



You're Awesome!

MESSAGE FROM THE PRESIDENT

We started this Council year with a visit from Chief Justice Hunstein and a superb program developed by Judge Powell and the Training Council. Many comments were made that it was the “best ever” Spring Training. While that may be just a slight exaggeration, it has set a tone.

We also began the year with the adoption of a working Council budget. Judge Harper and the Audit and Budget Committee prepared a 2010 – 2011 budget for us, it was adopted, and it is providing a blueprint for expenditures as intended. Let’s also not forget that those pesky, perpetual nolo and first offender misdemeanor Georgia prohibitors bit the dust!

You have done your part in another most important way – paid your CPCJ dues with 100% participation. Our Secretary/Treasurer, Judge McCoy, reports that for the first time in his tenure each and every county in the State of Georgia has paid Council dues! Thank you for your participation...and there is more...!

...this printed *Gavel* is an example. Ms. Murphy and Mr. Patterson at the AOC have worked diligently to maximize the use of Council funds under the jurisdiction of the AOC. This advance planning and frugality carries us through October of this year, funding this publication and several projects

and meetings while conserving current budget year funds. What an opportunity this presents to us as we consider



Judge Lynwood D. Jordan, Jr.

some additional programs which will require expenditures of scarce budget dollars!

Judges “T” Brown, Burnette, Greene, Parker, Powell, Wood and I met at the end of July for two days to consider options for strengthening the New Judges’ Training, the Mentor Pro-

gram, and Voluntary Certification. When you read through this edition of the *Gavel*, you will see two articles by Judges Powell and Burnette on these discussions and opportunities.

Our exploratory talks have emphasized the Mentoring Program and the New Judges’ Training to be held in December, 2012. The discussions involve training for Mentors, specific guidelines and checklists, and even provisions to reimburse travel costs for participants plus CJE credits for Mentors. Your fellow judges are taking these discussions very seriously. The Mentoring

Program will be ongoing with assignments made as needed between election cycles. The Council will benefit as will the new judges who are going to get in December, 2012, what’s that phrase – oh yes – the “best ever” New Judges’ Training and Mentoring.

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Message From the President *cont.*

Judge Scoggins reports in this edition of the *Gavel* on our District Meetings around the State. You are participating well in these meetings – but his report points out something else which we knew from the feedback. Regional training was a success! The clerks and judges were most thankful for all of you who contributed to, and participated in, the localized training this summer. There were logistic bumps in the roads here and there, but this was the very first time we have tried this on such a scale, and the response was overwhelmingly positive. One lesson learned was to make sure that in the future individual inquiries are directed to ICJE and not to the host judges or their clerks! Thanks to all of you who participated in this successful trial run. **Judge Scoggins’** report further reflects a feeling that summer CJE is indeed missed by you.

Let’s not forget the new Uniform Rules for the Probate Courts with special “thanks” to **Judge Ferguson** and her committee, and the additional invitees, who repeatedly met via email, in the North Georgia mountains, at Phipps Plaza, at **Judge Ogletree’s** Greene County Courthouse, and over the telephone - what a huge project that is which on August 5th came to a successful conclusion. This was a monumental effort with participation often by some, and continuously at times by others. Judge Ferguson has contributed to this *Gavel* edition with an article on these new rules.

A short piece appears in this edition about the November meeting of the National College of Probate Judges in Charleston, SC. Be sure to read it and

note that there is some money for this Continuing Judicial Education to help those who desire to attend. Enough money has been held to enable seven judges who are not members of the college to receive a grant for membership dues and conference registration. Participate in this if you can.

Judge Greene’s report in this edition on our retirement fund performance is quite positive, and not a dire outlook as it might have been without good management.

Also note **Judge Ogletree’s** piece on First Appearance Hearings. Those of our members who are involved with this judicial task are charged with performing a most essential judicial function, and Judge Ogletree has kindly condensed the principles for an informative read and a reminder of the importance of these hearings.

The Strategic Planning goals and objectives from our meetings in the last few years have not been forgotten, the benchmarks are being met one at a time, and that will become evident at our business meeting in November. Our plans are not sitting on a shelf somewhere.

The Officers and Committee Chairs will soon receive an invitation to attend our CPCJ Fall Committee Conference at Brasstown Valley. The dates will be October 11 – 13, 2010. This will be a very important meeting. Everything I have briefly mentioned above will be reviewed, our status will be discussed, plans will be made for the ensuing few months, and we will attempt to get a clear picture of where we are and where we are going.

From that conference we will move into the November Executive Committee meeting and the CPCJ full business meeting. Decisions will be made. Courses will be plotted. I hope that by November we will know clearly what our legislative plans are, whether we will have any initiatives, and where we intend to go during the last part of this Council year. Simply reacting to legislators’ ideas is not my idea of sound planning though it may be an unavoidable fact of life for judges.

All the progress and work evidenced by what you have recently accomplished will be continued, I have no doubt. Those successes bode well for the rest of this Council year.

You are, indeed, awesome.



Revision of the Uniform Probate Court Rules

As most you are well aware the Uniform Probate Court Rules have been revised. The Uniform Probate Court Rules were completely renumbered and amended as necessary. The format was changed to make the rules more coherent and easier to review. Although most of the changes are minor some are significant.

During the revision process the Rules and Forms Committee for the Council of Probate Judges Council reviewed the rules of the other classes of courts in Georgia. The revision as to the recusal rule involved a group effort with other classes of courts and consisted of a more in depth review of recusal rules from other states and model rules developed by various entities.

This article is an attempt to give an overview of some of the major changes to the Uniform Probate Court Rules. It is not an attempt to explain each and every change as nothing would substitute the careful review of the new rules by each Judge and attorney.

These rules will be officially known as the Uniform Probate Court Rules, according to rule 1.2. One major change is all local rules sunset December 2010 and all local rules are repealed by rule 1.1. As our society moves toward more global interaction, it is imperative that all the Uniform Rules for each class of court are actually enforced uniformly throughout Georgia. This insures justice and fairness for all litigants as all Probate Courts throughout Georgia will be operating by the same set of rules regardless of the location of the courthouse. In order for this to be effective it is necessary for there to be as few local deviations from the Uniform Rules as possible. When a deviation is necessary the rules require that the litigants have actual notice prior to the local rule being enforced. The notice required is set forth in rule 1.3.

Rule 1.4 establishes a permanent Committee of the Probate Judges council to address changes to the rules and forms. Rule 1.5 addresses how the rules are to be amended by such Committee. The actual

procedure to amend the rules has not changes, but the effective date to amend a rule has. Rather than the rules changing on July 1st of each year they are considered effective when the rule is approved by the Supreme Court and published in the advanced sheets. This is similar to the amendments to the uniform rules for the other classes of courts. There are several steps in the approval process and various entities are involved.

Another major change is in regards to Article 6 Probate Courts which is defined in rule 2.7. Georgia Probate Courts are unique in that there are many variations as to jurisdiction and the handling of appeals throughout the 159 counties. Prior to the recent rule revision the rules that applied to Article 6 Probate Courts were listed in a separate appendix. The new revision incorporates all the rules together. In cases where the rule differs between Article 6 and Non-Article 6 Probate Courts, the same rule is separated into sections that apply to Article 6 and Non-Article 6 Courts. Also rule 2.8 provides the concurrent jurisdiction that these Article 6 Courts have with Superior Courts according to O.C.G.A. '15-9-127.

The changes to Rule 3, Officers of the Court, include 3.1 which add the appropriate provisions for associate judges. Also other provisions were added to clarify the timeliness of notice 3.3.6, the substitution of counsel 3.3.11 and the duty to utilize and assigned judge 3.3.12. The changes as to rule 4, Court Records, are adding or clarifying include: accessibility to court files (4.1), integrity of court documents (4.2), and copies or records (4.3).

Rule 5 addresses Court Procedure and includes both minor and major changes. The minor amendments clarify the time of docketing (5.3.2) and effective date of an order (5.3.7). The major changes address how the standard forms are amended, the timing of such amendments and the publication of such. The effective date of a change to a form was amended so that it is similar to the amendments to the Uniform Probate Court Rules. The effective date is now when the forms are

approved by the Supreme Court and published in the advanced sheets. It also contains a special provision to allow the Rules and Forms Committee to make certain changes without the prior approval of the Council as a whole or the Supreme Court, but only when the form is somehow incorrect and there is no substantive change. These amendments would be still be submitted to both the Council and the Supreme Court for approval, but the amendment would be published on the website prior to such approval. This is necessary when a typographical error is found or a code section changes.

The Leave of Absence provision (6.9) was amended. Previously Appendix AA@ (Article 6 Courts) had an additional section (D) under the old Rule 14 which provided that in the event a hearing was already scheduled the hearing date had to be included in the petition for Leave of Absence. That provision was expanded to apply to both Article 6 and Non-Article 6 Courts. The new rule applies to both types of court. The new rule has two types of procedures. One (6.9 A) applies when no hearing is scheduled and the leave requested is less than 30 days. The other (6.9 B) applies when the leave is more than 30 days, a hearing has been scheduled or the time for filing a motion under (A) has not been met.

One of the major changes was a direct result of the recent Supreme Court case, *Capterton, et al v. Massey Coal Company* 129 S. Ct. 2252 (2009), which dealt with campaign contributions. This has been a hot topic for the last several years, as we continue to determine how our roles as judges effect how we are allowed to campaign. Justice Hunstein created the Judicial Council Recusal Rule Committee which involved participants from all classes of courts and also included the AOC and JQC. The recusal provisions in the Uniform Probate Court Rules resulted from the discussions and input from this committee. It is expected that the other Uniform rules will be similar to the Probate Court Rule as to recusal of judges.

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First Appearance Hearings

Judge Laverne Ogletree, Greene County

As a court of inquiry, the Probate Court is authorized to conduct first appearance hearings. The main purpose for a first appearance hearing is set by statute. The statute requires that as soon as is reasonably practicable following any arrest, but not later than 48 hours if the arrest was without a warrant or 72 hours following an arrest with a warrant, unless the accused has made bond in the meantime, the arresting officer or other law enforcement officer having custody of the accused shall present the accused in person before a Probate Judge or other judicial officer for a first appearance hearing.

At the first appearance, the judicial officer shall:

1. Inform the accused of the charges;
2. Inform the accused of the right to the presence and advice of an attorney, either retained or appointed, of the right to re-

main silent, and that any statement made may be used against him or her;

3. Determine whether the accused desires or is in need of an appointed attorney. If appropriate, advise the accused of the necessity for filing a written application;
4. Inform the accused of the right to a commitment hearing, unless the first appearance covers the commitment hearing issues, and inform the accused that giving a bond shall be a waiver of the right to a commitment hearing;
5. Inform the accused of the right to a trial by jury;
6. Unless a subsequent determination of probable cause has been made on a warrantless arrest, make an independent determination of probable cause for the arrest;
7. Inform the accused that if he or she desires to waive these rights and plead

- guilty, then the accused shall so notify the judge or the law officer having custody, who shall in turn notify the judge;
8. Set the amount of bail.

After having informed the defendant of his or her rights, the judge should ascertain if the defendant:

1. Has any questions;
2. Understands the right to an attorney;
3. Is able to provide own counsel;
4. Wants the court to appoint counsel;
5. Wants to proceed without counsel.

The Probate Court must have a procedure and forms consistent with applicable law in order to determine indigence and to appoint counsel to defendants who apply and qualify for appointed counsel.

O.C.G.A. 15-9-30; 17-7-20; 17-4-26
1995 Atty. Gen. No. U95-1
15.8 & 15.9-Rules of Probate Court

Revision of the Uniform Probate Court Rules cont.

The rules as to Court conflicts were changed so as to follow the rules of the Superior Court and to add some proceedings to the priority of cases that were not stated in the previous Uniform Probate Court rules such as Aparental termination proceedings@.

Few changes were made to rules 7,8 and 9. Rule 7, Civil Discovery, clarified issues as to filing requirements (7.2) and depositions (7.3). Few changes were made to rule 8, Pre-trial proceedings, other than the Pre-trial order. Rather than two Pre-trial orders (8.2) one for Article 6 and Non-Article 6 Courts one order is included. This order includes portions necessary in the event of a Jury trial which would only be used by Article 6 courts when a Jury Demand was filed.

Rule 10, Court Protocol, includes some new provisions. One involved when head coverings are permitted in the courtroom. Rule 10.2 addresses usage of the language line which allows better access to

the courts by non English speaking litigants. Rule 10.3 concerns the use of cell phones in the courtroom.

Rule 11, Telephone and Video Conferencing, was not amended with the exception of the numbering. The Appeals provision which is covered in Rule 12 was not amended except the numbering and consolidating provisions for Article 6 and non-article 6 courts into one rule.

Rule 13 was added to establish the rules and procedures for the Probate Judges Council including the necessary officers and purpose of the council. Rule 14 includes the mandatory judicial education necessary for each Probate Judge whether elected, senior Probate Judges and full-time associate judges.

Many of the sections previously set out in the former criminal rules were consolidated so they are all together under one heading. Those rules that apply to both Civil and Criminal cases were included in the basic section to avoid dupli-

cation. The Criminal Rules apply when the criminal rules are in addition to or different from the main rules. Some rules were added and others were revised including rules as to Dockets, time of Docketing, withdrawal of appearances, notification of representation, bail in criminal cases, categories of bail, maintenance of criminal evidence, initial appearance/commitment hearings. The new rules were revised so they resemble the rules of other similar courts such as municipal and magistrate courts that handle similar types of criminal matters.

The Uniform Probate Court Rules were approved by the Council of Probate Judges Council and have now been reviewed and approved by the Supreme Court. They are scheduled to be published in the Advanced Sheets in August. These Rules may also be found at <http://www.georgiacourts.gov>



Around the Districts

Judge Mitchell Scoggins, Bartow County

As your new Vice President Elect, one of my responsibilities is to keep in touch with all of the Probate Judges Districts. After touching base with all 14 districts, I have determined who is serving as District Director of each one and I also surveyed them to find out whether there is any news within their district and what opinion, if any, they have about the recent Clerk's training. I further inquired about whether they would be in favor of some type of district training for judges in addition to our regular Spring and Fall training. As you will note below, all were in favor of the district training in light of the cancellation of our Summer COAG training.

It is safe to say that I felt overwhelmed in June and July with all of the legislative changes that went into effect with the Governor's signature. If we had some type of training in June or July, we could be better prepared for any new legislation from that year's General Assembly. I think most of my fellow judges concur.

Listed below are the results of my survey with an up to date list of each Director for each District.

District 1

Judge Richie Parker - Gordon County
Judge Parker took over President from Judge Gene Lowery in April this year. Meetings are held quarterly. We need district training in July for the new laws. Clerk's training was very beneficial and would like to see it done every year.

District 2

Judge Dwain Brackett - Union County
Meetings are held quarterly. Clerk's training was good for the Clerk's and that is a big help for the judges too. In favor of district training in June or July for the new laws that are effective on July 1.

District 3

Judge Lillis Brown - Rockdale County
Meetings are held 3 times per year. Dis-

trict training would be wonderful for new legislation each year. Clerk's training was excellent and has heard very positive responses.

District 4

Judge Donald Boyd - Troup County
Judge Boyd just took over as District Director from Judge Bledsoe. Meetings are held quarterly. Clerk's training was very useful and would like it to continue. District training would be helpful for all judges with new laws maybe in June or July.

District 5

Judge Henry Baker - Newton County
New District Director is to be elected at next meeting. Meetings are held quarterly. Clerk's training very helpful and would like for it to continue. District training would be helpful for the new laws that go into effect in June and July because we don't offer a Summer COAG meeting.

District 6

Judge Patrice Howard - Putnam County
Judge Howard states that their district is having a problem with committals due to Central State Hospital not serving as a receiving hospital any longer. District training would be beneficial for Judges. Clerk's training was very beneficial for clerks and judges.

District 7

Judge Lee Moss - Lincoln County
Chairperson Judge Isaac Jolly - Richmond County
Judge Moss and Judge Jolly were just elected at June meeting. District training would be helpful for new legislation. Clerk's enjoyed training and would like it to continue each year.

District 8

Judge Judy Reeves - Sumter County
Meetings held 2nd Tuesday in of each month. We will be electing new officers

in August. District training would be helpful. Clerks' training was great!

District 9

Judge Rubie Nell Sanders - Montgomery County

Meetings are held quarterly. District training would be useful for everyone. Clerk's training very helpful all Probate Courts and would like it to continue.

District 10

Judge Gloria Dubberly - Tattnall County
Meetings are held quarterly. District training is a necessity for new Legislation. Clerk's training was very informative for the Clerks and should continue.

District 11

Judge Lee DeLoach - Bulloch County
We will be electing new officers at next meeting. Meetings are held quarterly. District training could be used along with our regular training. Clerk's training can be useful to the Clerks as well as the Judge.

District 12

Judge Wes Lewis - Colquitt County
Meetings are held quarterly. S&I training was conducted at last meeting. District training for new legislation would be beneficial. Clerk's training is a useful tool for Courts.

District 13

Judge Judy Mullis - Lanier County
Meetings are held quarterly. Terri Adams is newly elected Probate Judge for Lowndes County. District training is needed for new Laws in June or July. Clerk's training needs to be offered every year.

District 14

Joe Boatright - Bacon County
Meetings are held quarterly. District training would help everybody implement new laws correctly. Clerk's training really helps the Clerks and Judges equally.



News from the Training Council . . .

Judge Kelley S. Powell, Chair Probate Judges Training Council

Fall COAG

Our next training event will be held November 16-18 at the Savannah Marriott. We were originally scheduled to be at the Hyatt but a scheduling problem put us back at the Marriott. We are still finalizing speakers and topics but topics will include Firearms, Legislative Updates, Authority of Constitutional Officers, and many other relevant topics. The Training Council will offer 9 hours of training and COAG will offer 3 hours. The schedule includes a Training Council meeting on Monday at 3:00 p.m. and Executive Committee meeting on Tuesday at 9:00 a.m. Probate Court Training will be held Tuesday afternoon, Wednesday morning and Thursday morning. We will have a business meeting Tuesday afternoon. COAG training will be held Wednesday afternoon with the banquet will be Wednesday evening at the Marriott.

Many Constitutional Officers have repeatedly requested that the COAG Fall Conference be held earlier in the fall. Everyone agrees that it is hard to be out of the office the week before Thanksgiving. The problem has been that Probate Judges with election responsibilities are often knee-deep in elections and run-offs until mid-November. The solution is creative and I think everyone will welcome the change. Beginning in 2011, in odd years (or non-election years) the COAG Fall Conference will be held in October and in even years (or election years) the Conference will be held in mid-November as usual. An extra bonus is that October means lower room rates. Mark your calendars now for October 11-13, 2011.

Spring Training – Athens

Mark your calendars for March 28 – April 1, 2011. We will have to select the April 1st speakers very carefully. I can only imagine the photos we might see on April Fool's Day!

Budgeting for Training in the Upcoming Year

As most of you are aware, ICJE has been cut to almost half of their operating budget of several years ago. These cuts have a tremendous effect on the level of support the Institute can give to our training. It means there will be higher registration fees and no reimbursement. Be mindful in your next budget year that there will be a charge of \$360 to ICJE for the calendar year. That fee is a flat rate and is per Judge regardless of whether one attends Athens, Savannah or both. There will be no reimbursement from ICJE for lodging or travel. For the rest of this calendar year 2010, the charge will be \$180 flat rate for each participant at Savannah.

Revamped NJO

The Training Council is currently in the process of revamping the New Judges Orientation which will take place in December 2012. We appreciated the candid feedback from the last class of participants and are using those comments to make sure we give new judges the tools they need. We are refining our topics to include the subject matters they will need to know when they first step into the office in January.

We are exploring ways to make sure new judges leave training with practical information to help them through the first few months in office with tools such as checklists for petition review, scripts for conducting traffic arraignment calendars and outlines of basic evidence objections and possible rulings. We are developing courtroom procedure modules wherein we actually conduct mock traffic arraignments and probate and traffic hearings.

Because of our own recent experience, we will devote a good bit of time to judicial ethics. We will teach why judicial demeanor and temperament are important. We will also touch on practical topics such as how to handle money, accountings, and bonds. The new Judges should be given history and insight into their po-

sition as a Constitutional Officer. We want all of the new Probate Judges to feel comfortable and confident when they take the oath and take the bench for the first time. Most importantly, we want to ensure that they are competent.

Probate Judges Certification Program

We continue to pursue the development of a Probate Judges Certification Program. This program has been the dream of Judge Tammy Brown for many years and we are getting closer to making that dream a reality.

The purpose of this program will be to offer Judges a more in-depth program of legal training above and beyond the mandatory 12 hours per year. Our preliminary meetings regarding curriculum have resulted in many important proposed topics such as constitutional law, civil procedure, criminal procedure, evidence, etc. These classes will be developed so that more time can be devoted to how our laws were developed and what safeguards they provide. It is envisioned that the curriculum will be developed with classes in substantive issues, procedural topics as well as office management.

While these classes will not be developed to be daunting, the true goal is deeper understanding and so they will not be geared for the casual judge. Only those with a real thirst for knowledge need embark on the course. At the end of each class there will be a short retention check to make sure the participant left the class with the desired new knowledge.

On August 30th several Judges will be meeting with the Carl Vinson Institute of Government in Athens to talk about formulation of the program. The Institute has facilitated the certification program offered by the Superior Court Clerks for years. They were excited about the prospect of partnering with our group to develop and implement a certification program.

Since we are still in the development stage of this process we still need input

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New Mentor Committee

Judge Vickie B. Burnette, Mentor Committee Chair

Probate Courts are a unique class of courts. Depending on location and/or population every county has multiple and diverse jurisdictions which requires training in different areas of the law. Newly elected judges are often overwhelmed with their many unique responsibilities and new judges, that have no prior experience in the judicial field, find it difficult to transition to this new role.

After considering the problems and the appeal for help from judges across the state, a few judges from the Training Council, Executive Board and the Mentoring Committee met and decided Probate Judges needed a much more in depth Mentoring Program.

The Magistrate Courts have already implemented a very powerful and worthwhile mentoring program and have given their blessing for us to pattern for our association. It has been very beneficial to the Magistrate Judges across the State of Georgia and we feel it will be for us as well. We are grateful for their willingness to share with us.

News from the Training Council ... cont.

from any interested Judges. In the next few months I will be sending out a short survey to ask a few opinions regarding the proposed program. Please let your opinions be known.

As always, if you have ideas for training, please let me or your district training council representative know. Also, please remember to fill out the evaluations at the end of each seminar. We really do pay attention to your scoring and your comments. I always appreciate the candid nature of the comments for good or bad. We strive to make training relevant and timely for what is happening in your office and in your courtroom.

See you in Savannah!

After approval, we will begin to put the program into action. The program begins with a Mission Statement:

“Mentoring exists to furnish each new probate judge in the State of Georgia with the wisdom and counsel of an experienced judge, so as to facilitate the transition of each judge from a beginner to a confident and compassionate member of the judiciary, with an eagerness to learn and expand his or her knowledge, skills and experience.”

The first step to begin the program is to have Mentors trained and certified. This is accomplished by having a six-hour training session preferably centrally located to all counties. Before a mentor can become a mentor to another judge, the mentor must attend the six-hour training session.

At this training session judges will be learn what is expected of the mentor and the mentoree. There will be several benchmark activities that will have to be completed within a specified time period. Some of benchmark activities are: the mentor will maintain regular contact with the new judge, the mentor will visit the new judge’s office, the mentor and mentoree will visit a neutral site, and the mentor will be a host for the new judge at their office. The mentor does not have to

know ALL the answers to every question; however, the mentor should be able to direct the mentoree where to find the answer.

Each new judge will be mandated to participate in the Mentor Program. Failure to participate will result in a referral of the non-participating judge to the Judicial Qualifications Commission.

We feel this program will truly benefit the Probate Judges of our State by equipping us with the necessary tools to do our jobs effectively and sufficiently and we are excited to take steps to improve how we do our jobs. We also feel that being a mentor will help us become more qualified to do our jobs.

Judge Jim Thurman, Lee County Magistrate Court, said, “It’s all about communications...frequent, open, direct, candid, wide-ranging, regular contact and discussion between the mentor and the mentoree, whether by telephone, email or even face-to-face. Mentors and mentorees talking together often refines and resolves most questions or problems.”

Please join the Mentoring Committee in participating in a great, effective and positive tool, called mentoring, to better ourselves and all the newly elected Probate Judges across our State.

Spanish Version of “Your Guide to the Georgia Courts” Available

The Administrative Office of the Courts and the Georgia Committee on Access and Fairness in the Courts have collaborated to publish a Spanish language version of the popular brochure “Your Guide to the Georgia Courts.”

“Guía a los tribunales de Georgia” is now available for download at www.georgiacourts.gov/publications and in a print edition. For copies of the English or Spanish versions of “Your Guide” contact the AOC at 404-656-5171.





CPCJ 2010 Spring Seminar







Weapons Carry License Broad Overview FAQ

Prepared by Probate Judges Lynwood D. Jordan, Jr., and William J. Self, II, with input from clerks and judges

Disclaimer: The Georgia Council of Probate Court Judges (GCPCJ) makes no assurance of the legal status of these opinions on the interpretation of the provisions of S.B. 308. GCPCJ makes no representation that these opinions constitute legal advice or a legally sanctioned interpretation of the changes to the laws mentioned. Probate judges in Georgia only issue weapons carry licenses; they do not enforce or interpret any provisions of the licensing laws other than those directly related to the application for and the issuance or denial of issuance of the licenses. Charges brought by any law enforcement officer/agency are not tried in the probate courts, and the opinions expressed herein will not constitute a defense to any such charge. These opinions are offered, published, and intended only as a public service since the judges and staff of the probate courts are often asked these questions.

1. What is a "weapon?"
2. What is a "knife?"
3. What is a "handgun?"
4. What is a rifle or shotgun called?
5. Where can one carry a weapon without a carry license?
6. What about carrying the weapon between the car and the business?
7. Who can carry a weapon?
8. Does it matter if the weapon is carried in a holster in the open?
9. Are there other "carry" provisions in the law?
10. How much does the weapons carry license cost?
11. What is the "renewal license?"
12. What about the \$6 license replacement charge in HB 1055? Now is it \$5?
13. Who can apply for a license?
14. What if someone moves?
15. What about persons who are not citizens (who qualify)?
16. Will the physical license itself be changing?
17. Does the CPCJ have input into the license form?
18. Is a misdemeanor "drug" conviction still a lifetime prohibitor under Georgia Law?
19. Does a "first offender" drug plea still count as a "conviction" under Georgia Law?
20. What about a Pardon?
21. What are the Georgia prohibitors?
22. Do forcible misdemeanors disqualify anymore?
23. What if information is received from any source that a weapons carry licensee may have become ineligible after the license is issued?
24. Do hearings cost the applicant?

1. **What is a "weapon?"**
A knife or handgun. NOTE: There is an expanded definition of "weapon" in the Code Section dealing with school safety zones.
2. **What is a "knife?"**
A blade longer than 5 inches attached to a handle (with some other criteria).
3. **What is a "handgun?"**
A firearm with a barrel not exceeding 12 inches (with some other criteria such as explosive discharge) and not including single shot firearms with .46 centimeter or less projectiles.
4. **What is a rifle or shotgun termed?**
It is not a "weapon." It is a "long gun." Only handguns and knives are "weapons."
5. **Where can one carry a weapon without a carry license?**
On his or her property; or, inside his or her home, motor vehicle, or place of business. See also Question 7. below.
6. **What about carrying the weapon between the car and the business?**
The law does not specifically deal with that issue. However, the law now contains a blanket permission for a person to whom a weapons carry license has been issued to "carry a weapon ... in every location in this state" except where expressly prohibited.
7. **Who can carry a weapon?**
Someone with a "weapons carry license" in his or her possession may carry a weapon. There are a number of persons who are exempt from the requirement of

having a weapons carry license, primarily law enforcement, military, and certain courts-related personnel. Without a valid license, a person who is not prohibited from possessing a handgun or long gun may: (1) have or carry a weapon or long gun anywhere on his/her property or inside his/her home, motor vehicle or place of business; (2) carry a long gun anywhere not prohibited, provided that, if loaded, it is fully exposed; (3) have and carry a handgun anywhere not prohibited, provided it is unloaded and enclosed in a case; (4) transport a handgun or long gun in any private motor vehicle anywhere not prohibit by law or by the owner or other person in lawful possession of private property; and (5) have and carry a handgun or long gun while hunting, fishing, or engaging in sport shooting, provided the person possess a valid hunting or fishing license (or is exempt from having a hunting or fishing license) and has the permission of the owner of the property where the activity takes place.

8. Does it matter if the weapon is carried in a holster in the open?
No, the law places no restriction on how a weapon or long gun may be carried by a person with a valid license.

9. Are there other "carry" provisions in the law?
Yes, and the Probate Judge or clerks will not attempt to give legal advice on the circumstances concerning where or under what circumstances an item is a "weapon," where a weapon or long gun may be possessed or carried, and in what manner a weapon or long gun may be

continued page 11

Weapons Carry License Broad Overview FAQ cont.

possessed and carried. It is the responsibility of the owner to obtain that information, to govern himself or herself accordingly, and to seek legal advice from an attorney if needed.

10. How much does the weapons carry license application cost?

It is now \$30 because of SB 308 for the application. Additional fees apply for the fingerprinting and criminal records checks.

11. What is the "renewal license?"

There is not a true "renewal" license, although the law makes reference to "requests for license renewals." There is, however, a temporary renewal license which may be issued in connection with certain applications. Every license application is treated as a new application for purposes of an examination of criminal and mental health records.

12. What is the cost for a replacement license?

If a license is lost, stolen, or damaged, a replacement license, valid for the remainder of the original five-year term of that license may be obtained for a fee of \$5.

13. Who can apply for a Georgia Weapons Carry License?

A person at least 21 years old who is domiciled in the state of Georgia and certain military personnel on active duty in the state of Georgia who are NOT residents of Georgia (with additional criteria) may apply for a license.

14. What if someone moves?

The weapons carry license is still good if the person moves to another county or even to another State (as far as use within Georgia is concerned).

15. What about persons who are not citizens (who qualify to apply)?

Certain persons who are not citizens of the United States but who are in the U. S. legally are permitted to apply for the li-

cence. Such persons must prove an exception from the federal laws prohibiting possession of a firearm.

16. Will the physical license itself be changing?

It is the responsibility of the Department of Public Safety to furnish the application and license forms to the probate court. There will be significant changes to the form of the license, which will become effective on January 1, 2012. In the meantime, the license remains the same, except that the language of Code Section 16-11-127 need no longer be printed on the reverse side.

17. Does the GCPCJ have input into the license form?

Not as to the current form of the license. However, in connection with the design and specifications of the new license form, the GCPCJ (probably through its Firearms Licensing Committee) will participate in the creation and design of the new license forms so as to assure uniformity across the state. The Georgia Department of Administrative Services is to purchase the equipment and supplies necessary to produce the licenses using the competitive bidding procedure.

18. Is a misdemeanor "drug" conviction still a lifetime prohibitor under Georgia Law?

No. A person who has been convicted of a misdemeanor involving the use or possession of a controlled substance is eligible if: (1) the person has been free of supervision for the conviction for at least five years, and (2) the person has not, during the five years preceding the application, been convicted of a second misdemeanor involving the use or possession of a controlled substance, convicted of any offense involving the manufacture or distribution of a controlled substance, convicted of the unlawful possession or shipping of a firearm in commerce under federal law, or has had a weapons carry license revoked.

19. Does a "first offender" drug plea still count as a "conviction" under Georgia Law?

No. However, if first offender treatment has been entered for a drug offense, in order to be eligible for a weapons carry license, the person must be otherwise eligible, must have completed the first offender probation without adjudication of guilt, and must have had no other convictions since completion of the first offender sentence and for at least five years before the date of the application for a License.

20. What about a pardon?

If the pardon restores the right to possess a weapon, then there are no provisions limiting the right to a weapons carry license to someone otherwise eligible.

21. Do forcible misdemeanors disqualify anymore?

No, except for a "misdemeanor crime of domestic violence" [MCDV], as defined under the federal law. Conviction, as defined under the applicable federal or state law, of an MCDV is a lifetime prohibitor under federal law.

22. What are the Georgia prohibitors? These are called "licensing exceptions" and include:

- a) Anyone under 21;
- b) Any convicted felon who has not been granted a pardon which covers the felony offense;
- c) Any person against whom proceedings are pending for a felony;
- d) Any fugitive from justice;
- e) Anyone prohibited under federal law from possessing or shipping a firearm;
- f) Any person who has been convicted of an offense arising out of the unlawful manufacture or distribution of a controlled substance or dangerous drug;
- g) Any person whose weapons carry license has been revoked;
- h) Any person convicted of (1) pointing a gun or pistol at another, (2) carrying a

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The National College of Probate Judges in Charleston, SC

November 7 – 10 From the Brooke Astor Conservatorship To James Brown’s “I Feel Good Trust” Dues/Registration Grants Available

This Fall we will have an opportunity for a CJE experience at the national level within driving distance of Georgia, enjoying the Southern hospitality of Charleston, South Carolina.

This National College of Probate Judges meeting will feature the Brooke Astor case. Mrs Astor was a New York philanthropist and socialite. She was involved in a conservatorship battle which led to a criminal conviction. The speakers will include the author of a book on the case, an Astor grandson and history professor, the prosecutor, and a probate attorney and expert witness.

Featured also in Charleston will be a session on the James Brown case presented by a professor from the University of South Carolina.

Other topics of discussion include ju-

dicial ethics and electronic communication, estate tax and will construction, a probate case update, etc.

Funds have been reserved to allow seven Georgia Probate Judges who are not members of the National College of Probate Judges to take advantage of the closeness of this year’s conference. The limited funds are available to pay the college dues and the conference registration for seven judges. Those wishing to make a commitment to attend and apply for one of the seven dues/registration grants, please make your wishes known to Ms. LaShawn Murphy at AOC.

It is expected that our own Judge Bill Self will be chosen as the President Elect of the College at this Charleston meeting. The conference will be held at the Mills House Hotel which is within walking dis-

tance of many sites and buildings of historic interest. Fine restaurants are nearby, and the hotel is bordered on one side by King Street on which are many antique shops, boutiques, and upscale stores.

Other names of historic interest within walking or short driving distance: Fort Sumter, Four Corners of Law, Middleton Place, Boone Hall, Magnolia Plantation, Cooper River Bridge, USS Yorktown, Charles Towne Landing, and others.

Tuesday night’s dinner meeting will feature a harbor dinner cruise on the Spirit of Carolina.

Take advantage of this CJE opportunity in a nearby city known for its living history.

Weapons Carry License Broad Overview FAQ cont.

weapon without a weapons carry license, or (3) carrying a weapon or long gun in an unauthorized location, unless such person has been free of restraint or supervision in connection with the conviction and has been free of any other conviction for a period of five years immediately preceding the application for a license;

i) Any person convicted of a misdemeanor involving the use or possession of a controlled substance, unless such person has, for not less than five years immediately preceding the application for a license, been free of restraint or supervision in connection with the conviction, has been free of a second conviction of a misdemeanor involving the use or possession of a controlled substance, and has been free of conviction of (1) possession or shipping of a firearm in violation of federal law or (2) an offense arising out of the manufacture or distribution of a controlled substance or dangerous drug, or

(3) has had his/her weapons carry licenses revoked;

j) Any person who has been hospitalized as an inpatient in any mental hospital or alcohol or drug treatment center within five years immediately preceding the application, unless the judge, in his/her discretion approves the issuance of the license; [NOTE: Under federal law, any person who has been involuntarily committed for treatment at any mental institution is prohibited from possessing a firearm and is ineligible for a Georgia license.]

k) For purposes of these exceptions, anyone who has been afforded first offender treatment for an offense arising out of the unlawful manufacture or distribution of a controlled substance or dangerous drug or for an offense involving the use or possession of a controlled substance is eligible for a license only if the first offender sentence was successfully completed without

adjudication of guilt, and the person has been without any other conviction for at least five years immediately preceding the application.

23. What if information is received from any source that a weapons carry licensee may have become ineligible after the license is issued?

A hearing may be held after notice to the licensee, and the probate judge may revoke the license upon finding that the licensee is no longer eligible for a license, or that the license was issued on a falsified application, or that the licensee has become mentally incompetent or chronically uses alcohol or narcotics.

24. Do hearings cost the applicant?

For conducting trials of contested matters or formal hearing on a denial of a weapons carry permit, the cost is \$25 per half day or portion thereof.

The National College of Probate Judges

2010 Fall Conference
November 7-10, 2010
Charleston, South Carolina

Saturday, November 6

2:00 – 5:00 PM Executive Committee Meeting

Sunday, November 7

Tee times beginning at
10:00 AM

Golf Tournament at Patriots Point Golf Links

2:00 - 6:00 PM Registration

4:00 – 5:30 PM Business Meeting
South Carolina Association of Probate Judges
Historic Courthouse, 84 Broad Street

6:00 PM - 7:00 PM Welcome Reception
Business Casual Attire

Monday, November 8

7:00 AM – 8:00 AM Breakfast

7:00 AM – 8:30 AM Registration

7:00 AM - 8:30 AM Vendor Exhibits and Coffee Service

8:30 AM - 9:00 AM Welcome Remarks
John W. Voorhees, NCPJ President
State or Local Dignitary

9:00 AM - 10:30 AM Educational Session
Speakers: Meryl Gordon, Author, *'Mrs. Astor Regrets: The Hidden Betrayals of a Family Beyond Reproach'*
Philip Marshall, grandson, Professor of Historic Preservation, Roger Williams University
Elizabeth Loewy, prosecutor
Alexander Forger, probate attorney and expert witness
Topic: *The Astor Case*

9:30 AM – 10:30 AM Spouse Coffee

10:30 AM - 10:45 AM Vendor Exhibits & Coffee Break

10:45 AM - 12:15 PM Educational Session
Topic: *The Astor Case (continued)*

Tuesday, November 9

7:00 AM – 8:00 AM Breakfast

7:00 AM - 8:00 AM Vendor Exhibits

8:15 AM - 8:45 AM Annual Business Meeting

The National College of Probate Judges

- 9:00 AM – 10:30 AM Educational Session
Speaker: Prof. F. Ladson Boyle, University of South Carolina School of Law
Topic: *The Estate Tax and Related Will Construction Issues*
- 10:30 AM - 10:45 AM Vendor Exhibits & Coffee Break
- 10:45 AM - 12:15 PM Educational Session
Speaker: Barbara M. Seymour, Deputy Disciplinary Counsel, Supreme Court of South Carolina
Topic: *Judicial Ethics and Electronic Communication*
- 12:15 - 5:00 PM Executive Committee Meeting
- 6:00 PM - 9:00 PM Dinner Cruise
Swearing in of NCPJ President and South Carolina Association of Probate Judges Officers
*Nautical Attire**

Wednesday, November 10

- 7:00 AM – 8:30 AM Breakfast
- 8:00 AM - 9:00 AM State Representatives Meeting
- 9:00 AM - 10:30 AM Educational Session
Speakers: Pi-Yi Mayo, Certified Elder Law Attorney, Baytown, Texas
Topic: *The Advantages of Qualified Settlement Funds*
- 10:30 AM - 10:45 AM Coffee Break
- 10:45 AM - 12:15 PM Educational Session
Speaker: Prof. S. Alan Medlin, University of South Carolina School of Law
Topic: *The James Brown Case and Probate Case Update*

****Prize for Best Dressed.***

Save the Date

CPCJ Committees Planning Session
October 11-13, 2010

Brasstown Valley, Hiawassee GA

National College of Probate Judges

Fall 2010 Conference is

November 7 - 10, 2010

The Mills House in Charleston, SC

Fall 10 COAG - November 16 - 18,
2010*

Marriott Riverfront Hotel, Savannah GA

800-285-0398

**Executive Comm. and Training Council
scheduled to meet*

Probate Judges Annual Spring Conference

March 28- April 1, 2011

The Georgia Center, Athens GA

**Executive Comm. and Training Council
scheduled to meet*



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Judges of the Probate Courts Retirement Fund

Judge J. Mike Greene, Chairman of Board

The Board of Commissioners of the Fund met for their regular quarterly meeting on July 29, 2010 at the Fund office in Griffin, GA. All members of the Board were present.

Mr. Jack Halper with Smith Barney Consulting Group presented the report on the asset performance for the year ending June 30, 2010. Mr. Halper also provided the Board with a Capital Markets Overview. During the quarter ending June 30, 2010 the Dow Jones Industrial Average reached its highest point since September 2008, but finished down 1,083 points. Despite the correction, the Dow finished the quarter 22.0% above its 52-week low and 49.3% above the low of March 2009. The top performing money

manager for the year was Great Lakes Advisors with a return of 18.78% and the least performing manager was Tradewinds with a return of 6.80%. The Fund continues to be well diversified covering most asset classes.

The Probate Judges Fund ended the year with a positive return of 13.49%. With the Fund being down -6.00% for the Quarter. The market value of the assets in the Fund are now \$52,619,000. On June 15, 1995 the market value was \$29,343,000. As you can see even in the rough markets of the past few years your Fund has grown over time.

The Board requested a report from Buck Consultants on the possibility of increasing the salary cap which is currently

\$36,904. The report from Buck stated that the Fund could not increase the salary cap. The Board will continue to monitor the issue and provide an increase as soon as possible.

The next meeting of the Board will be held on October 21, 2010 in Athens, GA.

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