



MUNICIPAL COURT

Judges Bulletin

Summer 2004 • The Georgia Council of Municipal Court Judges Newsletter • Vol. 5, No. 4

Council of Municipal Court Judges Officers 2004 - 2005

President

Judge William M. Coolidge III, Duluth

President Elect

Judge John K. Edwards, Jr., Valdosta

First Vice President

Judge LeRoy Burke III, Savannah

Secretary

Judge Kathy Gerhardt, Macon

Treasurer

Judge A. Frost Ward, Morrow

Immediate Past President

Judge Charles Barrett, III, Lilburn

Editor

Chief Judge Margaret Washburn, Duluth

District Representatives

District One

Judge Kevin J. Street, Thunderbolt
Judge Willie T. Yancey, II, Thunderbolt

District Two

Judge Herbert W. Benson, Ashburn
Judge John Kinsley Edwards, Jr., Valdosta

District Three

Judge Michael P. Cielinski, Columbus
Judge David M. Pierce, Byron, Perry, Roberta

District Four

Judge Angela T. Butts, Decatur
Judge Warren W. Hoffman, Stone Mountain

District Five

Judge Elaine Carlisle, Atlanta
Judge Calvin S. Graves, Atlanta

District Six

Judge John Clayton Davis, Forest Park
Judge David J. Turner, Jr., Manchester

District Seven

Judge Herbert M. Crane, Jr., Cartersville
Judge Diane M. Busch, Marietta

District Eight

Judge Tommy Bobbitt, III, Dublin
Judge Charles Merritt, Jr., Madison

District Nine

Judge Hammond Law, III, Flowery Branch
Judge Dennis T. Still, Norcross

District Ten

Judge Chip Hardin, Washington
Judge C. David Strickland, Covington

President's Corner



**William Coolidge, III
Duluth**

The coming year will be a great challenge for the Municipal Courts of Georgia. We have always wanted recognition and in last year's indigent defense bill, we were indeed recognized by OCGA § 36-32-1 (f)-(g), which removes our jurisdiction to impose enforceable sentences if we do not have conforming indigent defense programs in place by January 1, 2005. (More on this is elsewhere in this newsletter.) No other court has this sanction. House Bill 1Ex, which provides a funding mechanism for the new indigent defense program in Superior and Juvenile Courts, implicitly recognizes the Municipal Courts for our ability to raise funds, since our courts collect more surcharges than any other single class of courts. Of course, we would have preferred recognition for other attributes, such as our practice of efficiently dispensing fair and impartial justice to citizens who probably will never appear in any other type of court.

Also looming on the horizon is a new Federal mandate that will, as a practical matter, require that all traffic court dispositions be electronically reported to a central state office. Since we handle most of these cases, the change will be more closely felt by our

courts than any other single class of courts.

The greater weight of the burdens imposed by House Bill 1Ex and the need to electronically report traffic dispositions will fall on our clerks, many of whom have other duties. In the coming year, their work will increase exponentially. They need our support in efforts to organize an association of Municipal Court clerks and to establish regular, mandatory training sessions.

After years of jurisprudential obscurity, our Courts are going to be very much in the spotlight especially in the area of surcharge collections. While it has been our historic practice as judges to let our clerks and other city officials handle administrative matters, the need for our courts to perform is so great that Municipal Court Judges are going to have to take a greater role in court administration than ever before, even if our compensation "packages" (i.e. getting paid on a per court session basis) do not contemplate this. However, the future of our courts may depend on increasing our administrative role and making our local city officials aware of the increased administrative needs of Municipal Courts.

With the active participation of Municipal Court Judges, I am confident that we will be able to meet the challenges facing our Municipal Courts.

Outgoing President's Letter



**Charles L. Barrett, III
Lilburn**

I am pleased and privileged to again report to you in this my final "President's Letter".

The annual "Summer Seminar" took place on June 23-25, 2004, at the Renaissance PineIsle Resort at Lake Lanier Islands. The Summer Seminar continues to be our most attended training seminar of the year.

The Judicial Council of Georgia met June 16, 2004 at Jekyll Island, and, once again, members of our Council's Executive Committee were invited guests. Judge William Coolidge represented the Council of Municipal Court Judges at the Judicial Council's meeting, and presented a report. Our Council continues to interact with the Judicial Council of Georgia, wherever and whenever possible, and our hope is that our Council will achieve representation on the Judicial Council in the relative near future. Our representatives continue to be warmly received at Judicial Council functions and we, of course, very much appreciate the graciousness of the Judicial Council in continuing to invite us.

As you know, the Legislative Committee of our Council continues to monitor Court - related Legislation during the General Assembly sessions. In the 2004 session, we were particularly interested in the passage of House Bill 821, the "Pre-Trial Diversion Bill," which had been favorably reported out of the House Judiciary Committee.

Unfortunately, this bill did not make it through the complete legislative process, and has not yet become law. Our Council will continue to press for its passage. The most significant piece of Legislation affecting our Courts in 2004 was House Bill 1 EX, which passed in the Special Session of the General Assembly. This Legislation was signed into law by the Governor on June 15, 2004, and, as you all probably now know, various filing fees, surcharges, etc... are now in place pursuant to the Legislation. The Legislation will significantly impact our Courts, who will be charged with the responsibility for collecting fines, fees, surcharges, etc..., and with remittances and reports, primarily to and through the Superior Court Clerks Cooperative Authority. The Authority has established a web site concerning the collection of the surcharges under the new Legislation, being www.courttrax.org. This Legislation will be a primary funding vehicle for indigent defense in Georgia.

Your Executive Committee Council has been in close contact with the Georgia Public Defender Standards Council with the view towards developing a model ordinance to incorporate the Indigent Defense standards adopted by the Standards Council, to be made available to all of our Courts

so that local ordinances might be adopted, and in place, by January 1, 2005, so as to preserve our Courts' jurisdiction under the Georgia Indigent Defense Act of 2003. We will continue to work on this matter, which is of vital importance, and we anticipate that you will receive additional information, documentation, etc... so that appropriate local ordinances may be adopted in advance of January 1, 2005.

Finally, I would like to thank the Executive Committee Members, Liaison Committee Members, and the great staff of the Administrative Office of the Courts, for making my job easier (and much more pleasant) during this past year. Your new President, Judge William M. Coolidge, III, will, I am sure, continue to work tirelessly for our Council. Please give him your wholehearted support and assistance, as will I.

Thanks again for the privilege of serving as the President this past year, and I look forward to ongoing involvement with our Council. Keep up the good work!

Condolences

The family of Judge Albert Turner, Woodland Municipal Court, who passed away on June 11.



**PLEASE
RECYCLE**

Legislative Update

By Judge Margaret Gettle Washburn
Duluth Municipal Court

The following are bills that passed the 2004 Georgia Legislative Session, and have either been signed or vetoed by the Governor. In order to view the "as passed" version of each bill, click on the bill number. More details on some of the bills may be found on the AOC Legislative Tracking web site. Go to www.georgiacourts.org and click on "Track Legislation" to visit the web site. This list does not include the legislation from the special session. HB EX1 "Indigent Defense Funding Bill" passed during the special session. The bill contains several effective dates for different sections. The section requiring the new add on for indigent defense is effective upon the Governor's signature, some lead time prior to the signature will assist in getting pertinent information to the courts.

Criminal/Sentencing

HB 211 provides a penalty (90 days imprisonment, a \$500 fine, or both) to persons or their dogs knowingly interfering with an assistance dog. HB 653 prohibits minors from possessing tobacco products with a penalty of 20 hours of community service if convicted. Amends Code Section 16-12-171.

HB 1161 is known as the Probation Management Act of 2004. This bill creates an options system for sentencing probationers. The outlined details and terms are also found within this bill. Judges are not required to use the Probation Management Act; it is there as another option for sentencing.

HB 1441 criminalizes trafficking of ecstasy. This bill includes minimums for the trafficking of different amounts of ecstasy.

HB 1456 creates penalties for aggravated assault, theft and/or armed robbery on commercial transportation cargo.

SB 184 defines arson in the first, second and third degree offenses.

SB 281 prohibits the sale or offer to sell children.

SB 297 creates a felony for any person fleeing or eluding a police officer punishable by a \$5,000 fine and/or 1 – 5 years imprisonment.

SB 337 creates a statute of limitations (one year) on habeas corpus cases. This bill provides that the convicted defendant be informed of this fact following the trial, and also provides an exception for death penalty cases that were sentenced prior to the passage of this bill.

SB 467 defines criminal negligence and creates the offense of third degree cruelty to children. The bill also creates the felony offense of manufacturing or possessing methamphetamine around children with a punishment of 5 – 20 years imprisonment. This bill was on the Governor's and Lieutenant Governor's agendas for this session, and received bipartisan support.

SB 482 requires the collections of DNA samples of convicted criminals of sexual offenses.

Traffic

HB 20 adds a \$26 or 11% fee (the lesser of the two) to DUI fines for Victims' Compensation. These fees will also help pay for a memorial sign, to be placed on the side of the road, for each deceased victim due to DUI accident.

HB 217 changes the age requirement for child restraints from under 4 years old to children under the age of 6 (unless the child is taller than 4' 9"). The first conviction will be a fine not more than \$50.00, and the second conviction will be a fine not more than \$100.00.

HB 1113 prohibits the use, possession (with the ability to use), sale, and purchase of traffic-control device preemption emitters.

HB 1158 allows someone who misses an appointment to have ignition interlock device checked, to provide an excused reason for missing the appointment in order to not have his/her driver's license suspended for an additional 120 days.

SB 489 creates restrictions for buses/motor coaches traveling in left-hand lanes (other than HOV lanes), and allows for the DOT to restrict any other lanes with penalties.

SB 603 requires video/photography surveillance for motor vehicles to be taken only of car tag, make, model of vehicle, and prohibits video/photography that identifies persons in the vehicle (except to protect toll booth operators).

continued on page 4

Legislative Update cont.

Of interest:

HB 196 Code Section 16-13-31 of the Official Code of Georgia Annotated, relating to trafficking in cocaine, illegal drugs, marijuana, or methamphetamine and providing for penalties, is amended by striking subsection (c) and inserting in lieu thereof the following: "(c) Any person who knowingly sells, manufactures, grows, delivers, brings into this state, or has possession of a quantity of marijuana exceeding 50 10 pounds commits the offense of trafficking in marijuana and, upon conviction thereof, shall be punished as follows: (1) If the quantity of marijuana involved is in excess of 50 10 pounds, but less than 2,000 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of five years and shall pay a fine of \$100,000.00.

HB 226 Code Section 15-10-60 of the Official Code of Georgia Annotated, relating to the applicability of the article on violation of ordinances of county and state authorities and imposition of suspended sentences, is amended by striking subsection (a) and inserting in lieu thereof the following: "(a) This article governs trials of violations of county ordinances and ordinances of state authorities, which violations may be punished by incarceration or monetary penalty. Nothing in this chapter shall grant to any county or state authority more authority to enact or enforce such ordinances than the county or state authority has independently of this chapter. The punishment imposed for any ordinance violation shall not exceed a fine of \$1,000.00 or 60 days' six months' imprisonment or both, provided the judge shall probate not less than 120 days of any sentence imposed, except

as otherwise provided by general law, and shall not exceed the maximum punishment specified by the ordinance. In the event a sentence is revoked, a defendant shall not serve more than 60 days in a county jail."

HB 447 To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, so as to change certain provisions relating to applications of minors for drivers' licenses and distinctive license for persons under age 21; to change certain provisions relating to when courts are to send licenses and reports of convictions to the Department of Motor Vehicle Safety; to change the provisions relating to suspension of license or driving privilege for failure to respond to citation and reinstatement of license; to provide for forwarding of information and fees; to change certain provisions relating to limited driving permits for certain offenders; to change certain provisions relating to purpose of Article 4 of Chapter 5 of said title; to provide for licensing periods; to provide for bonds; to change certain provisions relating to optional programs; to change certain provisions relating to establishment and approval of clinics and programs for driver improvement and driving under the influence of alcohol and drugs, out-of-state certificates of completion, instructor licenses, fees, and operation of clinics by employees of probation division; to provide requirements for court ordered programs; to change certain provisions relating to reinstatement of licenses suspended for certain offenses or for points; to change certain provisions relating to reduction of point count upon completion of course; to change certain provisions relating to administrative penalties; to change

certain provisions relating to administration of the Motor Vehicle Safety Responsibility Act, rules and regulations, hearings, and appeals; to amend Code Section 42-8-112 of the Official Code of Georgia Annotated, relating to proof of compliance required for reinstatement of certain drivers' licenses and for obtaining probationary licenses and reporting requirements, so as to change certain provisions relating to reporting requirements for provider centers for ignition interlock devices; to amend Chapter 13 of Title 43 of the Official Code of Georgia Annotated, relating to instructors in driver training and operators of driver training schools, so as to provide for licensing and regulation of instructors and operators of driver training schools and commercial driver training schools; to provide for effective dates; to repeal conflicting laws; and for other purposes.

HB 470 Code Section 15-11-2 of the Official Code of Georgia Annotated, relating to definitions relative to juvenile proceedings, is amended by striking paragraph (2), and inserting in its place the following: "(2) 'Child' means any individual who is: (A) Under the age of 17 years; (B) Under the age of 21 years, who committed an act of delinquency before reaching the age of 17 years, and who has been placed under the supervision of the court or on probation to the court; or (C) Under the age of 18 years, if alleged to be a 'deprived child' or a 'status offender' as defined by this Code section."

HB 770 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, so as to enact the "Georgia Indigent

continued on page 6

House Bill 1EX

House Bill 1EX (f/k/a/ HB 869) is now in effect. Among other things, it replaces the Peace Officers' and Prosecutors' Training Fund Surcharge with the "Peace Officer, Prosecutor and Indigent Defense Funding Act" surcharge, which became effective on the date HB 1EX was signed by the Governor, June 15, at least as to cases arising after that date. Pursuant to the new surcharge, "an additional penalty" will be added to each fine as follows: "The lesser of \$50.00 or 10% of the original fine, PLUS an additional 10% of the original fine." However, the new surcharge has a different formula for cash bonds: "The lesser of \$50.00 or 10% of the original bail or bond PLUS the lesser of an additional \$50.00 or 10% of the original amount of the bail or bond^{on}"

In addition, when an application is made for an appointed attorney, there will be a charge of \$50.00, which may be retained by municipal courts. It can be waived if the court finds that a hardship will result.

The other major change effected by HB 1EX is that the most surcharges will now be collected by the Georgia Superior Court Clerks Cooperative Authority and not the individual surcharge beneficiaries. Each judge and court should have received a notice from the GSCCCA regarding this. Further notices and instructions will come from the GSCCCA. If your Court has not received anything from GSCCCA, contact it immediately. If the GSCCCA believes that your court is more than 60 days delinquent in remitting funds to it or if it thinks your court is habitually delinquent in remitting any funds or reports, GSCCCA can notify the chief Superior Court judge in your circuit. The Chief Judge "shall have the authority

to require compliance by any court within the county."

The research division of the AOC has rendered an opinion that if a cash bond was posted before the effective date of HB 1EX (i.e the date the bill was signed by the Governor) but is forfeited after that date, the new surcharge would not apply. That opinion relied in large part on a 1983 Unofficial Attorney General's Opinion which found that the original Peace Officers and Prosecutors' Training Fund surcharge did not apply to cases made before its effective date.

There has been a great deal of concern about how the priorities are given to the various surcharges and how they are to be paid out, as well as how partial payments are to be treated. A statute applicable to Superior Court only requires payment of most surcharges before the local government receives any funds. As of this writing, the Superior Court Clerks Cooperative Authority has set a meeting for July 14 to discuss these issues. The results of the meeting will be transmitted to our members by the List Server. GSCCCA will notify each court of the final decision. The Georgia Municipal Association has taken a prominent role in articulating the concerns of our courts on this matter.

None of the surcharge revenues will be used to fund indigent defense programs in municipal courts, which will have to use their own funds to comply with O.C.G.A. §36-32-1 (f) and (g). That statute requires that our courts must comply with all "applicable standards" promulgated by the Georgia Public Defender Standards Council by January 1, 2005 or we lose jurisdiction to impose any jail sentence or sentence of probation, and probably, the ability to hold a defendant in contempt of court for

willful failure to pay a fine.

However, we have been informed by the GPDSC that because House Bill 1EX also requires the submission of all of GPDSC's standards to an oversight committee and, possibly, to the General Assembly, before they are final, there will be no "applicable standards" contemplated by O.C.G.A. sec. 36-32-1 (f)-(g) in place on January 1, 2005. Therefore, if a municipal court is providing counsel free of charge to indigent defendants on and after January 1, 2005, it will be in compliance with the statute until "applicable standards" are determined. If a municipal court is NOT providing counsel free of charge to indigent defendants on or after January 1, 2005, then pursuant to 36-32-1 (f)-(g), that court will lose jurisdiction to impose jail and probated sentences. Accordingly, if your court does not have an indigent defense program in place by the deadline, you will no longer have the ability to impose a meaningful sentence or to enforce any order through contempt proceedings. We recommend that whatever program you may have be described in writing and that it be in the form of a court order or a city council resolution.

At its last executive committee meeting, our council voted to prepare a model ordinance incorporating the "applicable standards" that would, if enacted by each municipality, constitute prima facie compliance with OCGA § 36-32-1(f) and (g). Once the enumeration of "applicable standards" is received from the GPDSC in 2005, we will begin work on this project and will circulate the result to all municipal courts. Presumably, compliance with the "applicable standards" can be achieved by contracting with local circuit defender offices, once those

continued on page 7

Surcharge Priorities and Collections

By Judge William M. Coolidge, III
Duluth Municipal Court

Any fine money on hand in your city or your probation office as of July 1 or received after that date, must be paid out according to rules to be implemented by the Superior Court Clerks Cooperative Authority. At a board meeting on June 24, they decided that payments to be made in July shall be made using forms from the individual surcharge beneficiaries that you currently use, except that payments shall be sent to the Clerks Authority, instead of the beneficiaries.

Temporary forms for the new indigent defense surcharge and the LOCAL crime victim fund will be provided by the Authority. Until the Clerks Authority enacts a rule regarding priorities for surcharge payments, there will be no statutory or other rules in place for municipal

courts regarding priorities, since the only statute regarding priorities applies to Superior Courts only. However, House Bill 1Ex does require that payments be made to the Clerks Authority. The Clerks Authority will meet on July 14 to consider the priority schedule for surcharge payments and fines. They will also consider forms for use with payments. The decision on priorities and partial payments was delayed until then because the Authority wanted to give due consideration to the many concerns of local governments about the fiscal and administrative manpower effects of proposed priority schedules for fine and surcharge payments. The result may very well be different from the priority schedule established by statute for Superior Courts. The GMA has taken a prominent role in articulat-

ing the concerns of cities on these issues. Both the GMA and our council will be represented at the July 14 board meeting and at planning meetings held before that date.

If you have any particular concerns, please let me know. While we know about the potential fiscal impact of this, we also need to be able to convey the administrative burdens that the new reporting requirements may cause. Some of our municipal court clerks have stated that they may not be able to comply with some reporting requirements and still attend to their other job duties. Every court in the state should be hearing from the Clerks Authority about temporary procedures and forms shortly. You may contact me at: (770) 932-3552, ext. 229; (770) 932-6348 (fax).

Legislative Update *cont.*

Defense Act"; to provide a short title; to define certain terms; to create the Georgia Public Defender Standards Council; to provide for membership, appointment, and terms of office; to provide for duties; to provide for a director of the council and the director's duties and responsibilities; to provide for continuing legal education; to provide for a report of activities; to provide that such council shall assume all duties, responsibilities, liabilities, assets, and obligations of the Georgia Indigent Defense Council; to provide that the Georgia Indigent Defense Council shall be abolished; to provide for a transition; to provide for the appointment of a circuit public defender in each judi-

cial circuit; to provide for eligibility; to provide for the appointment of conflict counsel; to provide for the representation of indigent persons in certain cases; to provide for duties of a circuit public defender; to provide for a salary; to prohibit the practice of law for profit; to provide for reimbursement of expenses; to provide for a budget; to provide for the appointment of assistant public defenders and their salaries; to provide for the appointment of investigators and their salaries; to provide for the filling of a vacancy in office; to provide for the employment of staff; to provide for the status of employees as public employees; to provide for additional positions paid for by

counties; to provide that no attorney employed full time by the circuit public defender shall engage in the private practice of law for profit.

SB 80 To amend Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile court proceedings, so as to provide juvenile court jurisdiction to order temporary child support for a deprived child; to provide for matters related to payment of child support and custody; to change and reorganize provisions relating to allegedly deprived children; to provide for related matters; to repeal conflicting laws; and for other purposes.

Council Minutes

The winter meeting of the Georgia Council of Municipal Court Judges was held on February 5, 2004, at the Fairfield Inn in Atlanta, Georgia. President Charles Barrett called the meeting to order at 3:00 p.m.

The first order of business was the consideration of the minutes of the fall meeting held in Macon on October 3, 2003. The minutes were amended to reflect that Judge David Strickland was present at that meeting and, after this amendment, the minutes were unanimously approved.

Judge Barrett introduced Richard Reaves, Executive Director of the Institute of Continuing Judicial Education. Mr. Reaves wished to address the council about proposed legislation to amend the Georgia Municipal Courts Training Council Act. The bill would expand the composition of the training council to include five clerks, require 20 hours of training for municipal clerks and create a council of municipal court clerks. Mr. Reaves expressed concern that the bill had been drafted

without consultation with the Municipal Court Judges Council, the Training Council or ICJE. He acknowledged that the legislation was prompted by concerns about the need for training of municipal clerks but felt that further study was needed before the proposed legislation could be endorsed. Judge Bobbitt moved that the council inquire as to the status of this bill and that the appropriate committee work cooperatively with the Municipal Clerks Association to develop the appropriate bill. The matter was referred to the Legislative Committee.

The next item on the agenda was the President's report. Judge Barrett advised that his report would be given in conjunction with various committee reports.

Ms. Bernadette Smith of the AOC then gave the state funds report. She reported that, as of December 31, 2003, \$4,825.70 of the \$20,000 in state appropriated funds had been spent, leaving a balance of \$15,174.30.

Next, Judge Ward gave the private funds report. As of December 31, 2003, the council had \$35,026.37 in its non-state appropriated funds account. He noted that the executive committee had approved the expenditure of up to \$5,000 for the legislative reception and that expense would be paid following the reception. In closing, Judge Ward reported that not all judges are paying dues although a few have paid more dues than they owe. He suggested that changing the dues year to the calendar year might help judges and courts keep track of when dues are due. His proposal was discussed but no action was taken.

Judge Ward also reported to date, he has not received the "association" check from Judge Henry Williams.

Ms. Marla Moore gave the report from the AOC advising that, they are monitoring legislation during the session. She announced that there is now a legal research department in Macon which is available to answer questions from judges. Questions and answers felt to be of general interest will be published online. The AOC is also planning to send out a municipal court survey and wants to begin surveying regularly so that it can collect comparative data to show the work of the courts. Ms. Moore also reported that the AOC is working with the new Georgia Public Defender Standards Council.

The following committee reports were then given:

Legislation

Judge Coolidge first dealt with the proposal that has been made to decriminalize traffic offenses. A trial judges' committee composed of judges from various types of courts has met and recommends that more study is necessary before legislative action is taken. He noted that it is doubtful that such a bill will be introduced this year.

HB821 to authorize pre-trial diversion in municipal courts was introduced in the House where it passed unanimously, presently in House Judiciary. Since it is a non-controversial bill, it is expected to pass the Senate as well. Senator David Alderman agreed to carry the bill.

HB869 has also been introduced which would consolidate most surcharges on fines into a mega surcharge and also increase the total surcharge paid. Part of the money collected would go to the state to

continued on page 8

HB 1EX cont.

offices are actually established and once rules regarding such contracts are in place. The GPDSC is going to prepare a model contract for cities and circuit defenders. However, that option will not be feasible for some courts, most notably those courts in counties that elect to "opt out" and not establish a circuit defender. The Council of Municipal Court Judges will make every effort possible to convey information to all municipal courts regarding this critical issue as soon as it becomes available.

Council Minutes *cont.*

help pay for indigent defense. The bill as proposed could negatively impact municipal courts because increasing surcharges so much could make it difficult for municipalities to raise fines and also because municipal courts would get no benefits from the funds raised for indigent defense. Judge Bobbitt advised that the Association of County Commissioners of Georgia has suggested an alternative to this bill which would provide for an add on fee for indigent defense that would be returned to the city or county which generated it for use there. The next meeting of the GPDSC is scheduled for February 23, 2004.

Judge Coolidge advised that he will continue to monitor these bills and will report back on their status.

Indigent Defense

Judge Coolidge reminded council members that effective January 1, 2005, no one can be sentenced to probation or confinement unless he or she has been advised of the right to counsel and counsel has been provided to indigents in accordance with the standards adopted by the Georgia Public Defenders Standards Council. Some questions remain to be answered, for example, whether appointed lawyers have to be provided in probation revocation cases and whether municipal courts have to adopt and submit an indigent defense program for approval by the council. The council will meet with representatives of municipal court judges to address these questions. The council has also prepared an implementation manual for county, municipal, and consolidated governments which is now available. Copies were distributed to judges present at the meeting.

Reports on liaisons with the following agencies were then given:

Judicial Council

Judge Barrett again advised that representatives from the municipal courts are invited to judicial council meetings but there is still no municipal court representative on the council. The Municipal Court Judges Council will continue to liaise and work on having municipal court membership on the Judicial Council.

Georgia Municipal Association

Judge Coolidge noted that the GMA is concerned about fine surcharges becoming so large that cities will not be able to raise fines and also because they may increase the fines so much that it will make them difficult to collect. At its next meeting, the GMA will come up with a position on surcharges and their collection. It will also discuss the proposal to decriminalize traffic offenses.

Probation Advisory Council

Judge Ward noted that municipal courts are still the largest users of private probation services. Some cities are now considering starting their own probation services as a possible source of revenue. Legislation dealing with standards for local government probation services could be introduced in the not too distant future. Ms. Moore reported that the AOC is working on getting reporting automated. She further added there may be legislation concerning this issue.

Municipal Court Judges Training Council

Judge Cielinski reported that the training schedule for 2004 had been sent out. He noted that the ICJE was fiscally sound with adequate funds on hand to cover costs. He reminded judges that they should be registered for their 2004 continuing education classes by the end of March.

As a matter of information, Judge Cielinski advised that LC14 8672 will be introduced by Tom Burk to require trial court judges to continue a case when an attorney representing one of the parties has a conflict because he or she is sitting as a judge in another court. He recommended that we support this legislation.

Judge Barrett announced that the next meeting of the executive committee has been scheduled for May 7, 2004 in Macon at the Administrative Office of the Courts office. He then invited all those present at the meeting to attend the legislative reception to be held later that evening at the Sheraton Atlanta Hotel.

There being no further business, the meeting was adjourned.
Respectfully submitted,
Kathryn Gerhardt, Secretary

SEMINAR UPDATE

Attention: These are the remaining seminars for CY04. Please contact Kathy Mitchem to register @ 706-524- 7402

20 Hour Basic Certification
September 8-10 • GA Center, Athens

12 Hour Recertification
September 9-10 • GA Center, Athens

12 Hour Traffic Violations
September 16-17 • GA Center, Athens
Ages 17-21

12 Hour Discussion on Books @ DUI
October 26 • GA Center, Athens

16 Hour Pharmacology of Drugs
October 27-28 • UGA Pharmacy School

Clerks Seminar
December 6-8 • GA Center, Athens

Celebrate America ...

By Jim Maran

President/CEO, Gwinnett Chamber of Commerce

Edited By Vicki Baggett, AOC

July 4th, Independence Day. This day of important days throughout our heritage carries a special significance to all Americans. For this day of celebration is more than fireworks, time with the family, a day off from work or cookouts and summer events. It was during that hot summer of 1776, a day much like today, in the City of Philadelphia, one of humankind's greatest documents was crafted, the Declaration of Independence. Through the wisdom of Thomas Jefferson, Benjamin Franklin, John Adams and our other Founding Fathers, this declaration proclaimed to the world that a new nation had been born, a nation that would be destined to bring goodness, freedom, prosperity and hope to the all corners of the globe. As President Ronald Reagan stated, our Founding Fathers envisioned a "shining city on the hill". Today, we are living their dream as we continue to build our shining citadel of freedom.

Of the fifty-six men that signed that document seeking our freedom, only a few would survive the War for American Independence. Five would be captured by the British authorities and killed. Twelve would have their homes and businesses destroyed. Two of our Founders lost their sons in service to the Continental Army, and nine paid the ultimate sacrifice. But these men made a pledge to each other and to future generations, "With the firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honor." They were not poor men. They were not fanatical radicals. They were business-

men and entrepreneurs secure in their prosperity. Yet, they had a dream for freedom and deemed liberty from tyranny far more important than their lives, fortunes or honor. They and the countless thousands of others over the course of our nation's rich history paid the price to make certain you and I would remain a free people.

Our Founding Fathers laid the cornerstone for the world's greatest republic based on individual liberty, elected representation and a government of the people. But they knew that freedom would not be free. How often we have forgotten that simple truth? One of the greatest privileges and responsibilities that we have as American citizens occurred on July 20TH, when we had the opportunity to participate in this great American enterprise--WE HAD THE PRIVILEGE TO VOTE!

On that day, the standard-bearers for each of the political parties were decided for elections such as U.S. Senator, U.S. Representatives, and many local races from Judges to Sheriff to Board of Commissioners. In recent years, a significant number of Gwinnett voters did not take the few moments it requires to exercise that most precious right we have as Americans in a free country.... the right to vote and shape the future of our community. We have all heard the excuses. "It is not convenient." "I'm just too busy." "I'm simply not interested in the political process." "My one vote can't make a difference." "I can't get off work in time to make it to the polls." Yet, we all know the right thing to do...VOTE. It all comes down to the individual and their commitment to a free soci-

ety...to something bigger than one's self.

If you don't think one vote can make a difference, please read below. According Cathy Cox, Georgia's Secretary of State, it can and does. Just take a look at some examples of historical decisions decided by just one vote...

- In 1645, one vote gave Oliver Cromwell control of England.
- In 1649, one vote caused Charles I of England to be executed.
- In 1776, one vote gave America the English language instead of German.
- In 1839, one vote elected Marcus Morton Governor of Massachusetts.
- In 1845, one vote brought Texas into the Union.
- In 1868, one vote saved President Andrew Johnson from impeachment.
- In 1875, one vote changed France from a monarchy to a republic.
- In 1876, one vote gave Rutherford B. Hayes the presidency of the United States.
- In 1923, one vote gave Adolph Hitler leadership of the Nazi party.
- In 1941, one vote saved Selective Service – just 12 weeks before Pearl Harbor was attacked.
- In 1960, John F. Kennedy won and Richard Nixon lost the presidential election by less than one vote per precinct.
- And in 1977, the mayor of Ann Arbor, Michigan was elected by one vote." (Source: Georgia Secretary of State's Web site)

Finally, the 2000 Presidential election should be proof to all of us that a small number of votes can change history. The election for President between George W. Bush and Al Gore was one of closest I can remem-

continued on page 11

Cases of Interest

Judges Recusal Contempt

This case, decided in November, may have snatched the prize for wackiest judicial conduct of the year 2003. Two individuals had an accident. They were the only two witnesses. Both were charged with traffic violations. When they appeared in the city court of Atlanta the prosecutor realized that he could not make out a case unless each defendant waived their right against self incrimination and would testify against the other. (Please note both defendants were unrepresented). The prosecutor asked the Judge to dismiss or nolle pros the cases. The trial Judge explained the prosecutor was wrong on the law and told him to go forward with the prosecution. Further the Judge explained to the defendants that they were obligated as a witness to the accident to testify as to what they claimed or what they saw the other person had done and if they didn't he would hold them in contempt. Still the prosecutor politely but firmly declined to prosecute the case. The Appellate Court noted "it's refreshing to see a prosecutor try and to insure that the unrepresented defendants rights were protected...rather than simply trying to chalk up an easy win." At this point the Trial Judge swore in both defendants over objection of the Solicitor, who the Judge invited to leave the courtroom. Subsequently the Prosecutor filed a Motion to Recuse the Trial Judge, who found the Prosecutor in contempt. The Appellate Court notes that the Trial Judge should have recused himself from the contempt hearing since it was not immediately following the alleged contemptuous action in

court. Further, the Court found no evidence to support a finding of contempt against the Prosecutor.

In Re: Burgar 03FCDR3478 (11/13/03).

Criminal Practice Right to Counsel

This turns on the issue of proceeding without representation. The Court found that the Trial Court did not prevent the defendant from representing himself or from hiring counsel by refusing to discharge his court appointed lawyer. The defendant had desired to discharge the court appointed attorney but was unable to either find another attorney or represent himself. At the guilty plea he stated that he was satisfied with his attorney that the attorney had done everything needed and that the plea was being entered freely and voluntarily. Therefore, the guilty plea could not be withdrawn.

Tucker v. State 04FCDR152 (12/19/03).

Criminal Practice Right to Counsel

In this case the defendant had been convicted of Theft by Taking and Criminal Trespass and had signed a document waiving his right to be interviewed for court appointed counsel and a notice regarding representation at trial. However the Appellate Court found there is no evidence that the defendant was aware of the dangers of proceeding pro se or was aware of his possible defenses. A particular interest is that the defendant was found to have submitted an altered waiver form to the Appellate Court and submitted a brief which contained unsupported factual assertions. The Court of Appeals gave the defendant the benefit of inexperience as a pro se appellant. I think it is important to note that he had enough experience to get his conviction reversed.

Lawal v. State 03FCDR3469 (11/10/03).

Traffic Court Listserv

The AOC administers a "Listserv" for traffic court judges, including Municipal Court Judges, which is the most efficient means of communicating critical information to our membership. The "Listserv" is a bulletin board which allows one judge to post a message that will be e-mailed to all other judges on the list. Any recipient can reply. Because we will be facing many critical issues in the coming months involving indigent defense, if

more Municipal Court judges participate in this program, more of us will be better informed about the issues facing us. If you have any questions about this service, please contact AOC Webmaster, Brian Collins at (404) 656-5171 or collinsb@gaaoc.us

To subscribe to the Traffic Court Judges' "Listserv" please contact Bernadette Smith at (404) 656-5171 or via e-mail at smithb@gaaoc.us

Self-Employed? Take All the Deductions You Deserve

By Ray Rumble
Edward Jones 800-280-1937

The multitude of available tax deductions does you no good unless you act on them. Here are a few ideas to consider:

- Home office expenses — If you work out of your home regularly and exclusively, you may be able to claim a variety of deductions. Basically, you may be able to write off the business-use square footage percentage of many items, including mortgage or rent payments, real estate taxes, home insurance, utilities, repairs and home security systems.
- Health insurance premiums — If you have a health plan through your business, you may be able to deduct 100 percent of your premiums for 2003. If you're self-employed but not incorporated, you may be able to hire your spouse, pay him or her a

minimal salary and include all your dependents in a group health insurance policy; all the premiums may be deductible as employee benefits.

- Mileage — In 2003, you can deduct 36 cents per mile for business, 14 cents for every mile you drive for charitable causes and 12 cents for any mileage you drive for medical purposes and parking and tolls are also fully deductible.
- Retirement plan — Do it now. You may be eligible for a tax credit just for setting up your plan, and your contributions may be tax deductible. The retirement plan you choose will depend on your individual needs, but you may want to consider a SIMPLE plan, a SEP-IRA or an "owner-only" 401(k).



- Depreciation — Section 179 first-year depreciation allowance — which allows you to instantly deduct 100 percent of the cost of most new and used business acquisitions — has been increased from \$25,000 to \$100,000. And computer software is now eligible for Section 179. Before you take action, consult with your tax adviser (tax-preparation fees may be deductible).

Court Fee Contact Info at Georgia Superior Court Clerks Cooperative Authority

GSCCCA Fines & Fees Division
P.O. Box 29645
Atlanta, GA 30359
Phone (404) 327-7320
Toll Free (866) 847-4058
Fax (404) 327-7325
Toll Free Fax (866) 847-4105
Email finesandfees@gsccca.org
Website www.courttrax.org
Other www.state.ga.us/legis

David Williams, Executive Director
david.williams@gsccca.org
John Myers, Project Coordinator
john.myers@gsccca.org
Mike Smith, Communications Director
mike.smith@gsccca.org
Sharon Fort, Communications Assistant
sharon.fort@gsccca.org
Karen Crumbley, Financial Manager
karen.crumbley@gsccca.org
Connie Nelson, Accounting Assistant
connie.nelson@gsccca.org
Justine Dooley, Administrative Assistant
Justine.dooley@gsccca.org

Vote cont.

ber. President Bush's victory in Florida gave him the 25 electoral votes he needed. In Florida, Bush beat Gore by just 537 votes.

Let's remember the sacrifice so many have made for us to be able to live in a free and democratic society. To turn my back on the election process is to minimize the freedoms for which so many have paid the ultimate price. I vote because I am proud to be a citizen of the greatest nation on the face of the earth. I vote because I want to honor our Republic and participate in its governance. I vote because I want to see our nation and our community prosper. I vote because I value the pre-

cious right that so many may casually let slip away on July 20.

Our votes on July 20th helped to determine the direction of our county. Upon all of our shoulders rests the responsibility of electing and re-electing qualified individuals who have the community's best interest at heart. I was at the polls to make my voice heard. Were you there? On July 20TH, we had the chance to follow the example of our Founding Fathers and stand up for freedom. To those that came before us and gave so much, let our generation do no less. God Bless America!

GOLF TOURNAMENT NEWS

First in Five (also known as the Great Washout!)

by Judge Jim Payne
Acworth Municipal Court

The Municipal Court Judges' Annual Golf Tournament was held at the Renaissance Resort at Lake Lanier in conjunction with the Traffic Law Update Seminar on June 23, 2004. For the first time in five years, we were rained out after only seven (7) holes of golf. But, as usual, a good time was had by all, even if we looked like drowned rats coming in from the downpour.

The Players: Jim Payne, John Adams, Allen Curtis, Tim Lewis, John Parker and Gary Jackson.

The Winners:

Tim Lewis: Closest to Pin

Gary Jackson: Longest Drive

We all sported "The Judge" caps and looked quite dandy in our learned opinions. Hope to see more of you next year for this most important event. Jim Payne.



Council of Municipal Court Judges

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

MARGARET GETTLE WASHBURN
*Chief Judge, Duluth
Editor*

DAVID L. RATLEY
Director

MARLA MOORE
*Associate Director for
Court Services*

ASHLEY G. STOLLAR
Graphic Design