity powers that are reserved to the Superior Courts in most instances. It has even been ruled recently that Magistrate Courts cannot order one to correct and re-mediate a violation. For example order, order a sewer fixed in 30 days.

But few realize that there is strong wording in a certain statute involving the abatement of nuisances that include words such as “order”, “injunctions”, “demolish”, “close”, “repair” and otherwise control property that is unfit, a haven for drug activities and sex, is a fire hazard, improperly ventilated, dilapidated, and numberless other “calamities”; such power is conferred upon such county municipality to exercise its police power to repair, close, or demolish the aforesaid dwellings, buildings, or structures in the manner provided in Code sections 41-2-8 through 41-2-17. The law states that the Municipal Court shall have

authority within the city limits “unless provided by local law”. It is remarkable that a term from equity is used: irreparable damage and permanent injunction.

The manner of filing a petition, service, liens, costs, rule of evidence, the entering of judgment, partakes of a civil action. However, one part of the statute belies any provision of the Civil Practice Act: “The trial may be had upon affidavits, or either party may demand the production and oral examination of witnesses”. It is unclear if this is an in-court witness. It is provided ironically that the nuisance shall “be triable as all other cases”. Yet it adds elements such as the “reputation” of the nuisance shall be admissible. Thus there seems to be a mix and match of the Civil Practice Act and 41-3-5.

On having usually dealt with traffic and a few delegated misdemeanors may suddenly find himself or herself uncomfortable with a civil action in Municipal Court. The definition of “nuisance” in 41-1-1 is so broad that one may wonder what all it could embrace in addition to the examples above:

A nuisance is anything that causes hurt, inconvenience, or damage to another and the fact that the act done may be lawful shall not keep it from being a nuisance. The inconvenience complained of shall not be fanciful, or such as would effect only one of fanciful, or such as would effect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable man.

What conduct would be “inimical to the welfare of such residents of the county or municipality”? It seems almost anything. Such as zoning, in 41-1-7, which governs non-agricultural land from extending into agricultural areas. One must be aware of local enabling acts, local charters, local conflicting ordinances and the fact that the municipality must have 15,000 people.

This treatise has been concise because the many rules differ from a regular civil action. But if a petition for abatement of nuisance is filed, one must do a quick study of 41-1-1 et. Seq. to learn this intrusion into criminal jurisdiction of the Municipal Court. Maybe it is not an intrusion...the term “misdemeanor” appears one time in 41-1-6.

Minutes cont.

was scheduled for October 13, 2006, in Macon. The next Business meeting would be in Atlanta on February 1, 2007, in conjunction with the legislative breakfast.

Prior to closing the meeting, Judge Cielinski introduced a special guest, Justice Hines, and invited him to say a few words. Justice Hines first thanked all of the municipal court judges for their hard work and reminded them that their role is an

important one because the perception of justice for so many of the citizens of the State is formed in municipal courts. He then took the opportunity to address the question of allowing municipal courts to have a seat on the Judicial Council. He believes that municipal courts should have a seat and encouraged the Municipal Court Judges Council to take advantage of a more favorable climate to press the issue and expressed the opinion that

the most effective way to do so was by personal contact with other members of the Judicial Council and their respective legislators.

There being no further business, the meeting was adjourned.

Respectfully submitted,
Kathryn Gerhardt, Secretary

2007 Meeting Schedule

February Meeting

(Executive & Winter Business)

Legislative Breakfast/Winter Business Meeting

February 1, 2007

One Martin Luther King, Jr. Dr.

Sloppy Floyd Towers

Atlanta, GA 30334

7:30 am - 9:30 am Legislative Breakfast
(All Municipal Court Judges and the General
Assembly invited to attend)

9:30 am - 12:00 Council Winter Business Meeting

1:00 pm - 3:00 pm Municipal Judges
Training Council Meeting

April Meeting

Executive Committee Meeting - April 20, 2007

Administrative Office of the Courts Macon Office

110 Holiday North Drive, Suite B

Macon, Georgia 31210

June Meeting

in conjunction with the Traffic Seminar

(Executive Committee and Summer Business)

June 27- 29, 2007

Hyatt Regency Savannah

Savannah, Georgia

Valdosta Municipal Judge Sworn-in



On September 14,
2006, Judge Vernita
Lee Bender was
sworn-in as judge for
the City of Valdosta.

She was sworn in by
Judge H. Arthur
McLane, Superior
Court, Southern
Judicial Circuit.



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 subscribed, 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!

News from the County & Municipal Probation Advisory Council

By Lisa Durden, Former Asst. Director for Regulatory Services

NEW LEGISLATION

Senate Bill 44, which brings all city and county probation systems under the regulatory authority of the County and Municipal Probation Advisory Council (CMPAC), was signed into law by Governor Sonny Perdue in May. Since the signing of this important piece of legislation, the Council has been working diligently to prepare for the July 1, 2006 effective date and subsequent report to the Legislature in January 2007. This Council previously provided oversight to only private probation providers in Georgia. With the incorporation of city and county probation systems, the umbrella of the Council was greatly expanded.

NEW RULES

On July 12, 2006, the Council met at the Georgia Public Safety Training Center in Forsyth, Georgia, and adopted necessary Council rules amendments incorporating the requirements found within SB 44 as well as the adoption of certain Council rules which will improve the quality of the oversight of all misdemeanor probation systems in Georgia. By working with GMA and ACCG, Staff identified and mailed out over 700 notices regarding the new law and requirements. Additionally, CMPAC Staff Director Ashley

Garner and AOC staffer Pamela Dixon have been busy identifying and locating those governmental entities providing misdemeanor probation services in Georgia.

ORIENTATION

The 2007 registration period is from October 1, 2006, through December 31, 2006. During this time, ALL governmental entities providing probation supervision must register with the Council. This registration period coincides with the annual registration renewal period for private providers. On September 20th and 21st, staff will conduct Orientation sessions for the governmental entities which will cover the registration process, Council rules, and reporting forms. These Orientation sessions will be held at the AOC Macon office. Private providers that are currently registered with the Council will not need to participate in these sessions. A web-cast is being scheduled during the month of October and all misdemeanor providers will be invited to participate.

LEADERSHIP RECOGNIZED

On August 17, 2006, during the quarterly CMPAC meeting held at Jekyll Island, Georgia, Judge Jim Burton was honored for of his outstanding leadership

during the past year as Chairperson of the Council. The Council also recognized Judge Neal Dettmering for his work during the past year as Vice-Chairperson. Both Judge Burton and Judge Dettmering made significant contributions in preparing the Council for the upcoming changes due to the changes in the statute. The Council elected Sheriff Steve Cronic of Hall County as Chairperson and Mr. Michael Nail of the Department of Corrections as Vice-Chairperson for the 2006-07 year.

Information about the Orientation sessions and the Council rules may be found at www.georgiacourts.org under Councils / Probation Advisory Council, or by contacting Ashley Garner at the AOC at 478-471-5778.

Board of Court Reporting Rules Revisions

By Lisa Durden, Former Asst. Director for Regulatory Services

Several amendments have been made to the Board of Court Reporting rules. Earlier this year, the Board voted to recommend these revisions to the Judicial Council of Georgia, and the Judicial Council approved these revisions at its meeting on August 29, 2006. The revisions are to the Rules and Regulations, Section A, Article 3.A. and Article 9.D. The revisions are as follows:

A. The Certification Process

1. **Written Exam.** A written exam will be administered by the Board as part of the certification process. The written exam consists of objective questions on court reporting, spelling, grammar, and medical and legal terminology. The use of a dictionary or other reference materials will not be permitted during this written portion of the test. Once the written portion is passed with 80 percent accuracy, credit will be given for all future exams, unless an applicant's certificate has been revoked. Passing the written exam is a prerequisite to taking the Takedown and Transcription portion of the exam.

2. **Takedown and Transcription.** An applicant must pass each of three sections as follows: The dictation portion of the test exam will be given at speeds of 200 wpm for the Questions and

Answer section, 180 wpm for the Jury Charge section, and 160 wpm for the Literary section. For each section, there will be two five-minute dictations using different material for each. Applicant, however, will turn in only one transcript per section.

Each applicant shall take down this dictation in writing, voice, or other form of personal takedown. Voice writers and machine shorthand reporters must be completely inaudible from a distance of three feet, and will be tested for quietness.

The applicant will be allowed four hours to complete the transcription. The test packet sent to candidates by the Board prior to the exam will list the permitted types of equipment which may be used during the exam. A minimum passing grade on each section shall be 96 percent accuracy.

All sections of the dictation portion must be completed in the same method of takedown. If an applicant chooses to change methods, all sections previously passed must be retaken. Only one method may be used during any one testing period.

D. Sanctions for Not Meeting Training Requirements

3. **Notice of Suspension.** A

Notice of Suspension will be sent to any reporter who has not met the ten credit hour training requirement for the previous year. Effective January 1, 2007 a Notice of Suspension will be sent to any reporter who has not met the ten credit hour training requirement for the previous year by December 31st. Suspension is immediate, but individual requests for extensions of time will be considered on a case-by-case basis, according to Part I.D of the CRTC Rules.

The Board of Court Reporting Rules may be found at www.georgiacourts.org under Commissions and Projects / Board of Court Reporting. Paper copies of these revisions will not be mailed; however, if you would like to receive a paper copy, please contact:

Aquaria Smith, Program Manager
Board of Court Reporting
244 Washington St., S.W., Suite 300
Atlanta, Georgia 30334-5900
Phone: 404-651-8707
Email: smitha@gaaoc.us

Breaking Up is Hard to Do: Identifying Alimony

Federal Taxes Weekly Alert, 10/12/2006, Volume 52, No. 41

Recognizing that many of our Municipal Court judges are also in private practice, we thought the following would provide useful information.

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Divorcing spouses should determine whether they want payments to be characterized as alimony deductible by the payor and includable by the recipient-and structure payments accordingly. This Practice Alert (excerpted from a more extensive article in March 2006 issue of Practical Tax Strategies) examines the tax rules for determining whether payments constitute alimony.

In '84, and again in '86, the Code was amended to make the alimony rules more flexible, simpler, and less dependent on state law. The principal goal of these amendments was to provide a more equitable treatment of alimony without changing the fundamental intent of the alimony payment itself. This was accomplished by eliminating the requirement that alimony be paid in discharge of one's legal obligation to support someone (arising out of a marital or family relationship), and also, by removing the requirement that the alimony payment be periodic. Consequently, an understanding of the current rules for alimony is essential for advising clients or contending with the tax consequences of a divorce or separation.

Alimony for tax purposes. Code Sec. 71(b) was originally enacted to provide a uniform definition of alimony so that alimony payments could be distinguished from property settlements, which receive a much different tax treatment. Under this provision, a payment is considered "alimony" only when:

... It is paid in cash.

... The payment is received by (or on behalf of) a spouse under a divorce or separation instrument.

... The parties are not members of the same household at the time of payment.

... The payor spouse is not liable to continue making the payments after the death of the payee spouse.

... The payment otherwise qualifies as alimony and is not designated as non-alimony (Code Sec.71(b)(1) 1.

In addition to these requirements, excess front-loading of alimony payments is prohibited, and the payment cannot be fixed as child support either directly or indirectly. Both of these concepts are discussed below in more detail. A payment that meets all of the above requirements automatically qualifies as an alimony payment. There is no requirement, as under pre-1985 law, that the payment be periodic or that it be made in discharge of a legal obligation to support arising out of a marital or family relationship.

Only payments made under a divorce or separation instrument are deductible as alimony; voluntary payments are never considered as such. A divorce or separation instrument includes a written separation agreement, any type of written court order or decree, or any other order that requires one spouse to make payments

for the other spouse's support or maintenance (Code Sec. 71(b)(2)).

Voluntary payments include payments made before or after there is a legally enforceable payment obligation, payments made under oral agreements or orders, and payments that exceed amounts required by the divorce or separation instrument. A voluntary payment cannot be cured by making a separation retroactive to the date that earlier payments were made.

Payments do not qualify as alimony if the payor is required to continue making payments after the death of the payee spouse. Such a payment would more closely resemble a legal obligation related to a property settlement than alimony, because it would be payable to the estate or an heir of the decedent spouse. Although better if done, the support or divorce instrument does not have to state that payments will terminate on the death of the payee spouse if state law or circumstances would, in fact, terminate such payments on the payee spouse's death.

If a husband and wife are divorced or legally separated, a payment does not qualify as alimony if the spouses are members of the same household at the time the payment is made. A household shared by both spouses is not considered two separate households even if the spouses physically separate themselves under the same roof. However, the parties are not treated as members of the same household if one of the parties is preparing to depart from the household shortly and does, in fact, depart not more than one month after the date the payment is made.

If the spouses are not legally separated under a decree of divorce or sep-

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arate maintenance, payments made under a written separation agreement qualify as alimony even if the spouses are members of the same household when the payments are made. Under this rule, payments under a written agreement qualify as alimony even if the spouses continue to live in the same household until they receive a decree of divorce or legal separation.

Having now examined the requirements of Code Sec. 71(b), from a literal sense, the tax treatment of alimony may appear somewhat straightforward. However, many special rules and interpretations affect the appropriate application of these rules.

Third-party payments (indirect alimony). Payments to a third party (referred to as indirect alimony) may be deductible by the payor and includable in the income of the indirect beneficiary. Indirect alimony may include cash payments to a third party to provide a residence for a former spouse (e.g., rent, mortgage, utilities, etc.), insurance on the life of the payor spouse, medical cost payments, or other such expenses incurred by the payee spouse. Even though the payments are made directly to the third party, they are treated as if they were received by the spouse and then paid to the third party.

Specific rules have been developed over the years to determine whether indirect payments are alimony for tax purposes. The main focus of the rules remains whether the payee spouse receives an economic benefit by reason of the payor spouse's paying such expenses. A payment is deemed alimony if the payee spouse benefits economically by reason of the payment. If the payee does not benefit economically, a payment to a third party generally is not alimony.

Personal residences. Commonly, a taxpayer may be required to make the

mortgage payments on a residence that the former spouse is entitled to occupy, as well as pay the real estate taxes, insurance, and any other maintenance costs associated with the residence. If these payments otherwise meet the remaining requirements of Code Sec. 71 (described above), the payments are considered alimony if they are made for the benefit of the payee spouse.

Rental home or rent-free residence. Occasionally, a divorce or separation agreement permits the former spouse to occupy a residence owned by the other spouse rent-free. Any attempts by the owner-spouse to deduct the residence as alimony (fair market value or otherwise) will prove unsuccessful because no cash had been paid. On the other hand, the payment of rent to a third party for a residence occupied by a former spouse is deductible as alimony. This, of course, is provided that the taxpayer and not an alter ego such as the taxpayer's corporation) makes the payment.

Payment of legal expenses. Frequently in a divorce situation, one spouse becomes responsible for paying the legal expenses of the other, either by agreement or by decree. While the payment of another spouse's attorneys' fee is not generally deductible, if the requirements of Code Sec. 71 are satisfied, this payment can be treated as alimony. Taxpayers should be aware that a sizeable attorney's fee could trigger the recapture rules, which are discussed below.

Payments for child support. Payments for child support pursuant to a divorce or legal separation are neither income to the payee nor deductible by the payor (Code Sec. 71(c)). Where minor children are involved, one party generally has primary custody of the children. Distinguishing whether payments are

alimony or child support in such situations may be difficult, and the incentives are strong to label as alimony what is really support of children. Congress sought to prevent that, resulting in a tangled system of principles that require further scrutiny.

The test for having payments that serve as child support qualify as alimony has three parts:

... The payments cannot be labeled as child support.

... The size of the payments cannot change based on the happening of a contingency related to the child.

...The size of the payments cannot change based on something that is associated with the happening of a contingency related to a child.

The first requirement is fairly straightforward and is based on the terminology that is found in the statute. Payments can be characterized as child support even though they are for the support of an adult child. The second two requirements are a bit more complicated and require further discussion.

A contingency related to the child. What might otherwise be considered an alimony payment will be treated as child support to the extent it is subject to reduction on the occurrence of a specified contingency relating to the child. For example, a \$1,000 per month support payment that is paid to a former spouse that stops when their 15-year-old daughter gets a full-time job will be treated as child support. Other normal contingencies might include a child's marrying, dying, leaving home, leaving school, or reaching a certain income level.

An event associated with a contingency related to the child. The statutory language of Code Sec.71(c)(2)(13) could arguably be interpreted to mean

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that any reduction in alimony that might fall anywhere near 'a date of significance' that is related to a child could be enough to change the tax treatment from alimony to child support. Fortunately, however, the regulations break this standard into two tests, both of which can be identified with greater certainty. The first test is simple to explain and apply in practice. The second test seems to require a slide rule, a protractor, and a Ph.D. in mathematics in order to consider its application.

... Alimony cannot be reduced within six months of the 18th or 21st birthday of a child, or the local age of majority.
... The second test takes place only if there are at least two children and at least two reduction dates. The regulations state that payments will not be considered alimony where the amounts are to be reduced on two or more occasions that occur not more than one year before or after a different child of the payor spouse attains a certain age between the ages of 18 and 24, inclusive. The certain age referred to in the preceding sentence must be the same for each such child, but need not be a whole number of years.

When a reduction satisfies one or both of the tests above, there is a rebuttable presumption that the payment is child support to the extent the reduction coincides with the contingency related to the child. Rebutting the presumption requires a showing (either by the taxpayer or by IRS) that the date of the reduction is set independently of a contingency related to a child.

Front loading of alimony (recapture rules). To prevent payments from being deducted as alimony that are in fact disguised property settlements, special front-loading rules provide for the recapture of excess amounts that have been treated as alimony (Code

Sec. 71(f)). The recapture rule comes into play only when alimony payments are reduced or terminated during the first three years. Once a recapture condition is found to exist, excess alimony payments are recaptured in the payor's tax year beginning in the third post-separation year by including the excess in income that year. The payee, who previously included the payments in income as alimony, may deduct the recaptured amount from gross income in the payee's tax year beginning in the third post-separation year.

The statutory format is to identify the relevant years as the first, second, and third post-separation years. The first post-separation year is the year in which the payor first makes payments qualifying as alimony or separate maintenance payments. The next two succeeding calendar years are known as the second and third post-separation years. In general, if during the first three years, the alimony paid decreases by more than \$15,000 between years, the excess over \$15,000 is alimony recapture.

The amount of recapture is determined in two steps:

... Determine the decrease between the second and third years to determine alimony recapture for year two.

... Determine the alimony recapture for year one. In making this determination, the Code requires that the average of payments for years two and three be compared to the year one payment to see if there is a prohibited decrease. For this calculation, the year two payment is revised to the extent any year 2 payment will be recaptured alimony. In other words, for this part of the calculation, revised alimony for year 2 is used. Year 2 revised alimony would be the actual alimony paid in year 2 less any year 2 alimony recapture computed in the first step.

Finally, after the excess payments for both the first and second post-separation years have been determined, the results are combined to determine the amount subject to recapture in the third post-separation year.

Exception to the recapture provisions. There are four exceptions to the application of the recapture provisions. If any one of the following apply, no recapture is required.

... Payments cease by reason of death or remarriage.

... Payments are for temporary support.

... Payment fluctuations are not within the control of the payor spouse.

... Payments decline by \$15,000 or less over the three-year period.

Remarriage. Up until TRA '84, the concept of alimony was based on the payor's legal obligation to support the payee spouse. Under post-TRA '84 law, this obligation to support was removed. Accordingly, even though state law may no longer require (or even permit) alimony to be paid after the remarriage of the payee spouse, payments made according to the divorce instrument continue to be alimony as long as the parties have not arranged to provide otherwise.

If the divorce instrument requires that alimony payments cease on the remarriage of the payee spouse and the payor spouse continues to make payments after such remarriage, the amounts paid will not be considered alimony. This is because the payment was not made pursuant to a divorce instrument. In such a situation, the payment will most likely be considered nondeductible to the payor, and in some instances, it might be considered a personal gift.

De facto remarriage. Events triggering the cessation of alimony should be considered and agreed on. The only

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Dusting or Huffing...A New Addiction??

(Mr. Williams' letter began as a post to an online message board he visited for support in the wake of his son's death. It prompted a teacher who found it there to ask if she could read it to her class, which in turn prompted him to write for her a more detailed version that gave a better sense of who his son had been. He also posted this expanded account to a couple of message boards where he was discussing his grief. It is this version that now circulates.)

First, I'm going to tell you a little about me and my family. My name is Jeff. I am a Police Officer for a city which is known nationwide for its crime rate. We have a lot of gangs and drugs. At one point we were # 2 in the nation in homicides per capita. I also have a police K-9 named Thor. He was certified in drugs and general duty. He retired at 3 years old because he was shot in the line of duty. He lives with us now and I still train with him because he likes it. I always liked the fact that there was no way to bring drugs into my house. Thor wouldn't allow it. He would tell on you. The reason I say this is so you understand that I know about drugs. I have taught in schools about drugs. My wife asks all our kids at least once a week if they

used any drugs. Makes them promise they won't.

I like building computers occasionally and started building a new one in February 2005. I also was working on some of my older computers. They were full of dust so on one of my trips to the computer store I bought a 3 pack of DUST OFF. Dust Off is a can of compressed air to blow dust off a computer. A few weeks later when I went to use one of them they were all used. I talked to my kids and my two sons both said they had used them on their computer and messing around with them. I yelled at them for wasting the 10 dollars I paid for them. On February 28 I went back to the computer store. They didn't have the 3 pack which I had bought on sale so I bought a single jumbo can of Dust Off. I went home and set it down beside my computer.

On March 1st, I left for work at 10 PM. Just before midnight my wife went down and kissed Kyle goodnight. At 5:30 am the next morning Kathy went downstairs to wake Kyle up for school, before she left for work. He was propped up in bed with his legs crossed and his head leaning over. She called to him a few times to get up. He didn't move. He would sometimes

tease her like this and pretend he fell back asleep. He was never easy to get up. She went in and shook his arm. He fell over. He was pale white and had the straw from the Dust Off can coming out of his mouth. He had the new can of Dust Off in his hands. Kyle was dead.

I am a police officer and I had never heard of this. My wife is a nurse and she had never heard of this. We later found out from the coroner, after the autopsy, that only the propellant from the can of Dust off was in his system. No other drugs. Kyle had died between midnight and 1 AM.

I found out that using Dust Off is being done mostly by kids ages 9 through 15. They even have a name for it. It's called dusting. A take off from the Dust Off name. It gives them a slight high for about 10 seconds. It makes them dizzy. A boy who lives down the street from us showed Kyle how to do this about a month before. Kyle showed his best friend. Told him it was cool and it couldn't hurt you. It's just compressed air. It can't hurt you. His best friend said no.

Kyle was wrong. It's not just compressed air. It also contains a propellant called R2. It's a refrigerant like what is used in your refrigerator. It is a

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obvious proscriptive requirement is that the alimony cease on the death of the payee ex-spouse. Other possibilities that both parties might consider are the remarriage of the payee ex-spouse or cohabitation by the payee ex-spouse with another individual. Even the most obvious of payment cessation events should be stated in the instrument.

Payment of arrearages. Reg. § 1.71-1(b)(5) effectively places the payor and payee on a cash method of accounting for alimony purposes. The payments

are includable in the payee's income only for the tax year in which they are received unless they are constructively received. Arrearages in these payments can pose a trap for unsuspecting taxpayers and often overturn even the most properly drafted divorce instruments, if the payments are not made in the year in which they are due.

Conclusion. All too often, insufficient attention is given to tax considerations during a divorce or separation.

Undoubtedly, a favorable tax result is easier to accomplish when the two spouses part in an amicable fashion. Nevertheless, good results can still occur amid even the most combative situations. Therefore, it is incumbent on the practitioner to ensure that clients are wary of the alimony rules and recognize that the more disparate the tax brackets between the two spouses, the greater the benefits to be achieved

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heavy gas, heavier than air. When you inhale it, it fills your lungs and keeps the good air, with oxygen, out. That's why you feel dizzy, buzzed. It decreases the oxygen to your brain, to your heart. Kyle was right. It can't hurt you. IT KILLS YOU. The horrible part about this is there is no warning. There is no level that kills you. It's not cumulative or an overdose; it can just go randomly, terribly wrong. Roll the dice and if your number comes up you die. IT'S NOT AN OVERDOSE. It's Russian Roulette. You don't die later. Or not feel good and say I've had too much. You usually die as you're breathing it in. If not, you die within 2 seconds of finishing "the hit". That's why the straw was still in Kyle's mouth when he died. And why his eyes were still open.

The experts want to call this huffing. The kids don't believe its huffing. As adults we tend to lump many things together. But it doesn't fit here. And that's why it's more accepted. There is no chemical reaction, no strong odor. It doesn't follow the huffing signals. Kyle complained a few days before he died of his tongue hurting. It probably

did. The propellant causes frostbite. If I had only known.

It's easy to say hey, it's my life and I'll do what I want. But it isn't. Others are always affected. This has forever changed our family's life. I have a hole in my heart and soul that can never be fixed. The pain is so immense I can't describe it. There's nowhere to run from it. I cry all the time and I don't ever cry. I do what I'm supposed to do but I don't really care. My kids are messed up. One won't talk about it. The other will only sleep in our room at night. And my wife, I can't even describe how bad she is taking this. I thought we were safe because of Thor. I thought we were safe because we knew about drugs and talked to our kids about them.

After Kyle died another story came out. A probation Officer went to the school system next to ours to speak with a student. While there he found a student using Dust Off in the bathroom. This student told him about another student who also had some in his locker. This is a rather affluent school system. They will tell you they don't have a drug problem there. They

don't even have a dare or plus program there. So rather than tell everyone about this "new" way of getting high they found, they hid it. The probation officer told the media after Kyle's death and they, the school, then admitted to it. I know that if they would have told the media and I had heard, it wouldn't have been in my house. We need to get this out of our homes and school computer labs. Using Dust Off isn't new and some "professionals" do know about. It just isn't talked about much, except by the kids. They all seem to know about it.

April 2nd was 1 month since Kyle died. April 5th would have been his 15th birthday. And every weekday I catch myself sitting on the living room couch at 2:30 in the afternoon and waiting to see him get off the bus.

(Falcon, the maker of Dust-Off, is aware its product is abused in this fashion. It has posted information about inhalant abuse on its web site, and cans of Dust Off bear a label cautioning users against misuse of the product and carry this warning in large red block letters: "Inhalant abuse is illegal and can cause permanent injury or be fatal. Please use our product responsibly." Yet while it might be tempting to regard this threat as one limited to Dust-Off (and therefore as a danger that can be averted by banning a specific product from the home), the truth is a great number of teens and pre-teens routinely attempt to get high by abusing inhalants and solvents found in common household products. Dust-Off is just one of a thousand or more products that can abruptly end the life of someone foolishly looking for an inhalant high.)

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Cross Examination of the Small Town Grandma

Lawyers should never ask a small town grandma a question if they aren't prepared for the answer. In a trial, a small-town prosecuting attorney called his first witness, a sweet, elderly woman, to the witness stand.

He approached her and asked, "Mrs. Jones, do you know me?" She responded, "Why, yes, I do know you, Mr. Smith. I've known you since you were a young boy, and frankly, you've been a big disappointment to me. You lie; you cheat on your wife, and you manipulate people and talk about them behind their backs. You think you're a big shot when you haven't the brains to

realize you never will amount to anything more than a two-bit paper pusher. Yes, I know you."

The prosecutor was stunned! Not knowing what else to do, he pointed across the room and asked, "Mrs. Jones, do you know the defense attorney?" She again replied, "Why, yes, I



do I've known Mr. Thomas since he was a youngster, too. He's lazy, disrespectful, and he has a drinking problem. He can't build a normal relationship with anyone and his law practice is one of the worst in the entire state. Not to mention he cheated on his wife with three different women. One of them was your wife. Yes, I know him."

The defense attorney slumped in his chair. The judge asked both counselors to approach the bench and, in a very quiet voice, said, "If either of you idiots asks her if she knows me, I'll hold you both in contempt and send you to prison!"

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