



# MUNICIPAL COURT Judges Bulletin

Fall 2007 • The Georgia Council of Municipal Court Judges Newsletter • Vol. 8, No. 3

## Officers 2007-08

### President

Bill Clifton, Forsyth

### President-Elect

John Roberts,  
Lithonia and Stone Mountain

### Vice-President

Tammy Stokes, Savannah

### Secretary

Kathryn Gerhardt, Macon

### Treasurer

Charles Gravitt, Lake City

## TABLE OF CONTENTS

Executive Committee. . . . .	2
Minutes of Spring Meeting . . . . .	3
Meet Your Leaders! . . . . .	8
Financial Report . . . . .	8
Training Council Policy . . . . .	10
Registration Form . . . . .	11
Questions on Venue and Judge Inquiry . . . . .	12
Traffic Law Update . . . . .	13
DDS Announcements . . . . .	16

## NEXT MEETING DATE

October 26th, 2007

10:00 a.m. - Municipal Ct Training Council

12:00 - Lunch

1:00 p.m. - Council of Municipal Ct Judges

Location: AOC offices in Macon  
110 Holiday North Drive, Suite B  
Macon, GA 31210  
478.471.5315

RSVP: johnsonl@gaaoc.us

## President's Corner



Bill Clifton  
Forsyth Municipal Court

Thanks to hard work by the folks who preceded us, we are earning recognition as respected members of the judiciary. Long overdue, if you ask me. Some of us are fortunate enough to hold full-time, tenured positions with decent salaries and benefits, but the vast majority of us are lawyers who perform a public service for a fraction of what we otherwise could earn in private practice. Judicial duty is our pro bono project. Our jobs aren't prestigious. Our pay is low. But we believe in a system of laws and giving back to the community.

Speaking of giving back, let me share some statistics you may not know. Municipal courts in this state collect and remit funds to the Georgia Superior Court Clerks Cooperative Authority (GSCCCA), county and city general funds, and various other accounts. In FY 2007, more than \$36.1 million dollars was remitted to GSCCCA from municipal courts (total remittance in 2006 was nearly \$32.6 million). This amount accounts for 41% of all funds received by GSCCCA from trial courts throughout Georgia.

Municipal courts report nearly \$131 million dollars in funds as a

contributor to programs such as alternative dispute resolution, city and county general funds, local crime victims' compensation and peace officers annuity and benefits funds. Our courts account for 30% of approximately \$434 million in reportable funds to the state from judicial sources.

We operate our Council on a budget of \$19,500 the lowest amount for any court council in Georgia.

Talk about financial backbone! When you add our numbers to the numbers of the other classes of courts, I expect you will find that Georgia's judiciary gives back to the state, counties, and cities more than, or at least almost as much as, it obtains in funding from Georgia's general revenues. We may be the most efficient funnel of taxpayer resources in Georgia. We use general revenues to administer a good judicial system, then we collect fines and give the money back to the government to be used for other beneficial purposes. We just happen to recycle tax dollars while performing a necessary and important government function.

In case you aren't quite pumped up with a sense of your own importance, here are a few more interesting facts:

continued on page 3

# EXECUTIVE COMMITTEE

Judge Bill Clifton  
President  
577 Mulberry Street, Suite 710  
Macon, GA 31201  
478-750-8600/F 750-8686

Judge John A. Roberts  
President-Elect  
462 E. Paces Ferry Road, NE  
Atlanta, GA 30305  
404-841-0661/F 841-0775

Judge Tammy Stokes  
Vice President  
Recorder's Court of Chatham County  
Chatham County Courthouse  
133 Montgomery Street, Rm. 104  
Savannah, GA 31401  
912-652-7429/F 652-7412

Judge Kathryn Gerhardt  
Secretary  
PO Box 4866  
Macon, GA 31208-4866  
478-745-9661/F 745-9824

Judge Charles A. Gravitt, Sr.  
Treasurer  
118 Main Street  
Jonesboro, GA 30236  
770-478-1114/F 471-1091

Judge Michael P. Cielinski  
Immediate Past President  
PO Box 1882  
Columbus, GA 31902-1882  
706-653-0354/F 323-1722

District 1  
Judge J. Hamrick Gnnann, Jr.  
Pooler  
PO Box 10085  
Savannah, GA 31412  
912-232-1192/F 238-9917

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

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

Judge Henry E. Williams  
Lumpkin  
1101 Valley Road  
PO Box 71747  
Albany, GA 31708-1747  
229-888-2600/F 888-8330

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

Judge Michael P. Cielinski  
Recorder's Court of  
Columbus-Muscogee County  
PO Box 1882  
Columbus, GA 31902-1882  
706-653-0354/F 323-1722

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 or 879-4976

District 5  
Judge Calvin S. Graves  
Atlanta  
150 Garnett Street, SW  
Atlanta, GA 30303  
404-658-7049/F 658-6586

Judge Rashida Oliver  
East Point  
2727 East Point Street  
East Point, GA 30344  
404-559-6246/F 305-8219

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

Judge Gregory A. Futch  
McDonough  
40 Atlanta Street  
McDonough, GA 30253  
770-898-9575/F 898-4973

District 7  
Judge Diane M. Busch  
Marietta  
800 Kennesaw Ave., NW, Suite 400  
Marietta, GA 30060  
770-426-4619/F 426-4846

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

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 Malcolm F. Bryant, Jr.  
Vidalia  
502 Jackson Street  
PO Box 28  
Vidalia, GA 30475  
912-537-9021/F 537-3807

District 9  
Judge William F. Brogdon  
Dacula  
PO Box 390997  
Snellville, GA 30039  
770-978-1181/F 978-1145

Judge Kenneth E. Wickham  
Norcross  
65 Lawrenceville Street  
Norcross, GA 30071  
770-448-2173/F 368-9185

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 Spring Meeting

April 20, 2007 • AOC Macon Office

President Cielinski called the meeting to order at 1:00 p.m. He welcomed the guests and thanked the members for coming, noting that a quorum was present.

## Approval of Minutes

Judges Cielinski asked if there were any additions or corrections to the minutes of the February 1, 2007, meeting of the Council. Judge Charles Barrett asked that his name be added as being present at the meeting. Judge Bobbitt moved that the minutes be approved as corrected. Judge Weaver seconded the motion and it passed without dissent.

Ms. Johnson asked the members present to review the newly revised Executive Committee roster and to let her know if there are changes to be made to any of the contact information.

## Financial Reports

Judge Cielinski asked the members to review the report of State funds through March 31, 2007. There were no questions.

The members then reviewed the report of private funds through the third quarter. Judge Still noted that the Council has a growing balance, so he asked if the Executive Committee would consider donating \$2,500 to the Georgia Mock Trial Program. He also stated he would like the Council to make this an annual donation. After a short discussion, Judge Bobbitt made a motion for the Executive Committee to donate \$2,500 to the Georgia Mock Trial Program in memory of Judge David Pierce, and that this donation be subject to renewal on an annual basis. Judge Davis seconded the motion and it passed by unanimous vote.

## AOC Report

Ms. Yolanda Lewis, Assistant Director for Judicial Liaison, reported that there is a new Research and Planning Division of the AOC. Mr. Greg Arnold remains the Assistant Director of Research which is responsible for the caseload report and salary survey that the municipal judges receive each year. Mr. Bob Bray, Associate Director of Planning and Research, and Mr. Kevin Tolmich, Assistant Director of Planning, are available to assist the courts with strategic planning, training, and other topics such as collections.

Ms. Lewis also reported that AOC staff will soon begin to update the CM CJ website. She invited the judges to provide her with any useful links that should be added to assist

**continued on page 4**

---

## President's Corner cont.

Our Council represents approximately 400 courts. We have roughly 385 judges, and at least 80 of us serve as judges in multiple courts. Eighty-five percent of our members are attorneys. Seventy-two of us serve as magistrates, fourteen as probate judges, and 30 as juvenile judges.

Currently we are working on several projects. In addition to our 11 active committees, we are providing training oversight for the chief clerks of our courts. We are in the process of implementing Uniform Rules for Municipal Courts, we have an ad hoc committee studying the implementa-

tion of uniform standards for court security, and we are devising a collaborative training program for municipal court solicitors. Present company excepted, you have an outstanding executive committee. You could not ask for more quality, experience and enthusiasm from the people who chair and co-chair your various committees.

Our work is limited only by our resources, but that's our problem. A small group of people make all the decisions. Mainly, it's the same small group that ran things when I first became involved with the Council. After

a while we run out of ideas. If you seek improvement and change, if there is something you want, some goal you want to achieve as a judge or for judges, then you must become involved.

In the words of the immortal Buckaroo Banzai: "No matter where you go, there you are." Where are you when we need you?

I am pleased to announce that Justice Harris Hines has agreed to serve as an Ex Officio member to the Executive Committee. We welcome him and look forward to a productive relationship with the Supreme Court.

---

# Minutes cont.

other judges. She also stated that if judges have ideas for projects or programs they would like to begin in their courts, the AOC can assist by providing national research information, grant funding, and locate other resources. Finally, she reported that the Council brochure will be sent to all municipal court judges so they are better informed of the important work of the Council.

Mr. Patterson reported that there is a national Court Collection Conference in Las Vegas on September 24-26, 2007. He suggested the Council may wish to send delegates with the private funds it has available. He circulated a flyer with the specific information.

Ms. Lewis added that the website of the AAA Foundation for Traffic Safety contains several free resources such as brochures on elder driving, road rage, and other topics.

## **Municipal Court Caseload Reporting:**

Mr. Michael Polynice, AOC Research Associate, informed the members that the office of Research has conducted legislative research which can be viewed at <https://research.georgiacourts.org>. Research also compiles local reporting trends of the Municipal Courts, provides court security analysis, and demographic and population analysis. A list of security consulting agencies is also available.

Mr. Polynice next discussed the elements required for the Municipal Court caseload study which will be conducted from July 5th-October 15th, 2007. The information gathered from the caseload study is published in the AOC Annual Report. The salary information is not published, but is available on request. He showed a comparison of the caseload totals for CY 06 that only

included data from 83 of the approximately 400 municipal courts. He stressed the importance of all courts participating so the Municipal Courts are accurately represented in the caseload studies, showing that 21% of courts reporting represented the second highest number of total filings by class of court.

There followed considerable discussion about the reasons why the municipal courts are not reporting. The reasons include lack of training for the clerks on how to gather the data, fear of legislative ramifications, and lack of time for the clerks to gather the numbers due to the variety of duties performed for city government. The members also discussed the possibility of gathering the statistics directly from the software vendors, DDS, and the Clerk's Authority rather than relying on the municipal clerks, as well as the possibility of reporting quarterly rather than annually.

Ms. Lewis stated the caseload numbers are used by clerks to compare how their staff size compares with other similarly-sized courts; and judges can compare whether their caseload supports the need for an associate judge or more staff. Both scenarios require that a meaningful number of municipal courts submit the caseload data each year. She also stressed that if the courts do not have the personnel to count the cases, or have questions about how to count the data, AOC staff can come to the court when requested.

Judge Clifton pointed out that the municipal courts collect a lot of revenue for other agencies and funds, but very little returns to the municipalities to run their courts. He stated that the revenue collected is what city councils use to decide court budgets. The only leverage the courts have is to be able to increase

the amount of money collected.

Judge Gerhardt observed that utilizing mandatory training for clerks to teach them how to count and submit the data will undoubtedly help increase the reporting percentage. Judge Ward pointed out that the definition of terms such as 'full-time versus part-time' employees are difficult when applied to the municipal court setting. He reiterated that training will be very important in order to get full compliance.

Judge Weaver observed that the judges have the ability to require clerks to report this data to ensure effective operation of the court. If the judge makes the report a critical function, the clerk will make the data a priority. He encouraged the judges to take the lead on this issue.

Judge Bobbitt suggested again that in addition to educating the clerks on the importance of the caseload reporting, the Council needs to work with the software vendors to develop a report to provide the data in the manner that it is requested on the caseload survey. The ability to show the data is very important to future interaction with the other classes of court.

## **Municipal Courts Training Council**

Judge Still noted that the legislature added mandatory training for the municipal court clerks in 2006 and the process is moving forward very quickly. ICJE will offer two 8-hour recertification courses and one 16-hour basic course this year. In addition, one of the two recertification courses will be held in Tifton. He stated that 221 clerks have already enrolled, and more are expected. ICJE has assigned an intern to help develop the curriculum for clerks'

continued on page 5

# Minutes cont.

training. He also reported that the Georgia Municipal Court Clerks Council (GMCCC) has arranged with the Georgia Department of Archives and History to give classes on records retention free of charge to their membership. Three classes are already scheduled in different areas of the state and the response has been good. As a result of this training, the clerks have also taken the initiative to develop a Municipal Court Retention Schedule. The GMCCC has 246 members representing 199 municipal courts.

Judge Still also reported that the Training Council is considering the development of a more complete written policy. He requested that the current document be distributed with the minutes, and asked the judges to send comments to him if there are issues they would like to see addressed by the Training Council Policy.

## Committee Reports

• Bylaws Committee: Judge Still referred the members to the proposed change to the bylaws contained in the agenda. He stated that currently any vacancies to the Executive Committee must be filled at the annual meeting. The proposed amendment specifies a procedure for filling vacant District Representative positions by appointment, and for filling vacant Officer positions by vote of the Executive Committee. Judge Still noted that if the Executive Committee approves the proposal then it can be presented for a vote of the whole membership at the June meeting. Judge Davis moved that the Executive Committee recommend adoption of the change to the bylaws at the June meeting. Judge Weaver seconded the motion and it passed by unanimous vote.

Judge Clifton asked if more thought was being given to the use of proxy votes to be used in the event a quorum does not exist. Judge Cielinski stated that the idea is being investigated.

• IT Committee: Judge Clifton reported for Judge Strickland that the IT Committee has determined that the clerks are crucial to the process of identifying what the courts need in the way of technology. The clerks and judges received a technology survey via the listservs. There were 160 responses from the first notice, primarily from municipal clerks. The results are being tabulated, but Judge Clifton reiterated that the clerks have been a tremendous asset to this process. From the responses, the IT Committee will begin to develop recommendations to the Municipal Courts for consideration when upgrading existing technology.

• Legislative Committee: Judge Barrett reported that there is still one more day of the Legislative session. He asked to defer an oral report in favor of a written report for the next issue of the newsletter.

• Newsletter Committee: Ms. Johnson reported that the deadline for the next issue of the newsletter has been set for May 7th, 2007. If anyone has anything to contribute, she asked that they send the materials to staff or to Judge Washburn by that date.

Judge Ward asked that when deadlines are set that they be published on the listserv. Mr. Patterson stated that could be done, however there are only 192 judges on the Traffic Judges listserv and some of those are probate and state court judges.

• Nominating Committee: Judge Withers thanked Judge Cielinski for the opportunity to serve the Executive Committee as Chair of the Nominating Committee. The Committee consists of Judge James Pace, Judge Adam Ferrell, Judge Rashida Oliver, and Judge John Cicala. A conference call was held on April 19th to review the list of vacancies and to designate responsibility for specific districts to determine if other vacancies will occur. The Committee will publish the proposed slate of officers 30 days prior to the June meeting, will provide absentee ballots as needed, and will conduct the elections.

Judge Clifton asked if there would be any consideration made for more diversity on the Executive Committee. Judge Cielinski stated that he has asked Judge Withers to seek new, diverse members where possible. Judge Withers committed to fill vacant positions with as much diversity as possible.

• Vendor Committee: Judge Brogdon stated that the Hyatt is charging a \$50-90 setup fee per vendor table for the Traffic Seminar, and asked if the Council would be charging a vendor fee as well. He stated that there would be one or two hospitality events that will be paid for by vendors, and he anticipates that goody bags would also be available again. Judge Still moved that the vendors pay \$300 per table to the Council, in addition to the Hyatt charge, unless they are sponsoring a social event. The motion was seconded and passed without objection.

• Uniform Rules: Judge Weaver stated that every judge should have received a copy of the proposed Uniform Rules by e-mail. He asked

continued on page 6

# Minutes cont.

for assistance so the rules may be finalized by the June meeting. There was discussion about whether another person was contracted to work on the rules or not. Ms. Murphy stated that the copy sent to Judge Weaver included all the work that had been completed by Judge Edwards and his Committee until he no longer served on the Council.

Judge Still stated that in his reading of the proposed Uniform Rules he was concerned that there is no exception for local rules. He noted that every city should have a local rule stating the indigent defense guidelines. He suggested the Uniform Rules include an exception for existing local rules regarding indigent defense, if adopted according to the standards set by the Georgia Public Defenders Standards Council. Judge Barrett noted that this can also be accomplished by local ordinance.

Judge Weaver stated he has spoken with Judge Whatley about amending Rule 26 to include language referencing the Pinkerton decision, as well as language pertaining to exceptions for local rules. He also added that the Rules of Evidence Retention that were published in June 2006 will be incorporated. Judge Bobbitt explained that the Magistrates Council is considering a change to the criminal and non-criminal sections of the retention schedules to accommodate pro se courts. He asked Judge Weaver to check with him later to see if those changes were adopted. Judge Weaver observed that there is nothing included yet about civil cases or ordinance issues.

Judge Cielinski suggested that AOC staff arrange a conference call to finalize the changes to the Uniform Rules so that they can be distributed prior to the June meeting.

He also encouraged all the members to send their comments directly to Judge Weaver and assist him if possible.

## **Liaison with Other Agencies**

- Commission on Interpreters: Judge Still stated there was nothing new to report.

- Judicial Council: Judge Cielinski reported that Chief Justice Sears and Justice Hines have been very supportive of Municipal Court representation on the Judicial Council. He felt that some action might be taken prior to the June 12th meeting of the Judicial Council, but he was not certain.

- Probation Advisory Council: Judge Ward asked Ms. Ashley Garner to report on the activities of the Probation Advisory Council. She reported that the quarterly reports reflect 234 courts reporting the supervision of 112,000 offenders, 70,000 of which are active. The 4th quarter 2006 reports also show \$10 million collected and remitted on behalf of municipal courts, which is approximately 40% of the total funds remitted for the entire judiciary for the year.

Ms. Garner announced the next Probation Advisory Council meeting is May 17th in Macon. As of the February meeting, a total of 29 courts had not provided information about their probation programs, many stating they are collecting, monitoring, and/or supervising, but were not providing probation services. The May meeting will address these issues and begin the process of sanctioning those who have not registered as probation programs. Each mayor, county commission chair, and each judge has been notified that

those programs who have not registered by May 1st will eventually receive a cease and desist order by the Attorney General's Office. Ms. Garner stated that about half of the 29 courts have complied, and every effort will be made to work with the local governments to prevent sanctions from being imposed. The primary resistance has been from local law enforcement personnel who are unsure about state oversight.

Judge Cielinski asked Ms. Garner about the status of the bill that would add numerous non-violent felonies to the misdemeanors which can be supervised by private probation. She responded that HB 527 was sent to the House Institutions and Properties Committee, and that lengthy hearings were held. Three items were included in the original bill: no registration fee for private probation companies; the addition of specific non-violent felonies that could be supervised by private probation; and a minimum supervision fee of \$50 per month. At the end of the session the only item left in the bill was no registration fee for private probation. Another bill, HB 779, was dropped and assigned to committee for the other two issues to be discussed more thoroughly next year. The Department of Corrections will be conducting a more thorough analysis of non-violent felony supervision in the interim.

Judge Whatley asked about pre-trial diversion as opposed to probation. Ms. Garner stated that it is her understanding that pre-trial diversion anticipates that a defendant will not actually be convicted of a crime unless he or she fails the pre-trial diversion program. Once convicted of the crime, however, the person is considered to be on probation, which would then fall under the guidance of

continued on page 7

# Minutes cont.

the Probation Advisory Council.

Judge Bobbitt asked for clarification of the proposed minimum supervision fee portion of the bill. Ms. Garner explained that the \$50 minimum fee was inserted in the private probation section of the law so it would not pertain to municipal or county run programs, some of whom are already charging that much or more per month. She also clarified that it would be applied to supervision of all misdemeanor and non-violent felonies (if approved).

Judge Bobbitt also asked whether local legislation is required before a “local technology fee” can be implemented. Many municipalities are using software that is paid for by a contracted monthly fee. He stated the software companies encourage the cities to recoup expenses by instituting a “local technology fee” on a per-case basis. Judge Cielinski stated that his county is adopting a similar fee under the home rule. Judge Weaver reported his city attorney presented the costs incurred to the city council, which adopted a local ordinance to allow the court to charge an add-on fee.

Judge Clifton observed that the IT Committee’s goal is to be able to use the leverage of the municipal purchasing power to require vendors to provide the necessary data elements to meet caseload reporting and other reporting requirements. Mr. Nolan explained that the Georgia Courts Automation Commission (GCAC) also has a software certification program underway to accomplish the same thing across all classes of court.

- Georgia Courts Automation Commission (GCAC): Mr. Nolan reported that GCAC has facilitated the development of a technology “articulation map” for the Council

leadership to stay focused on the items of importance to the Municipal Courts. He encouraged the Council to review this information frequently, as well as the list of stakeholders that are important to the municipal courts. By continually developing those stakeholder relationships, the Council will have informed partners on future mutual endeavors.

Mr. Nolan also reported that the data definition dictionary project has progressed nicely. The municipal and magistrate courts have finished categorizing their definitions. When the other classes complete the process, all classes will meet together and the original 5,000 definitions will be compressed to about 500 definitions that are used on a daily basis in all levels of court. Those will be mapped in XML language which will enable all classes of court to successfully exchange data with each other more easily. The vendors and other state agencies that are aware of this project have identified this as a substantial savings in attempts to integrate all court-related agencies. Eventually, all classes of court will meet to try to reach commonality in court forms.

Judge Ward asked if the GCAC project would result in more standardization of practice from city to city. Mr. Nolan stated that the project, as envisioned, will result in mandatory standards for software vendors doing business with the courts. It will also provide the ‘middle step’ translation of data to allow different systems to talk to each other. The systems will still be different, but they will be able to exchange data that is properly coded and translated into XML language. This will also allow the instantaneous transmission of data on a statewide basis.

- Georgia Municipal Association (GMA): Judge Bobbitt reported that GMA is currently engaged in a legislative struggle with the Association County Commissioners of Georgia (ACCG) about annexation of property and land use planning issues.

He also reminded the members that GMA appointed a study committee in January to investigate the possibilities of legislating term limits for municipal judges, and instituting minimum guidelines for hiring and firing to promote judicial independence. GMA is aware of such problems and is amenable to assisting with finding solutions. He will contact Mr. Baggett of GMA after the legislative session for an update.

- Georgia Superior Court Clerk’s Authority: Judge Bobbitt deferred his report to the next issue of the newsletter.

- Georgia Public Defender Standards Council (GPDSC): Judge Barrett reported that there are two pieces of legislation directly related to the Standards Council this year:

**SR 246** was adopted to create a joint committee to study issues surrounding the providing of indigent defense services. The committee anticipates submitting a report prior to next year’s legislative session.

**SB 139** was adopted to transfer GPDSC from the Judicial to the Executive Branch for budgetary understanding and oversight. The Standards Council was in favor of the transfer.

Judge Whatley asked whether it is ethical for a municipal court to bind over any defendant who qualifies for indigent defense, thus pass-

continued on page 12

# Meet Your Leaders!

## President Bill Clifton

**NAME or NICKNAME:**  
Bill

**IN MY SPARE TIME, I LIKE TO:** Sorry. I don't understand the question.

**COURT(S):** Forsyth Municipal, Monroe County Magistrate

**MY MOST MEMORABLE CASE WAS:** The one where the defendant's excuse for wrongdoing was "I'm from Alabama."

**EDUCATION:** BA, Oglethorpe Univ.; MA Georgia State Univ.; JD Columbia Univ.

**IN THIS CALENDAR YEAR, I HAVE SPOKEN ABOUT THE COURTS TO THE FOLLOWING GROUPS:** The Council of Probate Judges, the Council of Superior Court Judges, and the Council of Magistrate Judges

**WHAT I LIKE ABOUT BEING A JUDGE:** I get to wear shorts and flip-flops under the robe. No one knows!

## Judicial Council August 28, 2007



Judge Bill Clifton (second row, third from right) represents the Council this year. Judge Michael Cielinski (far left) received his certificate as last year's representative.

## Financial Report

COUNCIL OF MUNICIPAL COURT JUDGES -Q3 FY 2007  
1/1/2007 through 3/31/2007

Date	Account	Num	Description	Memo	Category	Amount
BALANCE 3/31/2007						56,637.14
4/7/2007	DEPOSITS	DEP	DEPOSIT	City of Atl	DUES	330.00
<b>BALANCE 6/11/2007</b>						<b>56,967.14</b>
TOTAL INFLOWS						330.00
TOTAL OUTFLOWS						0.00
NET TOTAL						330.00

Cash Inflows: Dues \$330.00 Payment by City of Atlanta for eleven judges

Cash Outflows: There were no invoices paid this quarter to date.

Ending Bank Balance at 6/11/2007: \$56,967.14 (reconciled).

Signed: Charles A. Gravitt, Sr., Treasurer

# Meet Your Leaders!

## President-Elect Judge John A. Roberts

### Education:

J.D., John Marshall Law School, Atlanta, Georgia  
B.S. Indiana State University; Major: Business Administration



**John A. Roberts** began his career in Risk Management for large hospitals. He gained a wealth of knowledge and experience in hospital management, medical liability and malpractice, and focused on pre-hospital emergency care. He was instrumental in the development of the Dept. of Transportation Regulations adopted by the United

States Government for both ground and air ambulance service. He later became Public Safety Director for a large city government, supervising over 600 employees in police, fire and emergency medical services. He was honored by President Reagan for his achievements in this area. This also led to his working for various governments around the world including Saudi Arabia, Audubon, the Air Ministry of Canada, the post-Communist government of Poland, and the Israeli Army. He acted as Special Assistant to Governor Rockefeller during the development of a statewide air ambulance program.

Mr. Roberts was then drawn to

the practice of law. He graduated from law school summa cum laude and was also President of his legal fraternity. He is now the Senior Partner and Owner of The Roberts Law Firm which he opened in 1991. During his tenure, Mr. Roberts has routinely worked with Indian Affairs and in the interests of other native peoples. His representation extends to publicly traded companies and a variety of national corporations in the manufacturing, health-care, and food service industries. Mr. Roberts was appointed to his first municipal court judgeship in 2003.

---

## Vice President Judge Tammy Stokes

**NAME or NICK-NAME:** Tammy Stokes



**COURT(S):**  
Chatham County  
Recorders Court

**EDUCATION:** B.A. Psychology University of Georgia and University of Georgia School of Law

**WHAT I LIKE ABOUT BEING A JUDGE:** I love the opportunity to have a positive impact on people and their views of the criminal justice system.

**IN MY SPARE TIME, I LIKE TO:** I participate in too much stuff to have “spare time”, but I do like to run, read, and cycle when I get the chance.

**MY MOST MEMORABLE CASE WAS:** I don’t have one, but I especially do enjoy cases when I have gotten young people to go back to school, complete at least their G.E.D., and even to go on to technical college, when that had not been a conscious goal before coming to court.

**IN THIS CALENDAR YEAR, I HAVE SPOKEN ABOUT THE COURTS TO THE FOLLOWING GROUPS:** Bethesda Home for Boys, Pooler Rotary Club, the Law Club at Armstrong Atlantic State University, the Georgia Association of Women Lawyers, the Chatham County Youth Commission and several middle and high schools.

*Please Recycle*



# CHANGES TO TRAINING COUNCIL POLICY

**A**t the June meeting of the Municipal Court Training Council, two significant changes were made to the Training Council policy. These changes are effective January 1, 2007, so they will apply to this year's hours earned. The changes as adopted were:

## CREDITABLE TRAINING:

Every other year the Council will extend up to twelve hours of credit to a judge for training sponsored by the Institute of Continuing Judicial Education for other trial court councils such as the Superior, State, Juvenile, Magistrate, or Probate Court Councils. Any judge relying on this must attend municipal training the following year.

The Council will not extend credit to Mandatory Continuing Legal Education (MCLE) programs, but will consider for recertification purposes crediting hours of judicial educational training conducted by judicial education entities such as

the National Judicial College, the Institute of Court Management, the National Center for State Courts, and the American Bar Association, if the judge has attended a prior year's twelve hour recertification course sponsored by the Council. The primary focus of all creditable training should be judicial office responsibilities, duties and ethics.

Except as noted in the first paragraph of this section, training sponsored by other trial court councils and such other judicial education entities shall be partially or fully creditable only with the Training Council's approval. Any such application for credit should be furnished to the Secretary of the Training Council and should include the following: the name of the sponsor of the program; the title of the program; the dates of attendance; the number of hours of training requested to be credited; and a summary of the program content with an explanation of its relevance to the duties of a municipal court judge.

## INITIAL CERTIFICATION:

Each municipal court judge upon initial appointment or election shall attend the 20-hour Basic Certification Course offered by the Council within 12 months of the judge's date of appointment or election as a municipal judge. If a judge has a break in service of more than 12 months, then the judge must attend the Basic Certification Course.

## RECERTIFICATION:

Each judge, after initial certification, shall annually attend twelve hours of training approved or sponsored by the Council to retain the judge's certification. If a judge has a break in service of less than 12 months, then the judge is eligible for recertification training. The Council will offer such training at least twice during each calendar year for recertification.

---

## Is A Citation in the Time of Christ Too Late?

By Judge Robert L. Whatley, Austell Municipal Court

**T**hat was the question posed in *Dandy v. State*- 253 Ga. App. 407. It appears that the officer placed the designation "01" on an improper lane change citation. The attorney brought the case up on appeal alleging that there was a fatal variance and that the case exceeded the statute of limitations by about 2000 years and was thus barred. The attorney alleged that the offense was dated March 19, 01. Therefore he could not be tried in 2001. The attorney alleged on appeal that the true

date of commission was in 01 in the time of Christ.

The Court did not treat the case as frivolous but used it to make a valid point. The Court ruled that the defendant was not eligible for a motion in arrest of judgment because he could have filed an objection or demurrer and further ruled that "when a judgment has been rendered, any party can move in arrest thereof for any defect not amendable which appears on the face of the record or pleadings." They reasoned that had

he so filed, the state could have amended the alleged defect or filed an accusation. The fact that he appeared on April 19, 2001, when the citation designated April 19, 01, further reflected he understood that it was 2001.

The name of the case is *Dandy v. State*. It was just *Dandy* for the municipal judges of the state because it gave us a laugh along with a solid legal principle. One may further wonder in humor if it was a chariot or donkey that offended the law.

# 2007 MUNICIPAL COURT JUDGES' REGISTRATION FORM

Early Bird Fee before February 28 is \$225. After is \$325.

*Be advised—to offset expenses incurred, \$35 will be billed to registrants who “Fail to Appear.”*

Mail this form with a check payable to ICJE.

INSTITUTE OF CONTINUING  
JUDICIAL EDUCATION  
123 Dean Rusk Hall, University of Georgia  
Athens, GA 30602

Questions, contact:

Kathy Mitchem: 706/542-7402, kathy@icje.law.uga.edu

or

Stacy Harvey: 706-542-8248, stacy@icje.law.uga.edu

Name \_\_\_\_\_

Phone \_\_\_\_\_ e-mail \_\_\_\_\_

City Judge of \_\_\_\_\_ Are you now a Municipal Judge? \_\_\_\_\_

Have you sat in the past year? \_\_\_\_\_

Office Mailing Address \_\_\_\_\_

Check here if we need to contact you about: Physical needs \_\_\_\_\_ Dietary needs \_\_\_\_\_

2007 Course Title	2007 Dates	Location
Pharmacology of Drugs	October 25-26	Pharmacy School, UGA
Traffic Violations, 17-21	October 11-12	Georgia Center, Athens
Spanish for Judges	November 8-9	Georgia Center, Athens

REGISTRATION: List the seminar you wish to attend from the above list.

Course \_\_\_\_\_

Date: \_\_\_\_\_ Location \_\_\_\_\_

Below is for ICJE use:

# Question on Venue and Judge Inquiry

By Judge Robert L. Whatley, Austell Municipal Court

There seems to be an inquiry on the judges Traffic Listserv as to the question of whether or not a judge should sense that venue has not been brought up, and if he sees the omission ask the question himself. No little debate has ensued as to whether or not this is proper. One judge sees it as being totally improper as well as any question to complement the establishment of any material fact that may have been overlooked by the solicitor as to the “proof” of the case. Yet other judges see no error and will supply the needed question. One judge went as far to say that he “cured” the problem by dismissing

cases. Then a quick study was made by the solicitor and the problem solved.

A study of case revealed no case in point. But in hindsight, the appellate courts have held that Venue “was” proven by collateral information. And even that the lower court could “try again” because it did not constitute double jeopardy so as to bar re-trial.

In ALLISON, the Court held that the fact that a certain county police official investigated the case and that a certain county medical examiner had the body in that county morgue was sufficient to establish venue in that county. 259 Ga. App.

775.

And in JONES, the Court held that even if there was no proof of venue, the Court could re-visit the matter and not be in violation of double jeopardy problems.

Question: Can the judge remain quiet and dismiss the case and start over in a few minutes? Meanwhile, he silently reminds the solicitor of his fatal error. 272 Ga. 900.

In a matter unrelated to Venue, the Court of Appeals has ruled that a motion to suppress/limine even when successful can be the subject of a renewed accusation in State court. THOMAS, A07A1013.

---

## Minutes cont.

ing the cost from the city to the county. Judge Barrett stated that under the Indigent Defense Act, every city must have an indigent defense program of some sort. It can be adopted by resolution, by court rule, or by ordinance, but it must be provided at each level of court.

### Old Business

Judge Cielinski reminded the Council that the ICJE Board of Trustees has voted that Pro Tem Judges should not be included as members of a Training Council.

### New Business

Judge Cielinski reported that 12-15 municipal judges have agreed to meet on May 2-4, 2007, to begin the

development of a Business Plan for the Council of Municipal Court Judges.

Judge Cielinski then asked if the Council would like to have a lapel pin for all judges of the Municipals Courts. After a short discussion, it was moved by Judge Hoffman and seconded by Judge Davis that the Council create a lapel pin with the seal of the Council of Municipal Court Judges, to be paid for by private funds. Motion passed without objection. Staff was directed to make them available by the June meeting.

### Next Meeting Date

Judge Cielinski reported that the next meeting will be held at 3:00

p.m. on June 27th at the Hyatt Hotel in Savannah.

There being no further business to discuss, it was moved that the meeting be adjourned at 3:00 p.m. The motion was seconded and passed.

Respectfully submitted for Kathryn Gerhardt, Secretary, by: Leslie Johnson, Judicial Liaison Officer

*Please Recycle*



# Traffic Law Update - August 2007

LAW OFFICES OF MICKEY ROBERTS

Duluth, GA • 770-923-4948

Here are the traffic cases of note that have come out since my last update; these are not the only appellate cases involving traffic issues, but they are the cases that either reiterate case law or make new law; I have not mentioned a couple of cases where the appellate issue involved “sufficient” evidence to convict, since generally if there is some evidence of guilt, the Court will affirm.

A couple of interesting cases below:

In **Horne**, the Court of Appeals says that “refusal” to submit to the alco sensor is circumstantial evidence of guilt. This seems to fly in the face of a suspect’s right to refuse to take “voluntary field tests.

In **Underwood** the Court affirms suppression of a breath test because the suspect was not under arrest for DUI at the time Implied Consent was read. (although there was probable cause for a DUI arrest and he was under arrest for drug possession.)

In **Yingst** the Court appears to affirm the use of hearsay testimony to prove the probative purpose for a roadblock.

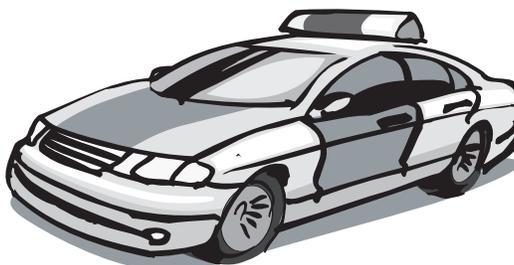
## CHEMICAL TESTING

*Cottrell v. St* A07A1417 (8/1/07)  
Cottrell argues that the blood test in his case should have been excluded because: 1) the State did not provide full information under OCGA 40-6-

392, and 2) that his right to confront witness was violated when the State did not provide an assistant toxicologist who helped perform the blood test.

The COA disagreed:

Cottrell argues that he was entitled to all the requested material under OCGA § 40-6-392 (a) (4), which provides in pertinent part: “Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be



made available to him or his attorney.”

We disagree with his argument.

Pretermitted whether “full information” for purposes of OCGA § 40-6-392 (a) (4) extends beyond the memos, notes, graphs, computer printouts, and other data relied upon the chemist in performing the test, the requested information must at least be shown by the defendant to be relevant in order to be discoverable. This, Cottrell failed to do.

Cottrell also contends that the trial court erred in failing to suppress the blood test results because one of the two tests of his blood was performed by a laboratory

technician who was not made available for cross-examination at trial. Golz, however, testified at trial that he operated the instrument during both tests. According to Golz, the technician assisted him in the second test and sampled the blood the previous day. Cottrell subsequently objected to the admission of the blood test results solely on the ground that without the technician’s testimony the state could not lay a foundation for the chain of custody of his blood.

Relying on the Supreme Court’s decision in *Crawford v. Washington*, Cottrell contends on appeal that the technician’s absence at trial denied him his constitutional right to confront the witnesses against him. But by failing to make this objection at trial Cottrell has waived the issue.

## FIELD SOBRIETY

*Horne v. St* A07A1563(7/20/07)  
Horne’s refusal to submit to an alco sensor test and to a later chemical test of [his] breath is circumstantial evidence of [his] guilt.” Matheson v. State.) See OCGA § 40-5-67.1 (b) (refusal to submit to properly noticed chemical test is admissible against defendant). Together with other evidence, such refusals “would support the inference that [Horne] was an impaired driver.” Jones, supra, 273 Ga. App. at 194 (1) (b).

*Trull v. St* , A07A1294 (7/9/07) Trull argues the trial court should have admitted evidence of the numeric

continued on page 14

# Traffic Law Update *cont.*

result of his roadside alco-sensor test because it showed an alcohol concentration of .075 grams, which is lower than the legal limit of .08 grams. The Court first noted that Trull cited no evidence in the record to support his claim that the alco-sensor result was .075 grams. The only citation he makes is to a page of the trial transcript at which his trial counsel states, "He blew a .75 on the handheld."

Trull has thus failed to meet his burden of supporting his claim of error by the record.

"Moreover, even if we assume for the sake of argument that the alco-sensor result was indeed below .08, Trull's claim that such a result should have been admitted into evidence to show the amount of alcohol in his blood has previously been rejected. "Alco-sensor results are not used as evidence of the amount of alcohol or drug in a person's blood. Instead, the alco-sensor is used as an initial screening device to aid the police officer in determining probable cause to arrest a motorist suspected of driving under the influence of alcohol." Since Trull was attempting to use the alco-sensor result to show the amount of alcohol in his blood and such a result is not admissible for that purpose, the trial court did not err in excluding such evidence."

## IMPLIED CONSENT

*St v. Stewart* A07A 232 (6/20/07)  
The Court reiterates the implied consent law: A person impliedly gives consent to submit to a state chemical test by driving on the

roads of this State. Any question of whether the person "understands" the implied consent warning is irrelevant. The officer only has to substantially comply in reading the implied consent warning to the suspect.

*St v. Underwood*, A07A576 (6/1/07); Underwood was stopped for possible hit and run; he was arrested for drug possession, and read implied consent notice; since he was not arrested for DUI, any results should have been excluded per 40-5-55.

The trial court found that although probable cause existed to arrest Underwood for DUI, Underwood had been arrested only for possession of drug related items at the time the implied consent notice was read to him. The trial court held that it therefore felt compelled to exclude the evidence under the holdings of *Buchanan v. State*, 264 Ga.App. 148, 150 (1) (589 SE2d 876) (2003), and *Hough v. State*, 279 Ga. 711, 715 (2) (a) (620 SE2d 380) (2005).

## ROADBLOCKS

*State v. Yingst* A07A1381 (7/30/07)  
Yingst challenged the roadblock in this case; At the first hearing, the State did not call Lieutenant Ferguson, the officer who authorized the roadblock, as a witness, but instead relied on testimony by another officer with supervisory authority who was present for but had not organized the roadblock. The Court allowed the State to re open the case at a subsequent hearing, where another officer testified that the roadblock was part of the State wide "Operation Zero Tolerance" campaign.

The COA finds that this hearsay evidence was sufficient to find the roadblock was operated properly.

Practice dedicated exclusively to aggressive defense of those accused of DUI and serious traffic offenses. 770-923-4948; [www.mrgadui.com](http://www.mrgadui.com)  
EMAIL: [mickey@mrgadui.com](mailto:mickey@mrgadui.com)



Judge Hilliard and Judge Cielinski attended the funeral of Darien Mize.

# Traffic Seminar and Summer Business Meeting



# DDS Announcements

There has been a processing error on the DDS database that prevented courts from electronically transmitting FTAs for certain underlying offenses. Specifically, the database would reject an FTA if the underlying offense was considered non-reportable. As you all know, there are many offenses that are not reportable to DDS as convictions, but that are legitimate reasons to issue a suspension if the driver fails to appear in court.

We believe that this error has been corrected. We are asking courts that have been holding rejected error files for these FTA issues to please resubmit them as soon as possible. As always, questions concerning GECPS error files can be addressed to Ms. Beverly

Tankersley at  
btankersley@dds.ga.gov.

If you have not registered for electronic reporting to DDS via the Georgia Electronic Conviction Processing System (GECPS), or would like to switch from Version 1 to Version 2 of GECPS, please visit the following webpage for more information:

<https://online.dds.ga.gov/gecps/>  
Under GECPS version 2, courts are able to transmit and withdraw all FTAs electronically (CDL and non-CDL, Georgia and non-Georgia residents, withdrawals before and after the effective date of the suspension). If you are currently transmitting under GECPS 1, contact your vendor to see about switching to version 2.

Also, early versions of the 2007

Traffic Court Reference Manual contained erroneous material concerning driving while unlicensed. Please check page 50 of your manual and cross-out any information related to driving while unlicensed. Also, notes indicating that legal code 40-5-20 and its subsections are now reportable for non-commercial offenses should be crossed out from the Reportable Violations List on pages 10 and 11. Updated copies of these pages for the TCRM are available at <http://www.dds.ga.gov/business/index.aspx>

Brandon Poarch  
Judicial Liaison  
Georgia Department of Driver Services  
678-413-8444

---

## Council of Municipal Court Judges

Administrative Office of the Courts  
244 Washington Street, SW • Suite 300  
Atlanta, Georgia 30334



**MARGARET GETTLE WASHBURN**  
*Chief Judge, Sugar Hill & Buford  
Editor*

**DAVID L. RATLEY**  
*Director*

**CHRIS PATTERSON**  
*Associate Director for  
Court Services*

**ASHLEY G. STOLLAR**  
*Graphic Design*