



Municipal Court

Judges Bulletin

Spring 2013 • The Georgia Council of Municipal Court Judges Newsletter

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PRESIDENT'S
CORNER

Chief Judge Kenneth E. Wickham
City of Norcross
City of Dunwoody

“Georgia’s Municipal Courts: Looking towards the Future and the Bigger Picture”

It has been a remarkable year for the Municipal Courts, and not just our Courts but the Courts of Georgia as a whole. I am pleased to report to you that the state of the Municipal Courts and the Judicial Council of Georgia has never been stronger. Over the last nine months we have focused the majority of our resources and attention on the possibility of major changes in Title 40, otherwise known as Traffic Law Reform. Beginning approximately two years ago, our Councils’ leadership recognized this movement and dedicated ourselves to studying the issues and working to find solutions and improvements to the system of justice in traffic courts across this great state. Over these last many months we have worked openly and collaboratively with the Chief Justice, Presidents of the Councils of Superior, State, Probate, Magistrate

Courts and the AOC to put together a consensus framework on Title 40 reform to present to the Governor and the Legislature.

We were able to reach consensus around a State Court Proposal presented by our friend and colleague Judge David Darden, President of the State Court Council. It was a well thought out and conservative approach which sought to minimize any unintended consequences on the system as a whole, while also making changes where improvement could be achieved. We believed it was a well done proposal and a good beginning for further discussions and work on the topic, but it now appears from all we are hearing that traffic law reform will not be a priority in this legislative session. As we all reflect back on the tremendous amount of work and energy

that it took to get to this point, there are those who question the need for this exercise. Granted it has been a lot of work but I suggest there is a much bigger picture here.

I believe this unprecedented collaborative effort and spirit between the Councils will pay dividends for generations as we continue to craft together a judiciary that every citizen of Georgia can be proud of. I have come to the clear belief that full and transparent cooperation across the classes of courts does nothing but strengthen the judiciary as a whole and foster an improved system of justice for all of Georgia. I can also state that the intensely focused introspection on our own municipal courts operations has created a very healthy climate for understanding where we can make improvements through education and training of

President's Corner cont...

our own membership.

I would like to specifically recognize a number of individuals whose dedication and leadership over the last nine months have been invaluable: Chief Justice Hunstein for her support, friendship and leadership, Ms. Marla Moore, Mr. Mike Cucaro, Ms. LaShawn Murphy and the AOC for their tremendous work and exemplary dedication to the courts, and Judge Jim Anderson, Judge Charles Barrett, Judge Gary Jackson and our lobbyist Mr. Skin Edge for their considerable contributions of time and effort on Title 40 reform. Without all of these individuals' unique contributions it is clear we would never have reached this broad consensus and cooperation amongst the Councils.

The Future of your Council and the Bigger Picture A select group of Municipal Judges from across the State recently met for a two day Strategic

Business Planning forum where we laid out the direction and goals for the Municipal Courts for the next few years, focusing on continuing efforts to excel in professionalism, ethics, and service to the citizens. We will be submitting a draft of this strategic planning document to the full body for your review and comments very shortly. Additionally, I have been honored to be a part of the Chief Justices Strategic Planning for the Judicial Council of Georgia and have tried to bring the broader ideals and goals of the courts as a whole to our councils work; I believe we have accomplished this.

In closing, I'd like to introduce to you to the future leadership of your Council, Judge Jim Anderson and Judge E.R. Lanier, who are the immediate, President Elect and 1st Vice President. Both gentlemen bring many years of experience on the bench and a truly deep passion for service to our efforts, with these

gifted and visionary leaders at the helm I am fully confident our Councils future will be even stronger.

Finally, I ask for each you to focus on your role not only as a municipal judge but as part of the state wide judiciary, as part of the judicial system as a whole dedicated to creating a strong and excellent judicial system for the citizens of Georgia. We will always be stronger and serve this great state completely when we stand together as one.

It has been my honor to serve this Council and I look forward to seeing you all in Jekyll in the summer. We thoroughly enjoyed the facilities and hospitality of Jekyll last year and it is a perfect spot for families and friends to join you as well. All my best to you all and keep up the good work. Please feel free to contact me at 770-714-6894 or kewickham@comcast.net if I can be of any assistance.



Please
Recycle!





By: Judge Margaret Gettle Washburn

HAPPY VALENTINE'S DAY

“From Beethoven to Bradshaw; A Little Something for Everyone”

For those of us in the Family Law arena, the one day of the year that ought to be divorce and angst free is Valentine's Day. It is a day of love and celebration, including our own Magistrate Court, where our Judges have hosted hundreds of weddings over the past 20+ plus years, a wonderful tradition where the courtroom is decorated with flowers and hearts and cupids.

What is the origin of Valentine's Day?

Saint Valentine's Day, commonly known as Valentine's Day, or the Feast of Saint Valentine, is observed on February 14 each year. Except for New Year's Day, it is the most celebrated holiday around the world. “Valentine's day for me is a celebration of love, love in its many forms, romantic love between a man and a woman, the never-ending love of family and dear friends, the enduring love between a parent and child, the abiding love between a human and their beloved pet, love of self and love shared with communities or the world.”

St. Valentine's Day began as a liturgical celebration of one or more early Christian saints named Valentinus. The most popular story about Saint Valentine was that he was imprisoned for performing weddings for soldiers who were forbidden to marry and for ministering to Christians, who were persecuted by the Roman Empire. Legend states that before his execution he wrote “from your Valentine” as a farewell to his jailer's daughter.

The day was first associated with romantic love in the circle of Geoffrey Chaucer in the High Middle Ages, when the tradition of courtly love flourished. By the 15th century, it had evolved into an occasion in which lovers expressed their love for each other by presenting flowers, offering confectionery, and sending greeting cards (known as “valentines”).

The first known romantic poem was written by Geoffrey Chaucer. Parliament of Foules (1382): “For this was on Saint Valentine's Day, when every bird cometh there to choose his mate.”

This poem was written to honor the first anniversary of the engagement of King Richard II of England to Anne of Bohemia. A treaty providing for a marriage was signed on May 2, 1381. They were each only 15 years old when they married.

(Granted, our Juvenile Court Judges might have had a few words with the parents, but those were the times).

Using the language of the law courts for the rituals of courtly love, a “High Court of Love” was probably established by princess Isabel of Bavaria in Paris in 1400. It was founded on 6 January, the festivity of a Bavarian Saint Valentin, with The Charter of the Court of Love. The court dealt with love contracts, betrayals, and violence against women. Judges were selected by women on the basis of a poetry reading. It was probably based on the poems of Grandson, and not on the poems of Chaucer. It is possible that the actual Court never existed and that it was all an invention of the princess.

Speaking of the law, we all advise our clients to not fall so hard for

From the Editor cont...

the object of their affections as to be accused of stalking and end up in Magistrate Court, another "Court of Love": As Carrie Bradshaw, one of our favorite NYC writers, said: "When men attempt bold gestures, generally it's considered romantic. When women do it, it's often considered desperate or psycho."

The verse "Roses are Red" shows the tradition of roses for Valentine's Day traceable as far back as Edmund Spenser's epic *The Faerie Queene* (1590):

"She bath'd with roses red, and violets blew,

And all the sweetest flowers, that in the forrest grew."

The modern cliché Valentine's Day poem can be found in the collection of English nursery rhymes *Gammer Gurton's Garland* (1784):

"The rose is red, the violet's blue,
The honey's sweet, and so are you.
Thou art my love and I am thine;
I drew thee to my Valentine:
The lot was cast and then I drew,
And Fortune said it shou'd be you."

Thus, the red rose has become associated with love and romance. But, there are other colors for your consideration. Roses of different colors symbolize different emotions and feelings. Therefore, be careful while presenting a rose to loved one or friend:

Red Roses - Love and passion

White Roses - True love, purity of the mind and reverence

Yellow Roses - Friendship, celebration and joy

Pink Roses - Friendship or Sweetheart, admiration

Peach Roses - Desire and excitement or appreciation

Lilac Roses - Love at first sight and enchantment

Coral Roses - Desire

Orange Roses - Enthusiasm and desire

Black Roses - Farewell or "It's Over"

Bouquet of Red and Yellow Roses:

Happiness and celebrations

Bouquet of Red and White Roses:

Bonding and harmony

Bouquet of Yellow and Orange

Roses: Passion

I think we all still believe in Valentine's Day and in the enduring human spirit; yes, even lawyers! In the immortal words of Carrie Bradshaw, in the last episode of the HBO Series "Sex and the City," aired February 22, 2004:

"Maybe it's time to be clear about who I am. I am someone who is looking for love. Real love. Ridiculous, inconvenient, consuming can't live without each other love."

And, in the more immortal words of Ludwig Von Beethoven, in the last part of a three part letter that was found in his desk after his death, addressed to "The Immortal Beloved," (and the mysterious addressee is unknown, but believed to be Antonie

Brentano):

"Your love makes me at once the happiest and the unhappiest of men - At my age I need a steady, quiet life - can that be so in our connection? My angel, I have just been told that the mailcoach goes every day - therefore I must close at once so that you may receive the letter at once - Be calm, only by a calm consideration of our existence can we achieve our purpose to live together - Be calm - love me - today - yesterday - what tearful longings for you - you - you - my life - my all - farewell. Oh continue to love me - never misjudge the most faithful heart of your beloved.

ever thine
ever mine
ever ours."

Happy Valentine's Day y'all. If there is someone out there that you have neglected while loving the law, next week is the time to fix it. Margaret Washburn.



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).

This listserv is developed and maintained by the Georgia Administrative Office of the Courts for official purposes only and is offered to Traffic Court and Municipal Judge subscribers strictly for their use in connection with their judicial duties. The listserv is not to be used for any personal or private activity of any kind, whether for profit or otherwise, without express written consent of the Georgia Administrative Office of the Courts.

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 the IT Listserv Administrator, Roger Watson at (404) 651-8169 or roger.watson@gaaoc.us . To subscribe to the Traffic Court or Municipal Judges Listserv, please contact LaShawn Murphy, AOC, at (404) 651-6325 or via email at lashawn.murphy@gaaoc.us.

Welcome aboard to all new subscribers!

“First Asian-American Judge Joins the Appellate Bench in Georgia”

On January 24, 2013, Judge Carla Wong McMillian was sworn-in as the newest member of the Court of Appeals of Georgia. Gov. Nathan Deal selected Judge McMillian to fill the vacancy created by the retirement of Judge A. Harris Adams who retired on December 31, 2012, after ten years on the Court of Appeals.

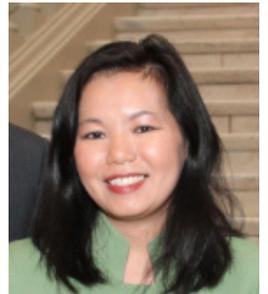
With this appointment, Judge McMillian became the first Asian-

American woman to serve on either of Georgia's appellate courts. In 2010 Gov. Sonny Perdue appointed Judge McMillian to the State Court bench in Fayette County. She won a contested race to a full four-year term making her the first Asian-American female to win a judicial election in Georgia in July 2012.

The Augusta native clerked for US District Court Judge William C.

O'Kelley, Northern District, and was a partner in the law firm of Souther Asbill and Brennan, LLP prior to her State Court appointment.

Judge O'Kelley introduced Judge McMillian to a crowded assembly in the North Wing of the State Capitol where she was joined by family, friends, and colleagues.



Judicial Council Members 2012 - 2013 *January 2013 Meeting*



Seated, from left: Judge Kelley Powell, Probate Court of Henry County; Chief Judge Brenda S. Weaver, Superior Courts, Appalachian Judicial Circuit; Judge Louisa Abbot, Superior Court, Eastern Judicial Circuit; Chief Judge Cynthia D. Wright, Superior Court, Atlanta Judicial Circuit; Chief Justice Hunstein, Supreme Court of Georgia; Chief Judge John J. Ellington, Court of Appeals; Judge Linda S. Cowen, State Court of Clayton County; Judge Robin Shearer, Juvenile Courts, Western Judicial Circuit; Judge Kenneth Wickham, Municipal Court of Norcross.

Standing, from left: Presiding Justice Hugh P. Thompson, Supreme Court of Georgia; Judge J. Lane Bearden, Juvenile Courts, Cherokee Judicial Circuit; Chief Judge Arch McGarity, Superior Court, Flint Judicial Circuit; Judge Edward D. Lukemire, Superior Court, Houston Judicial Circuit; Judge Betsey Kidwell, Magistrate Court of Heard County; Judge James Anderson, Municipal Court of Sandy Springs; Judge Alan Harvey, Magistrate Court of DeKalb County; Judge James G. Bodiford, Superior Court, Cobb Judicial Circuit; Judge David Emerson, Superior Court, Douglas Judicial Circuit; Chief Judge Gregory A. Adams, Superior Court, Stone Mountain Judicial Circuit; Judge J. Carlisle Overstreet, Superior Courts, Augusta Judicial Circuit; Judge Kathy Palmer, Superior Courts, Middle Judicial Circuit; Judge Mary Jo Buxton, Probate Court of Johnson County; Chief Judge Harry Jay Altman, Superior Courts, Southern Judicial Circuit; and Presiding Judge Herbert E. Phipps, Court of Appeals.

Not pictured: Judge David Darden, State Court of Cobb County

Domestic Issues

by: Judge Robert Whatley

“But why did you arrest us?” cries the parties. “In our country, the man is permitted to ‘discipline’ the spouse...

The domestic violence culture has undergone drastic changes over the years in our country and in many instances the rest of the world has been slow to do the same.

It use to be that when a police call was made on a physical abuse case, the police officer, if a very minor situation, would return to his police car and say, “Domestic, back in service.” No more. Now almost most every infraction is bringing charges and court.

Now, on an international level, there are cultural efforts to change that kind of thinking. But if you are in the United States, make no mistake about it-that thinking will notify.

When a foreign citizen or national is involved in a misdemeanor of a domestic type, there is an outcry of “In our country...” It has no currency. In Douglas County I am told the police responds to many calls every night to accusations where one spouse reports domestic abuse and rather than return to the police car alone, he has one or the other-or both-in tow.

“But why did you arrest us” cries the parties. “In our country, the man is permitted to ‘discipline’ the

spouse even if it means some injury. It is a routine minor infraction in most cases,” they say. But in some notable horrific cases, the same recitation has been uttered with varying tones.

The “defense” to recent murder cases has been “it was an honor killing”, alleging that the spouse or family member disgraced or vilified the family name, the person was allowed to murder the other family member, such as the recent case of a daughter who was dating a forbidden male. Or a wife who has betrayed family values.

This is more prevalent in Pakistan, but extends to other countries as well. And, again the United States Judicial System has said no. And off to prison they went.

But one is more graphic than most. A few years ago a very stressed-out Japanese mother drowned her three children in the Pacific Ocean. When charged with three counts of murder, she recoiled with horror and bewilderment when facing life imprisonment or worse. For in Japan, an overwhelmed or stressful mother is given probation or short sentence for such things.

Or in some countries, a man is exonerated while a woman he raped is stoned. Nay, not in America. You are in our country and our laws now apply to you.

A similar thing happened in court here in Douglas County recently with child abuse case where the parent was charged with beating her child on the side of a road. She said that child had been disrespectful and unruly, so as they walked along the road in the cold and rain, she beat the child with limb from a tree, sending him to the hospital.

Luckily, motorist called law enforcement and pulled over to stop the attack.

In her bond hearing the Haitian-born mother said, “In my country a parent must beat their child to make sure they understand respect.” The woman is now serving time for her attack.

Perhaps the old maxim “When in Rome, do as the Romans do” is fleshed out there. It should be.



By: Mickey G. Roberts, Esq.

NEW DUI LAWS FOR MULTIPLE OFFENDERS

Feb. 1, 2013

Effective January 1, the laws pertaining to license suspension and reinstatement thereof for multiple DUI offenders have changed. There are several code sections which affect the ability of a person convicted of multiple DUIs to reinstate their driving privileges. These laws are codified in OCGA Title 40 and Title 42.

Under 40-5-63(a)(2) upon a second conviction, the license is suspended (For DUI convictions, there is no time limit on the suspension). At the end of 18 months licensee may have license reinstated PROVIDED he does the following:

1. Submits proof of completion of DUI school(Risk Reduction)
2. Submits proof of installation and maintenance of an interlock device for 6 months coinciding with issuance of an interlock device limited

permit, UNLESS WAIVED due to financial hardship.

3. Pays the reinstatement fee.

In addition, 40-5-63. 1 provides that a person convicted of 2 or more DUIs within 10 years, as measured from arrest to arrest, must also undergo a clinical evaluation (defined in 40-5-1(3.1), and if recommended, shall complete a substance abuse program PRIOR to license reinstatement; (if the evaluation does NOT recommend treatment, the DBHDD must sign off and waive treatment, and there is a process for this)

Limited Permit:

Under 40-5-64(a)(2), a person whose license has been suspended for a 2nd DUI conviction in 5 years, MAY apply for a limited driving permit after serving at least 120 days suspension, AND providing a certificate of eligibility from a drug court program in the court of conviction, OR proof of enrollment in a clinical treatment as provided in 40-5-63.1.

40-5-64(C) (2) An IID limited permit is valid for 8 months(under the old

law, the licensee could get a 6 month limited permit with IID, pursuant to Title 42, and provided the court issued an "Interlock Ignition Device Order as part of the sentence); then the device may be removed and the permit may be renewed for additional period of 6 months as provided in 40-5-64(1)

Interlock Ignition Device (IID): 42-8-111(a) provides that upon a second conviction of DUI in a 5 year period(arrest to arrest), the court shall issue a certificate of eligibility for an IID (however see (b) below) ***42-8-111(b) provides that the court may decide to DECLINE issuance of the certificate of eligibility FOR ANY REASON.

42-8-112 (a)(1) provides that DDS shall not issue an IID limited permit until after expiration of 120 days from the date of conviction, and 42-8-112(a)(2) the person must submit the following to DDS:

1. Completion of DUI School;
2. Completion of a clinical evaluation and enrolled in a substance

abuse program approved by DHR(or has waiver thereof) OR is enrolled in a drug court program;
 3. Proof of installation of an IID on any vehicle they will be operating;
 4. A certificate of eligibility for an IID limited driving permit or probationary license from the court that sentenced such person for the conviction that resulted in the suspension.

42-8-112(5)(B) provides that after 8 months, the licensee may apply for a limited permit with no IID.

MY SYNOPSIS of the New Laws

Person is convicted of 2nd DUI in 5 years (arrest date to arrest date):

1. 120 day HARD suspension
2. 8 month limited permit WITH IID, provided he: completes DUI School, enrolled in drug court program or has done clinical evaluation and either is enrolled in treatment or has obtained waiver from DHR; and has obtained a certificate of eligibil-

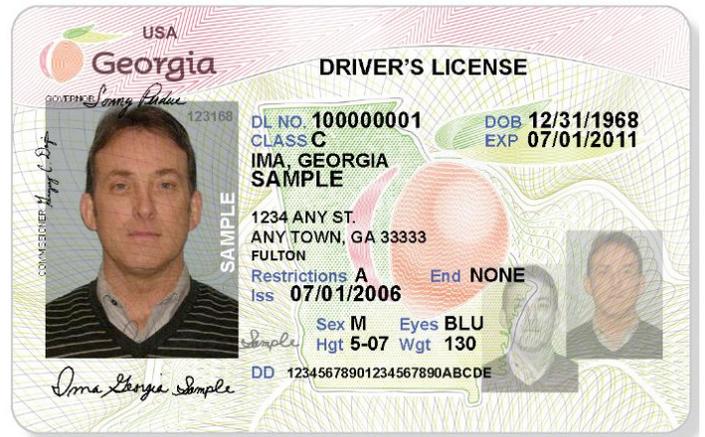
- ity from sentencing judge;
3. 6 month limited permit if successfully completes the 8 months with IID permit
4. Full license reinstatement per 40-5-63(a)(2)

Questions About This Law

1. What happens if judge declines to sign certificate? It appears that client CAN get license reinstated if he shows DDS completion of DUI School, Hardship Waiver Order, and pays reinstatement fee; But it also appears there might NO driving whatsoever for 18 months.
 ***From reading the code, and from discussion with DDS counsel, it appears to me that IF judge doesn't sign a certificate of eligibility for limited permit OR a waiver, the person will NEVER get license reinstatement.
2. There seems to be a conflict between 40-5-63(a)(2), "license reinstatement if licensee provides proof of installation and maintenance of interlock device for 6 months co-

inciding with IID permit", and the 8 month IID permit requirement under 42-8-112(5)(B)
 3. What happens if licensee pled guilty in 2012, and has had license suspended for more than 120 days? According to DDS, they still need a certificate signed by sentencing judge to get any IID permit. What happens if the sentencing judge doesn't sign a waiver or sign the Certificate?

As of the writing of this article, the author has had one city judge in Gwinnett tell him that the judge will not guarantee that he would sign the Certificate for a limited IID permit after 120 days, and would definitely not sign the certificate at time of sentencing; Also at time of this writing, the judges in State Court of Gwinnett have not decided on any uniform procedure as to whether they will sign the Certificates or Waiver either.



“Some Evidence Questions Under the New Code.”

By: Professor Paul S. Milich,
Professor of Law and Director of
the Litigation Program
Georgia State University, College
of Law
(lecture to the Municipal Court
Judges of Georgia)*

Fun Facts and Scenarios- based upon the NEW Evidence Code

1) In a commitment hearing, a police officer testifies that he received a report from dispatch that the defendant was running naked through a shopping mall. The defense objects that the report is hearsay.

Which is the best answer?

1. Sustained. Hearsay is illegal evidence with no probative value.
2. Sustained. The new code does not allow hearsay in a commitment hearing.
3. Overruled. The new code does allow hearsay in a commitment hearing.
4. Overruled IF it explains the police officer's conduct.

New O.C.G.A. § 24-8-802:
Hearsay shall not be admissible except as provided by this article; provided, however, that if a party does not properly object to hearsay, the objection shall be deemed waived, and the hearsay evidence shall be legal evidence and admissible.

New O.C.G.A. § 24-1-2(d)(1):
In criminal commitment or preliminary hearings in any court, the rules of evidence shall apply except that hearsay shall be admissible.

2) In the same commitment hearing, the defense objects that the hearsay is inadmissible under the Confrontation Clause.

Which is the best answer?

1. Overruled. The Confrontation Clause does not apply to commitment hearings.
2. Overruled. The defense can confront the officer who testifies.
3. Sustained. The Confrontation Clause does apply to commitment hearings.
4. Sustained. Naked people have a right to confront their accusers.

Gresham v. Edwards, 281 Ga. 881, 644 S.E.2d 122 (2007) (Confrontation Clause and Crawford do not apply to a preliminary hearing, only to a criminal trial).

3) In the same commitment hearing, the police officer testifies that the defendant was convicted six

years ago for indecent exposure.

The defense objects that this is inadmissible character evidence.

Which is the best answer?

1. Overruled. The rules of evidence are relaxed in a commitment hearing.
2. Overruled under the repeatedly indecent offender rule.
3. Sustained. The rules of evidence, except for hearsay, apply to commitment hearings.
4. Sustained. If a prior conviction is more than 5 years old, it doesn't count.

New O.C.G.A. § 24-1-2(d)(1):
In criminal commitment or preliminary hearings in any court, the rules of evidence shall apply except that hearsay shall be admissible.

4) After a fender bender, defendant was cited for running a red light. Officer Tracy testifies that although he did not observe defendant run the light, he cited him based on the statements of three eyewitnesses that defendant ran the light. None of the bystanders are at the trial. The

defense objects on hearsay and Confrontation Clause grounds.

Which is the best answer?

1. Overruled. The rules of evidence do not apply to traffic violations.
2. Overruled. The Confrontation Clause does not apply to traffic violations.
3. Both (1) and (2).
4. Sustained.

O.C.G.A. 24-1-2(b): “The rules of evidence shall apply generally to all nonjury trials and other fact finding proceedings of any court in this state subject to the limitations set forth in subsections (c) and (d) of this Code section.”

“In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.” U.S. Const. amend. VI.

5) In a prosecution for driving with a suspended license, the State offers a certified copy of a record from the Georgia Department of Driver Services which states that notice of suspension of defendant’s driver’s license was sent to defendant. The defense objects on hearsay and Confrontation Clause grounds.

Which is the best answer?

1. Sustained. The record is testimonial hearsay.
2. Sustained unless there is foundation qualifying the record under the business record exception to hearsay

3. Both (1) and (2).
4. Overruled. Nontestimonial hearsay that qualifies under the public records exception.

New O.C.G.A. § 24-8-803(8)(A):

The following shall not be excluded by the hearsay rule ... public records, reports, statements, or data compilations, in any form, of public offices, setting forth:

(a) The activities of the public office.

State v. Tayman, 960 A.2d 1151 (Maine 2008)

Certified records from the Violations Bureau that stated notice of suspension of defendant’s driver’s license was sent to defendant were not “testimonial” for purposes of Confrontation Clause, in prosecution for operating after suspension and unlawful possession of a license; the records were akin to business or public records, and they did not contain assertions or accusations made after the fact or in preparation for litigation.

6) Same case. Sheriff Andy Taylor testifies that he accessed a terminal lawfully connected to the Georgia Crime Information Center and offers a printout showing that defendant’s license was suspended. The defense objects that the State must tender a certified copy of the record of suspension.

Which is the best answer?

1. Sustained. Copies of all public records must be certified under the new evidence code.
2. Sustained. Cannot offer documents downloaded from the internet.
3. Overruled. A special statute allows this.
4. Overruled. Andy would never lie. (That’s my favorite answer!)

New O.C.G.A. § 24-9-924:

(a) Any court may receive and use as evidence in any proceeding information otherwise admissible from the records of the Department of Public Safety or the Department of Driver Services obtained from any terminal lawfully connected to the Georgia Crime Information Center without the need for additional certification of such records.

(b) Any court may receive and use as evidence for the purpose of imposing a sentence in any criminal proceeding information otherwise admissible from the records of the Department of Driver Services obtained from a request made in accordance with a contract with the Georgia Technology Authority for immediate on line electronic furnishing of information.

Witness must testify that record was obtained from terminal lawfully connected to GCIC.

Waters v. State, 210 Ga.App. 305, 436 S.E.2d 44 (1993)

Some Evidence Questions Under the New Code *cont.*

More Evidence Questions Under the New Code- Part 2

by: Professor Paul S. Milich, Professor of Law and Director of the Litigation Program Georgia State University, College of Law (lecture to the Municipal Court Judges of Georgia)* More Fun Facts and Scenarios-based upon the NEW Evidence Code Edited and contributed by Margaret Gettle Washburn, *contr.* ed.**

7) Defendant Joe Cool was cited for DUI. The State offers a certified copy of a report prepared by Officer Tracy which includes the statement: "I smelled alcohol on or about the [defendant driver]." The officer is not at trial. The defense objects on hearsay and Confrontation Clause grounds.

Which is the best answer?

1. Sustained. The report is testimonial and is hearsay without exception.
2. Sustained. Although the report falls under the public record exception, it is testimonial
3. Overruled. Nontestimonial and falls under the public record exception.
4. Overruled. The defense could have subpoenaed the officer if it wanted to.

New O.C.G.A. § 24-8-803(8)(B):

The following shall not be excluded by the hearsay rule ... public records, reports, statements, or data compilations, in any form, of public offices, setting forth: ...

(b) Matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, against the accused in criminal proceedings, matters observed by police officers and other law enforcement personnel in connection with an investigation.

8) Same case: If Officer Tracy does testify, can the State get the report into evidence?

Which is the best answer?

1. No, its still testimonial.
2. Yes. It falls under the public record exception.
3. Yes. If the officer cannot testify fully and accurately without the report.
4. Yes, but only if the defense isn't paying attention.

New O.C.G.A. § 24-8-803(5):

The following shall not be excluded by the hearsay rule ...

Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to

testify fully and accurately shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly

9) In a civil case involving trespass and property damage, plaintiff offers a certified copy of a police report in which the officer wrote that the defendant admitted to him that he cut down the plaintiff's trees. The police officer is not at the trial. The defense objects that this is double hearsay (police report said, the defendant said) and thus inadmissible.

Which is the best answer?

1. Overruled. The report is a business record and the defendant's statement is a party admission.
2. Overruled. Admissible under rule 803(8)(B) ("matters observed" pursuant to duty) and the defendant's statement is a party admission.
3. Sustained. What the defendant said is not a "matter observed" by the police officer.
4. Sustained. Narrative portions of a police report are inadmissible.

New O.C.G.A. § 24-8-803(8)(B):

(8) Public records and reports. ...
(b) Matters observed pursuant to duty imposed by law as to which matters there was a duty to report,

excluding, however, against the accused in criminal proceedings, matters observed by police officers and other law enforcement personnel in connection with an investigation ...

10) In the same case, the police report also contains the officer's conclusion that the defendant intentionally cut down the plaintiff's trees because he was angry at the defendant for calling him names. The defense objects to this portion of the report as hearsay.

Which is the best answer?

1. Overruled. Admissible under rule 803(8)(C) ("factual findings" of an official investigation).
2. Sustained. The officer's cursory investigation does not qualify as "factual findings."
3. Sustained. The officer's conclusion violates the ultimate issue rule.
4. Both (2) and (3).

New O.C.G.A. § 24-8-803(8)(C):

8) Public records and reports ...
(c) In civil proceedings and against the state in criminal proceedings, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness

New O.C.G.A. § 24-7-704(a) abolishes, at least nominally, the ultimate issue rule.

Under the Federal Rules of Evidence, rather than stating that testimony "violates the ultimate issue rule," courts state that the testimony is "not helpful to the trier of fact." This "helpfulness" standard is drawn from the text of both Rules 701 (lay opinions) and 702 (expert opinions).

11) Plaintiff has sued Freddie Cakes for injuries suffered when a driver of a truck with "FREDDIE CAKES" painted on the side ran a red light and struck the plaintiff's car.

Plaintiff would testify that while at the ER a few hours after the accident, Bob, the driver of the bakery truck, told her: "I'm so sorry. This was all my fault. I was lighting a joint and didn't see the red light." The defense objects that this is hearsay.

Which is the best answer?

1. Sustained. The driver was not authorized to speak for his employer.
2. Sustained. Can't use the sign on the truck to prove the driver worked for Freddie Cakes.
3. Overruled. The sign on the truck proves the driver was an employee and his statement concerns something he would know by virtue of his job duties.
4. Overruled. Falls under the pot-head exception to hearsay.
5. New O.C.G.A. § 24-8-801(d)(2)

(d) Agent admissions ...

(D) A statement by the party's agent or employee, but not including any agent of the state in a criminal proceeding, concerning a matter within the scope of the agency or employment, made during the existence of the relationship ...

New O.C.G.A. § 24-9-902(7):

Extrinsic evidence of authenticity as a condition precedent to admissibility shall not be required with respect to the following: ...

(7) Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin

12) In a personal injury case, Bill, plaintiff's husband, testifies that a week after the accident, his wife told him: "My neck is really sore."

The defense objects that this is hearsay.

Which is the best answer?

1. Sustained. A week after the accident is too long to qualify as part of the res gestae.
2. Sustained. The statement is self-serving and inadmissible on that basis.
3. Overruled if offered to prove that her husband was in pain in her neck.
4. Overruled under the exception

Some Evidence Questions Under the New Code *cont.*

for then-existing physical conditions.

New O.C.G.A § 24-8-803(3):

(3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, and bodily health, but not including a statement of memory or belief to prove the fact remembered ...

13) A witness testifies on direct that right after she saw the defendant's car hit the telephone pole she told her companion: "That moron. He was talking on his cell phone!" The defense objects that this is hearsay.

Which is the best answer?

1. Sustained. The out-of-court statements of a testifying witness are hearsay.
2. Sustained. This is improper bolstering of the witness's credibility.
3. Overruled. The statement is not offered to prove that the defendant is, in fact, a moron.
4. Overruled. The out-of-court statement is admissible as an excited utterance.

New O.C.G.A. § 28-8-801(d)(1)(A):

An out-of-court statement shall not be hearsay if the declarant testifies at the trial or hearing, is subject to cross examination concerning the statement, and the statement is admissible as a prior inconsistent statement or a prior consistent statement under Code Section 24-6-613 or is otherwise admissible under this chapter.

New O.C.G.A § 24-8-803(2):

Even More Fun Facts and Scenarios-based upon the NEW Evidence Code The Third Time's the Charm!**

14) In a breach of contract case, a witness for the plaintiff would testify that he heard the plaintiff say: "I plan to ship the widgets tomorrow."

The defense objects that this is hearsay.

Which is the best answer?

1. Not hearsay but a verbal act.
2. Overruled under the exception for statements of then existing intent.
3. Sustained. His intent is not in issue.
4. Sustained. Hearsay without exception.

New O.C.G.A § 24-8-803(3):

(3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, and bodily health, but not including a statement of memory or belief to prove the fact remembered or believed ... and not including a statement of belief as to the intent of another person

15) In a breach of contract case, a defense witness would testify that he heard the defendant say: "I believe Joe [the plaintiff] intends to reject my widgets when I deliver them tomorrow."

The plaintiff objects that this is hearsay.

Which is the best answer?

1. Overruled. Exception for statements of then existing mental conditions – here, the defendant's belief.
2. Overruled. Exception for statements of then existing mental conditions – here, Joe's intent.
3. Sustained. A statement of belief offered to prove the truth of the matters believed is inadmissible hearsay.
4. Sustained. No one really knows what a widget is. (I like that answer!)

New O.C.G.A. § 24-8-803(3):

(3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, and bodily health, but not including a statement of memory or belief to prove the fact remembered or believed ... and not including a statement of belief as to the intent of another person.

The exception "refers to the state of mind of the declarant, not to the state of mind of the listener or hearer of the statement." *U.S. v. Arbolaez*, 450 F.3d 1283, 1290 n. 6 (11th Cir. 2006).

16) In a breach of contract case, the plaintiff testifies that on the day defendant delivered the widgets, plaintiff's warehouse manager called him and said: "These widgets are all water damaged."

The defense objects: "Hearsay."

Which is the best answer?

1. Overruled. Agent admission.
2. Overruled. Exception for present sense impressions.
3. Sustained. No foundation that the manager spoke from personal knowledge.
4. Sustained. Widgets are supposed to be water damaged.

New O.C.G.A. § 24-8-803(1):

Present sense impression. A state-

ment describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter

17) In a drug case, the prosecution offers a copy of call records for a certain phone number maintained by AT&T. Attached to the copy is a "certificate of authenticity" signed by a records custodian at AT&T and properly notarized.

The defense objects that the call records are hearsay.

Which is the best answer?

1. Sustained. No foundation that the records satisfy the business record exception.
2. Sustained. AT&T's records are presumptively inaccurate.
3. Overruled. The certified affidavit satisfies authentication and hearsay rules.
4. Overruled as long as the prosecutor vouches for the records.

New O.C.G.A. § 24-9-902(11):

Extrinsic evidence of authenticity as a condition precedent to admissibility shall not be required with respect to the following: ...

(11) The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under [the business record exception] if accompanied by a written declaration of its custodian

or other qualified person certifying that the record:

(a) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of such matters;

(b) Was kept in the course of the regularly conducted activity; and

(c) Was made by the regularly conducted activity as a regular practice.

18) In an DUI case, the defense offers a copy of a medical record that states that the defendant suffered from a pinched nerve and that certain medications were prescribed to the defendant. The doctor is not at trial. The record is accompanied by an affidavit that includes all the assertions contained in New O.C.G.A. § 24-9-902(11). The record and affidavit were provided to the State four days before the trial with written notice of intent to offer the same into evidence.

The State objects that the note is hearsay.

Which is the best answer?

1. Sustained. Four days is not sufficient notice.
2. Sustained. Opinions are inadmissible in a business record.
3. Sustained. No foundation that the author of the record was qualified as a medical expert.
4. Overruled.

Some Evidence Questions Under the New Code *cont.*

As to notice, the rule only requires enough advance notice to give the opponent “a fair opportunity to challenge such record and declaration.”

The new business record exception expressly allows opinions in the record.

The authentication of the record is evidence that the author is a physician. If pressed, the court can verify the physician’s license on the internet. O.C.G.A. 24-1-104(a)

19) DUI case. State gives notice of intent to offer defendant’s prior conviction in 2009 for DUI.

Defense objects to this as inadmissible character evidence.

Which is the best answer?

1. Overruled. The prior DUI proves defendant’s bent of mind to drive while intoxicated.
2. Overruled. The prior DUI proves defendant’s motive and intent.
3. Both (1) and (2).
4. Sustained. Inadmissible under the new evidence code unless it meets one of two narrow exceptions.

New O.C.G.A. § 24-4-404(b): Evidence of other crimes, wrongs, or acts shall not be admissible to prove the character of a person in order to show action in conformity there-

with. It may, however, be admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

McMullen v. State, 2012 WL 2688713, n.30 (Ga.App. 2012) (“We note in passing that the new evidence code adopted by the Georgia General Assembly, effective January 1, 2013, eliminates the bent-of-mind and course-of-conduct exception to similar-transaction character evidence.”

New O.C.G.A. § 24-4-417: DUI exceptions:

(1) If defendant in this case refused the test and claims he did so for reasons that would be rebutted by the fact that he took the test in a prior instance and was convicted, then the prior is admissible.

(2) Where defendant claims he was not the driver, a prior DUI is admissible to prove identity.

20) Stan is 16 and charged with shoplifting. He takes the stand and denies the offense. On cross, the prosecution wants to ask Stan if its true that two weeks ago he gave a false name to a teacher who questioned him at school.

Defense objects that this is improper impeachment.

Which is the best answer:

1. Sustained. Unrelated acts of untruthfulness are inadmissible unless they led to a conviction.
2. Sustained. Teens never lie.
3. Overruled if the judge finds that the witness’s credibility is an important issue in the case and the cross-examiner has a good faith basis for the question.
4. Overruled, and if the kid denies it, the prosecution can call the teacher to testify.

New O.C.G.A. § 24-6-608(b):

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’s character for truthfulness, other than a conviction of a crime as provided in Code Section 24 6 609, or conduct indicative of the witness’s bias toward a party may not be proved by extrinsic evidence. Such instances may however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness ...

21) In a DUI case, a defense “expert” would testify regarding intoxicilyzers. The witness graduated last year from Paducah College & Clown School with a degree in chemistry. He has some rather novel theories about intoxicilyzers.

The State moves to exclude his testimony on the grounds that he is not qualified and his methods and conclusions are unreliable under Daubert. (New O.C.G.A. § 24 7 702)

Which is the best answer:

1. Overruled. Admit the expert’s testimony “for what its worth.”
2. Overruled. Daubert does not apply to Municipal Courts.
3. The court should hold a hearing and exclude the expert if his testimony does not satisfy Daubert standards .
4. Sustained. There are already too

many clowns testifying.

United States v. Brown, 415 F.3d 1257, 1268 (11th Cir. 2005) (“There is less need for the gatekeeper to keep the gate when the gatekeeper is keeping the gate only for himself.”)

Thanks very much to Kathy Adams, one of my most favorite people.

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2013 Municipal Court Judges Courses

2013 Courses:	Dates	Location
Humanities: 6 class hours, 6 hours reading credit	March 22	UGA Hotel & Conf. Center, Athens
Spanish II for Judges (Must have taken Spanish I in previous years) 6 class hours, 6 hours practice on your own)	April 12	UGA Hotel & Conf. Center, Athens
20 Hour Basic Certification)	June 19-21	Jekyll Island Club
Municipal Law and Practice Update	June 19-21	Jekyll Island Club
Spanish I 6 class hours, 6 hours practice on your own	August 9	UGA Hotel & Conf. Center, Athens
Local Ordinances)	September 12-13	UGA Hotel & Conf. Center, Athens
20 Hour Basic Certification (repeat of June class)	October 9-11	UGA Hotel & Conf. Center, Athens
Municipal Law and Practice Update (repeat of June class)	October 9-11	UGA Hotel & Conf. Center, Athens
Substances of Abuse: 8 class hours, 4 hours reading credit)	November 19	UGA Hotel & Conf. Center, Athens

2012-2013 District Representatives

- | | | |
|--|---|--|
| District 1
Judge Tammy Stokes
Judge Doug Andrews | District 5
Judge Gary Jackson
Judge Maurice Hilliard | District 9
Judge William "Bill" Brogdon
Judge Margaret Gettle Washburn |
| District 2*
Judge Richard Kent
Judge Willie C. Weaver Sr. | District 6*
Judge John Clay Davis
Judge John DeFoor | District 10*
Judge Leslie Spornberger Jones
Judge Dale R. "Bubba" Samuels |
| District 3
Judge Michael P. Cielinski
Judge Jim Thurman | District 7
Judge Tim McCreary
Judge Roger Rozen | |
| District 4*
Judge Norm Cuadra
Judge Warren W. Hoffman | District 8*
Judge Thomas "Tommy" Bobbitt
Judge E.R. Lanier | |

**District Representative up for election in June 2013.*

Color coordinated Map on next page.



2013 Poverty Guidelines

The following figures are the 2013 HHS poverty guidelines which are scheduled to be published in the [Federal Register](#) on January 24, 2013. (Additional information will be posted after the guidelines are published.)

2013 POVERTY GUIDELINES FOR ALASKA	
Persons in family/household	Poverty guideline
For families/households with more than 8 persons, add \$5,030 for each additional person.	
1	\$14,350
2	19,380
3	24,410
4	29,440
5	34,470
6	39,500
7	44,530
8	49,560

2013 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA	
Persons in family/household	Poverty guideline
For families/households with more than 8 persons, add \$4,020 for each additional person.	
1	\$11,490
2	15,510
3	19,530
4	23,550
5	27,570
6	31,590
7	35,610
8	39,630

2013 POVERTY GUIDELINES FOR HAWAII	
Persons in family/household	Poverty guideline
For families/households with more than 8 persons, add \$4,620 for each additional person.	
1	\$13,230
2	17,850
3	22,470
4	27,090
5	31,710
6	36,330
7	40,950
8	45,570

By: Judge John Cicala, Jr.

“Court Procedures and the Development of an SOP for the individual Municipal Courts”

When first approached with the news that I had been selected as the chair of the Court Operations and Procedures Committee, I did not anticipate cutting my teeth on a project of this proportion. Basically I was to develop an “internal audit” procedure for the municipal courts throughout the state which would be meaningful on all levels, and at the same time, helpful to the vast majority. Not being smart enough to be overwhelmed by this task, I smiled and said, “Sure.”

I began to realize that asking someone to participate in the development of an audit procedure is almost like asking them to help you test your new water-boarding set that you got in the mail from Acme.

Audit should be a four letter word. How can one be expected to warm up to a process that is associated with the revenue raising portion of our federal bureaucracy? Not going to happen. Instead of calling this an internal audit procedure (the nomenclature instilling somewhat of a defensive posture), my personal belief is that we should be calling this the Municipal Court Happy Procedures and Protocols (with Forms) project.

The idea here though is to come up with a uniform set of minimum procedures and guidelines that are accessible and available to all the municipal courts throughout the state. This includes areas such as procedures followed by Clerks, Judges, Probation, and Court security personnel. It also includes procedures for services of Public Defenders, Prosecutors, and Interpreters. This is an important step in the right direction toward assuring more uniformity in the practices and procedures followed in the Municipal Courts throughout the State. It should be considered as a valuable resource to all who are involved with the municipal court system.

There is still a lot of work to do, but thus far procedures, protocols and forms have been gathered and made somewhat generic for the following personnel:

- Clerk of the Court
- Judge
- Public Safety Personnel
- Prosecutor
- Public Defender
- Probation
- Interpreters

As one might expect, there will be quite a bit of overlap with the Municipal Court Judges Bench Book which is currently produced by Judge Glen Ashman. As one might also expect, this project, as with our Benchbook, is an undertaking which (unwillingly) has no end.

This project would not be possible without contributions from people who were willing to share their time, experience, knowledge and data base in order to even have a starting point. Tony Day, Misty Day, Judge James Payne, Judge E. R. Lanier, Judge Nelly F. Withers, and LaShawn Murphy, have all been involved to varying degrees in the shaping of this project. Now, Judge Darrell Caudill will be involved, as well.

I would appreciate contributions of procedures and forms which are used in the various courts throughout the State and would like to have them forwarded electronically through LaShawn Murphy of the Administrative Office of the Court. This can be done in WordPerfect, Adobe (.pdf), or MS Word formats.

By: Ben Wright
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“Judge pushes for highway memorials for troopers killed in the line of duty”

Trooper William Gaines Andrews Jr. had just 15 minutes left on his Georgia State Patrol shift when he started pursuing a speeding vehicle on State Route 41 north of Talbotton.

Andrews, 32, of Manchester lost control of his patrol cruiser about 11:14 p.m. and struck a tree on May 7, 1977. He died of injuries sustained in the accident a day later.

For the last seven years, Columbus Recorder’s Court Judge Michael Cielinski has launched an effort to make sure the sacrifices of Andrews and the more than 20 other troopers killed in the line of duty are not forgotten. Cielinski would like to see memorials placed along Georgia highways to remember the troopers who served in regions across the state.

“I’m not going to be satisfied until I get them all done,” said Cielinski, who once served as an attorney for the Columbus Police Department from 1975-1981 before he started hearing traffic and felony cases in Recorder’s Court.

As an attorney for the police department, Cielinski was usually called

when local officers were involved in shootings or serious accidents. Because he was familiar with the family, Cielinski was called on that night more than 35 years ago when Andrews crashed into a large oak tree.

“I got called out to the scene,” said Cielinski who brought the trooper’s wife and family to the hospital. “The little boy wanted to see his dad.”

A memorial for each trooper must be approved by the General Assembly. Capt. Paul Cosper, the legislative liaison for the Georgia Department of Public Safety, said that daunting task will start during the 2013 session.

From a list with 24 troopers’ names, Cosper said resolutions will be sought for 10 of the oldest names on the list during this session.

“We can’t do them all in one year because it’s a daunting task,” Cosper said. “We felt like we could get 10 done. The first 10 are the oldest. That would remain 14 for the next year.”

Cosper said he didn’t see any road blocks but recognizes the legislative process is very time consuming.

“Once we get that done and get them signed into law, that is when the real work comes in getting the scheduling of events,” he said.

A memorial will identify the trooper with his name on an intersection or memorial Highway. Cosper said his office would contact the families of troopers to determine the honor.

“My philosophy is we always contact the family and what would their wishes be,” Cosper said. “It’s really for the family.”

An honor for Andrews isn’t among the first 10 considered in the legislature next year. His name will be on the second list for approval in 2014.

If the process goes as planned for the first 10, Cosper said signs for memorials could probably go up in late June or July during the summer. That process will continue the next year until all troopers are honored. “Before it is all said and done, all those killed in the line of duty will have something done for them,” Cosper said.

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