

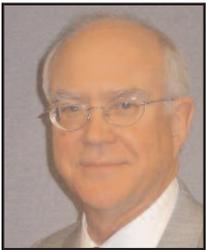
THE GAVEL

*The Official Newsletter
of the Georgia Council of Probate Court Judges*

Volume 15, Number 1

Spring 2008, Volume 1

MESSAGE FROM THE PRESIDENT



As my term of office as President of the Probate Judge's Council will end on April 16, 2008, this news letter seems

like an appropriate place to review the past year's activities and to make recommendations for the future.

There is a good chance that several pieces of legislation proposed by the Probate Judge's Council this year will pass legislative scrutiny, however, several key proposals will more than likely be postponed until the 2009 legislative term:

1. A proposal to increase the qualifications of individuals who can run for probate judge;
2. A proposal to revise the fee structure and increase fees paid to court appointed attorneys and guardian ad litem; and
3. A proposal to eliminate the filing fees for motions, objections, and caveats filed after an initial petition.

Also, the Probate Judge's Council has been working with the Councils of Municipal, State and Magistrate Court Judges regarding joint training opportunities which any judge could attend. The possibility of more online training and of televised

satellite courses have also been discussed; which would be much more convenient and eliminate travel time for many of us.

This year as President of the Probate Judge's Council it has been both challenging and rewarding; the biggest challenge has been learning what is required of a President. I think it would be beneficial to extend the President's term of office to two years, beginning with my successor, of course! It takes the majority of the first year to figure out what you are doing. By the time a President becomes fully aware of the duties whether it is overseeing the Executive Committee meetings, being a member of the State Judicial Council and COAG Executive Board, meeting with the Presidents of the other Councils, reviewing legislation which affects probate courts and other courts or attending the Probate Judge's Council meetings several times a year; the term of office has

expired. By increasing the term to two years, a President would have more time to be acclimated, which then gives more time to be truly effective.

Serving as President of the Probate Judge's Council has been extremely rewarding and a wonderful experience. Meeting the Presidents of the other Councils and having the opportunity to meet with and discuss issues with probate judges from all over the state has been extremely educational and thought provoking. As probate judges, I hope that our open lines of communication, our willingness to adapt, and our desire to improve our courts will lead to continued success. I look forward to a bright future in Georgia's probate courts. Thank you for a wonderful year and best of luck and good wishes to our incoming President, Judge Lillis Brown.

Jim Clarke, Gwinnett County

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Probate Judge Executive Committee Minutes

Hyatt Regency Hotel • Savannah, GA • November 13, 2007

Welcome and Opening Remarks

The meeting was called to order at 9:42 a.m. Judge Clarke welcomed everyone in attendance.

Approval of Minutes

Judge Clarke called for a review of the minutes from the August 14, 2007 meeting at the King & Prince Resort in St. Simons, Georgia.

MOTION: Judge Bracewell, with a second from Judge L. Brown, moved to approve the minutes as submitted. The motion passed unanimously.

Financial Reports

Association Funds - Judge McCoy provided a three page Treasurer's Report on association funds. His report indicated the Council's assets, as of October 31, 2007, totaled \$62,652.11 from two banking accounts, including \$43,652.84 from the investments from two certificates of deposits secured at the F&M Bank (\$10,000.00) and South Georgia Bank (\$33,652.84). Included was a BB&T Bank transaction report from 8/1/07 -10/31/07 showing a balance for the period in the amount of \$18,999.69.

Next, Judge McCoy reported 156 counties have submitted payment of dues; three counties (Chattooga, McIntosh & Pulaski) have not paid their dues to date. It was noted Judge Gordon Shuman retired from McIntosh County.

In final, Judge McCoy directed everyone attention to a request from the Institute of Continuing

Judicial Education (ICJE) to pay for the spring banquet. In general, due to budget constraints ICJE is accessing a \$75.00 registration fee for the spring conference to cover the Georgia Center fee and the luncheon. However, the fee will not cover all cost associated with the seminar. With that being stated, they are requesting the Council to cover the costs of the evening banquet scheduled to be held at the Botanical Gardens. Approximate costs for the event are as follows:

\$500.00 – Rental fee for the Botanical Gardens

\$330.00 – Bus Rental (2 buses @ \$55 p/h, 6:30pm – 9:30pm)

\$3,450.00 – Banquet Dinner (\$23.00 x 150 people)

\$380.00 – Amenities Package

\$4,660.00 – Total Cost for Banquet

Discussion ensued regarding the banquet. Judge L. Brown announced she has acquired a sponsor to donate \$1000.00 for the costs of the rental fee and the bus rental. However, ICJE will still access the registration fee. Judge Green questioned what would be the cost difference in having the banquet at the Georgia Center instead. Judge L. Brown replied there is no difference due to the Georgia Center servicing the Botanical Gardens.

Attention turned towards obtaining vendors for the conference. Ms. Murphy sent out request for the 2007 banquet and obtained funds to assist with the payment of the Council meeting and reception. After discussion, it was the executive committees' decision to pay up to \$4,660.00 towards the dinner from council funds. However, AOC would send

out Vendor RFP's for the conference and a final vote will take place at the meeting in January.

In final, Judge Brown suggested not to have the reception prior to the banquet; in past years it has been poorly attended. Everyone was agreement with this proposal.

State Funds – Ms. Murphy presented the report on State-appropriated funds activity as of November 5, 2007. Total funds appropriated for FY08 were \$160,138.00. This amount includes \$20,000.00 appropriated for legal research (Westlaw) and \$65,000.00 for updating the Guardianship Video. The Council has an existing balance of \$128,076.16 with year-to-date expenses totaling \$32,061.84. Revenue generated from hand-book and standard form sales in the amount of \$2483.00 has been received. Total Council funds available were reported as \$130,559.16.

President Report

Judge Clarke reported the strategic planning session held September 24-26, in Brasstown Valley Resort went very well. The sessions focus was mainly legislative matters. He will be attending the next Judicial Council meeting scheduled for December 10-11th at the Wyndham Vinings Hotel. Discussions have taken place with Judge Kimberly Warden, President of the Council Magistrate Court Judges regarding increasing their qualifications. He has also spoken with the president of the Council of Municipal Court Judges regarding working together on initiatives that affect both courts. In

Executive Committee Minutes cont.

final, Judge Clarke reported the Council seal has been re-registered with the Trademark Division of the Secretary of States Office.

Report from AOC

Ms. Lewis reported probate court caseload information being filed is up; full year data is being reported by the counties. Ms. Tabitha Press has been in contact with the courts in regards to caseload in the past months. She added Ms. Tiffany Pete is now the supervisor for the Research Division. Please feel free to contact either one regarding requests.

Next Ms. Lewis announced the website template is still under way. There have been twenty-two requests for the service. Following this, she informed the members a pretrial survey was sent to courts with traffic jurisdiction. This was done in effort to see which courts have programs, to come up with best practice and to find out who needs a pretrial program. Results are still being derived.

In final, it was reported the Municipal Judges are implementing Solicitor Training and would like to have two probate judges with traffic jurisdiction serve on their committee. Judge Michael Green volunteered to participate. Judge Bracewell nominated Judge Laverne Ogletree as a member. Judge L. Brown seconded the nomination that passed with all in favor.

Following this, Mr. Patterson presented the members with a request from Ms. Terry Cobb, Judicial Council Meeting Planner to host either the reception or cash bar for the June 2008 meeting. Mr. Patterson noted sponsorship rotates amongst the Councils. After a brief discussion,

Judge Bracewell moved to sponsor the reception for \$3700.00. Being properly seconded by Judge Griffin, the motion passed with no dissent.

In final, Mr. Patterson presented the members with the option of having an on-line version of the Gavel the probate judges' newsletter only. This is an effort to save the Council funds, as this printing expenditure is costly. After a brief discussion, Judge McCoy moved to discontinue printing of the Gavel and have an on-line version available only. Seconded by Judge L. Brown, the motion passed with all in favor. A notice will be sent to the listserv announcing the posting of the publication.

District Reports

Written reports from Districts Two, Five, Eight, (combination of 10, 11 and 14) and Twelve were included in the agendas. There were no verbal reports.

Committee Reports

Automation Committee – A written report was included behind tab four.

Benchbook Committee – Judge Toomer reported updates of chapters six and sixteen are completed and will be distributed during the conference.

Caseload Committee – A written report was included behind tab four.

Clerks Advisory Committee – A written report was included however, Ms. Perry added the committee has been charged with devising a best practices manual for clerks. She has contacted three

seasoned clerks to assist with this project in addition to the members. Plans to hold a GoTo Meeting in the coming month to start the process are forthcoming; she will contact Ms. Murphy to set this up.

Court Rules and Forms Committee

- Judge Ferguson reported the committee is working on the New Administration Form. In addition, the Rules for Criminal/Non-Criminal Evidence will be distributed during the Business meeting.

Firearms Committee – Judge Tate passed out correspondence received from Judge Kip McVay briefing Representative Sean Jerguson on the citizenship requirement regarding firearms licenses. Judge McVay is proposing that her local legislative delegation help sponsor a bill to require proof of citizenship before issuing a firearms license. She offered an analysis of the citizenship requirement for eligibility for a firearms license pursuant to O.C.G.A. § 16-11-129. The letter was copied to President Judge Clarke and Judge Tate, Chair of the Firearms Committee. However, there was no discussion with the Firearms Committee, Legislative Committee or the Executive Committee regarding the matter prior to drafting. The members were not in agreement with much of the verbiage and thought Judge McVay should have presented the matter in advance to obtain a stance from the Council as whole prior to responding.

Legislative Committee- Judge Bracewell announced he has spoken with Mark Middleton, CPCJ

Probate Judge Executive Committee Minutes cont.

Lobbyist and needs to know if his presence shall be needed at the Business meeting. It was decided his presence would not be needed but Judge Bracewell will contact him with the proposed legislation. Next, he reported the 2008 proposed legislation was forwarded to the Council on November 8th for review. He has had some feedback regarding certain pieces of legislation. He wants to be able to explain clearly, what they are trying to achieve to the Council during the Business meeting. The proposed list of legislation was reviewed (see attached).

Membership Committee – Judge Buford reported the hospitality suite is located in room 515.

Mental Health Committee - Judge Tate's reported several attorneys have joined the Statutory Review Committee of the Chief Justice Mental Health Task Force: Janet Grayson (State Bar Elder Law), Chris Colsen (GA Legal Services) and another attorney suggested by Adam Glaslowitz. Judge Ferguson is also a member of the committee. The committee was invited to attend a Mental Health Policy Forum held at the Carter Institute. The forum was well attended and provided good information. In final Judge Tate reported Judge Clarke has spoken with Governor Perdue regarding the appointment of a probate judge to the Mental Health Committee. Pat Strobe, NAMI plans to speak with the chair of the committee regarding the matter.

Retirement Committee – Judge Green reminded the members of the editorial written in the Atlanta Journal Constitution regarding the retirement funds of Ms. Juanita

Hicks, the immediate past Superior Court Clerk in Fulton County. The Retirement Board met during the strategic planning session and again recently to discuss the matter. In an effort to gain information about retirement plans available to the probate judges in their counties, a survey has been drafted. The survey, which is included in the agenda packet, will be distributed to the Council at the Business meeting scheduled for the following day.

Probate Judges Training Council

Judge Griffin reported the Training Council met the day prior and finalized training for the 2008 Spring Conference. Two clerks have completed the certification program from Rockdale County. Certificates have been drafted and will be presented at the awards banquet. She also reported Council discussed traffic judges training. It was decided to continue to have training with the municipal judges. However, next year training is scheduled during elections. The municipal judges are presenting traffic seminars twice; once in June and another in September. Judges will be allowed to choose which seminar they would like to attend. In addition to this, topics for the Winter COAG training have been reached but will be finalized upon receipt of COAG schedule. In final, Judge Griffin reported she and Ms. Murphy has been appointed by the COAG President to a Conference Planning Committee. The committee is composed of all the training council chairs of the association and w

Old Business

SJI Grant Proposals (update)

Judge Clarke reported the Council has been approved for grant funds but is still awaiting the award amount. As a committee has been appointed, the project may begin utilizing the match funds. Dan Sperling of Sperling Video may be contacting some judges regarding the project in the coming month(s).

Live Scan Funding (update)

Ms. Lewis reported the Criminal Justice Coordinating Council (CJCC) had a million dollars in grant funds left over. The agency has been asked to develop a process to review our of cycle grant requests such as this one for Live Scan equipment. She has spoken with Ms. Perry who advised the Council should think about ways to ensure an integrated approach to information sharing. Additionally, the Council should start thinking about how many courts they will seek to assist and a selection process.

Duties of Personal Representative (update)

Judge Jordan reported the pamphlet is in its final version; however there are a couple of little things that need to be tweaked. The "Road to Success" map fonts need to be increased and some margin issues for desktop printing. Following the conference he will get with Chris Patterson to update the issues.

Workload Assessment (update)

Judge Clarke reported the project has been deferred until further notice.

Case Law Summary Review, Last Six Months, 2007

By Judge Lynwood "Woody" Jordan, Forsyth County Probate Court

As with the previous pieces, this review is intended to be a broad brush treatment of the highlights of the cases. Many issues and facts may be skipped in a particular case synopsis.

Judge Cranford's case awaiting the legislature.

This is the case affirming our policy of requiring criminal record checks and NICS reports before issuing a concealed weapons permit despite legislative time limits. At the time of this writing, legislation is pending which may affect this reported decision.

JNOV, new trial, testamentary capacity, attorney testimony.

This case talks about post-trial procedural issues. It also contains

a definition of "testamentary capacity". This case highlights once again the testimony of the drafting attorney regarding the condition of the testator prior to, and at the time of, signing the will.

Testamentary capacity in the eyes of the attorney, the associate, and the legal secretary.

This case also contains the usual definition of testamentary capacity. The case is illustrative of the importance which solid testimony from the legal professionals can have upon a testamentary capacity decision by the trier of fact.

Another "not at the time of execution" case plus the effect of marking on a will copy.

The rule is re-stated that undue influence must operate at the time the will is executed. Events occurring years later are irrelevant. In addition, the Testator's material changes to a copy of his will together with a letter from the testator requesting the changes be given effect did not raise presumption of revocation. Markings must be made on the original, not a duplicate.

"Yes it is fine" is ok – "No it is not" is a no, no.

In a will caveat hearing, oral statements of the deceased may be offered. A post-execution oral statement that the testatrix was

continued page 7

Probate Judge Executive Committee Minutes cont.

New Business

Senate Survey Request/Response

Judge Clarke referred everyone to tab six. A Senate inquiry had been received by the AOC in response to SR340 passed earlier in the year to review the efficiency and effectiveness of State Authorities, Boards, Commissions, Committees and Councils. The survey has been completed by the Administrative Office of the Courts and forwarded to the Senate Research Office per the request.

Prentice Hall Publishing Request for Form Usage

Judge Clarke directed member to tab seven, which contained a request from Prentice Hall Publishing for permission to use the Letters of Testamentary Standard Form. He deferred to Ms. Murphy who explained the publisher is requesting permission to use the form in their publication: Wills, Trusts, and Probate Law for Paralegals and used in a CourseSmart email (electronic version of the book). The product will be sold at the price of \$65.00. After discussing payment for usage and credit, Judge McCoy moved to approve use of the Letters of Testamentary in the publication

provided the credit line states: Courtesy of the Council of Probate Court Judges of Georgia. Seconded by Judge L. Brown, the motion passed with all in favor.

Adjournment

There being no further business, Judge Clarke announced the next meeting would be in conjunction with the Winter COAG meeting in January 2008. The meeting was adjourned at 11:20 a.m.

Respectfully,

LaShawn Murphy, AOC
For Judge Darin McCoy, Secretary

2008 Nominations Committee Report

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President-Elect – LILLIS J. BROWN
Rockdale County, Conyers, GA 30012

1st Vice President – TAMMY BROWN
Barrow County, Winder, GA 30680

Immediate Past President – BETTY B. CASON
Carroll County, Carrollton, GA 30112

February 22, 2008

Memorandum

**TO: Each Probate Court Judge
Council of Probate Court Judges**

**FROM: Judge Darin McCoy
Secretary**

RE: 2008 Nominations Committee Report

The Nominations Committee of the Council of Probate Court Judges as provided in Article IX, Section 2 of the Bylaws of the Council proposes the following persons to be nominated for the positions indicated:

Officers of the Council of Probate Court Judges

1. President-Elect B Judge Tammy Brown to succeed Judge Lillis J. Brown
2. First Vice President B Judge Lynwood Jordan to succeed Judge Tammy Brown
3. Secretary-Treasurer B Judge Darin McCoy to succeed himself

Probate Judges Training Council

The Nominations Committee moved to hold nominations for Training Council members due to proposed legislation regarding the probate district make-up. The matter will be re-visited at the conclusion of the session.

The election will take place during the Annual Meeting of the Council of Probate Court Judges on Wednesday, April 16, 2007, 4:00 p.m. at the Georgia Center, Athens, Georgia.

Case Law Summary Review cont.

satisfied with the will is admissible; however, a post-execution statement tending to invalidate the will is not admissible. A statement made shortly after execution of the will expressing dissatisfaction may, however, be admissible to show the testatrix' state of mind at the time she signed the document. Note the drafting attorney's role in this case also.

Caveator is out of court, no hearing required.

As a court of record, the Probate Court has constitutional authority to dismiss, sua sponte, a motion which the record shows cannot succeed as a matter of law. A will was probated in solemn form. A caveat was later filed by one who signed an original assent to probate. This caveator was precluded from raising the testatrix's mental capacity in the late caveat not because it was late, but because the completed probate itself established that the requisite mental capacity was present. Note that no 9-11-60(d) motion was filed.

Decedent's sister fights decedent's daughter. No transcript?

The sister appealed the dismissal of her caveat, but there was no transcript of the hearing; therefore, the Supreme Court assumed the evidence supported the Probate Court findings. Because the Probate Court determined that the sister lacked standing to proceed on her caveat, she was not entitled to a jury trial. The contest was about whether the "daughter" is the "daughter." She is, and the sister therefore lacks standing as an heir at law.

No need? Then no Year's Support!

An award of a ? interest in the marital home was reversed. If the spouse's income exceeds expenses, Year's Support is not authorized. Year's Support is not compensation for a spouse's death. Year's Support is a transitional allowance. Year's Support is not intended to be a method to distribute estate property.

Another Year's Support case – you waive it, you lose it!

This case discusses, again, the rule that the "amount" of Year's Support is completely separate from "eligibility" for Year's Support. "Eligibility" means status. The "amount" must be needed, is not a method to distribute the estate, is not general damages, and is not a claim for loss of consortium. Furthermore, since the widow in this case had knowledge of her rights and knowledge of the condition of the estate when she waived her right to Year's Support, the trier of fact was authorized to find that she made a knowing waiver based upon adequate consideration.

Defaults can be opened in Probate Court.

Caveat deadline was November 17. On November 23, the defaulting party paid costs and filed pleadings. The Probate Court was required to consider the pleadings because the Civil Practice Act applies to the Probate Court and defaults may be opened within 15 days as a matter of right.

Right to jury trial remains.

This case deals with the general rule for appeals from Probate court and construes recently enacted statutes. The established rule is unchanged – de novo appeals to the Superior Court from the Probate Court are to be tried by jury unless the right to jury trial is waived.

"Best Interest" is the test.

In this incapacitated adult contest, the Probate Court may disregard the statutory order of preference and appoint the county administrator as conservator if it is in the best interest of the ward. The Court may not, however, abuse its discretion and ignore the merits and refuse to appoint a guardian.

Simultaneous Superior and Probate Cases.

A trust action in Superior Court can proceed at the same time as a probate proceeding. The case recognizes that the Probate Court has exclusive jurisdiction of probate of wills.

Article 6 Court powers.

This is a declaratory judgment case. The court may issue a stay restricting the estate and an insurance company from taking action during counsel's maternity leave. The court may likewise issue judgment on a motion to enforce a settlement agreement allegedly made between the estate and the insurance company.

2008 ICJE Professional Enrichment Products* (PEPs) **Courses of Interest to Judges of Georgia**

Course Title	Description	Dates	Location
20-Hour Firearms Awareness & SafetyBFor Novices	FULL	March 26-27	
20-Hour Cons. Crim. Procedures	FULL	May 12-14	
20-Hour WebCT Online (DV 101) (12 Virtual Classroom Hours)	Requires 3 hours (anytime) per week on line. 8 hours advance reading	June 16-July 11	Online (3 hrs/per week)
20-Hour Domestic ViolenceBBasic	FULL	July 10-11	
20-Hour Firearms Awareness & SafetyBFor Novices	FULL	Oct. 22-23	
12-Hour Pharmacology of Drugs	Study of common substances of abuse	Oct. 30-31	UGA, Athens
20-Hour Substance Abuse & Addiction Issues	Practical training regarding addictive substances such as meth. Late night Experiential Learning Opportunity (ELO). 4 hours advance reading	Nov. 6-7	Geogia Center, Athens

***Professional Enrichment Products* (PEPs) are open to judges from all courts.**

MCJE credit may be available, depending on the specific rules of your Training Council.

Registration Form--Professional Enrichment Products (PEPs)

To register for any of these courses, complete and mail form to ICJE, 123 Dean Rusk Hall, UGA, Athens, GA 30602.
Questions? Call: Dr. Lynda Hanscome: 706-542-7401 or email: lynda@icje.law.uga.edu

NAME: _____ COURT: _____

PHONE: _____ EMAIL: _____

ADDRESS: _____

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

Registration: Use the above schedule to request enrollment. Do not assume you are enrolled if you apply.
If you have been registered, you will receive a confirmation letter in the mail. **Space is Limited!**

Course Name: _____ Date of Course: _____

Location of Course: _____

A Word from the Supreme Court Comm. on Interpreters

The Supreme Court Commission on Interpreters is pleased to announce a new form created for your court's convenience when interpreters are utilized. This new form has been added to our website as a guide for determining the qualifications of interpreters. This form includes questions to ask when an interpreter is not licensed with the state of Georgia, the Interpreter Oath, and a disclaimer for all interpreters to sign. Prior to service, each interpreter, regardless of licensure status, is required to comply in writing with the Code of Professional Responsibility, found in Appendix C in the Supreme Court Rule for the Use of Non-English Speaking Persons in the Courts. You can find this form and the Code of Professional Responsibility online at www.georgiacourts.org/agencies/interpreters.org.

Licensed certified interpreters are available for the following lan-

guages: Arabic, French, Haitian-Creole, Portuguese, and Spanish. Licensed registered interpreters are available for the following languages: Arabic, Bosnian, Cantonese, Farsi, French, German, Japanese, Korean, Mandarin, Polish, Portuguese, Romanian, Russian, Spanish, and Vietnamese. When you employ a licensed interpreter, you are employing someone who has completed mandated training and passed a test on court procedure and ethics. Licensed certified interpreters have passed a national test indicating proficiency in the three modes of interpreting used in courts. Licensed registered interpreters have passed an oral proficiency test in the language they interpret. The Supreme Court Rule for the Use of Non-English Speaking Persons in the Courts outlines that in criminal cases, whenever a certified interpreter is not utilized, the court shall make an audio or audio-visual recording

of any testimony given in a language other than English. In civil cases, whenever a certified interpreter is not utilized and a party was denied the right to use an interpreter of his or her own choosing, the court shall make an audio or audio-visual recording of any testimony given in a language other than English. All current licensed interpreters have an up-to-date card they can provide for verification.

Each licensed interpreter in good standing is issued a new identification card every year. Current cards expire on September 30, 2008. If you have any questions about the use of interpreters, please contact Katherine Cadena, Program Manager for the Commission on Interpreters at 404-657-4219 or e-mail coi@gaaoc.us.

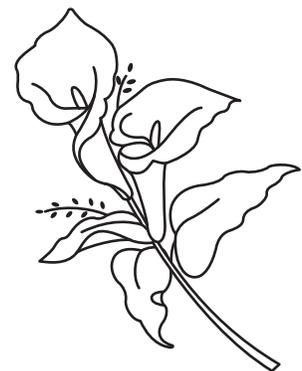
Condolences

Condolences to **Judge Bob Smith** of Hart County and his family on the passing of his mother Mrs. Annie Sue Smith and brother Mr. Tommy Smith. Please keep Judge Smith and his family in your prayers.

Condolences to the family of **Retired Judge Gene Wells** on his passing March 2008. Judge Wells

took office in McDuffie County January 1989 and retired January 2007.

Condolences to **Judge William Self, II** on the passing of his brother Tilman E. Self, Jr., on February 23rd. He was the father of Superior Court Judge Tilman E. "Tripp" Self, III. Keep Judge Self and his family in your prayers.



LEGISLATIVE AGENDA CPCJ 2008*

(* At printing SB508 reflected all of these proposed changes (or variation of) with the exception of the legislation regarding the appointment of an associate probate judge)

Title 15

O.C.G.A. § 15-9-127. Additional concurrent jurisdiction with superior courts.

Add to the jurisdiction of Article Six Probate Courts the power to construe wills pursuant to

O.C.G.A. § 23-2-92.

O.C.G.A. § 15-9-127-- Proposed Change to include 23-2-93 in Red

Probate courts subject to this article shall have concurrent jurisdiction with superior courts with regard to the proceedings for:

- (1) Declaratory judgments involving fiduciaries pursuant to Code Sections 9-4-4, 9-4-5, and 9-4-6;
- (2) Tax motivated estate planning dispositions of wards' property pursuant to Code Sections 29-3-36 and 29-5-36;
- (3) Approval of settlement agreements pursuant to Code Section 53-3-22 of the "Pre-1998 Probate Code," if applicable, or Code Section 53-5-25 of the "Revised Probate Code of 1998";
- (4) Appointment of new trustee to replace trustee pursuant to Code Section 53-12-170;
- (5) Acceptance of the resignation of a trustee upon written request of the beneficiaries pursuant to Code Section 53-12-175;
- (6) Acceptance of resignation of a trustee upon petition of the trustee pursuant to Code Section 53-12-175;
- (7) Motions seeking an order for disinterment and deoxyribonucleic acid (DNA) testing as provided

in Code Section 53-2-27 ;
(8) Conversion to a unitrust and related matters pursuant to Code Section 53-12-221; and

(9) Adjudication of petitions for direction pursuant to Code Section 23-2-92

Propose legislation to allow probate judges to appoint an associate judge; to include approval of County Commission. (Follow Juvenile Code O.C.G.A. 15-11-2)

O.C.G.A. § 15-9-12.1 Associate probate court judges

- (a) The judge may appoint one or more persons to serve as associate probate court judge in probate matters on a full-time or part-time basis. The associate probate court judge shall serve at the pleasure of the judge, and his or her salary shall be fixed by the judge with the approval of the governing authority or governing authorities of the county or counties for which the associate probate court judge is appointed. The salary of each associate probate court judge shall be paid from county funds.
- (b) Each associate probate court judge shall have the same qualifications as required for a judge of the probate court as provided in Code Sections 15-9-2 and 15-9-4.

Terms of Court (O.C.G.A. § 15-9-82) Current term runs month to month. Propose changing to quarterly; every three months

Proposed Change

O.C.G.A. § 15-9-82--The Term of Court for the Probate Courts of the State of Georgia shall commence as follows: The first Monday in January, April, July and October and shall continue in session from day to day as the business of the court may require. If the first Monday of a given term should happen to fall on a legal holiday, the probate courts throughout this state shall convene on the following day.

Reintroduce Training Council legislation re: changes in composition regarding districts

- a) The training council shall be composed as follows:

three members from the state at large elected by the probate judges at the annual spring business meeting of The Council of Probate Court Judges of Georgia for three-year staggered terms and; The Probate Judges' Council shall create and approve training districts as needed for the purpose of membership on the training council, for representation at regional and state training meetings and for the furtherance of training opportunities. Training Districts shall be defined as an administrative unit which is comprised of counties that share a common geographical area; each county designated within the training districts shall be represented by the probate judge of each of the coun-

LEGISLATIVE AGENDA CPCJ 2008 cont.

ties within the unit.

There shall be one member from each designated judicial administrative training district eligible to serve on the Training Council. Each member who shall be a judge of the probate court and elected by the judges of the probate courts within the each of their designated training districts immediately. Such elections shall occur prior to the annual spring business meeting of The Council of Probate Court Judges of Georgia for a four-year term; provided, however, that the initial members elected from the training districts that are odd in number shall serve for a two-year term and then upon the subsequent election shall begin a four-year term. The initial members elected from judicial administrative training districts that are even in number shall serve for three-year four-year terms. provided, further, that, beginning in the spring of 1989, in order to stagger the terms, the initial term of one state-at-large member shall be one year, one shall be two years, and one shall be three years. All members may succeed themselves except for the three state-at-large members. Successors shall be elected in the same manner as the original members immediately prior to the expiration of each member's term of office. The president of The Council of Probate Court Judges of Georgia if not a district or at-large member of the training council shall be a voting member of the training council ex officio. (b) In the event a vacancy occurs in the membership of the training council as a result of a death, resignation, removal, or failure of

reelection as a probate judge, the remaining members of the training council shall elect a qualified person to serve for the remainder of the unexpired term of the member whose seat is vacant. The person elected to fill such vacancy shall take office immediately upon election.

O.C.G.A. § 15-9-35--Proposed Change --clean up

(a) Where any guardian, conservator, administrator, executor, personal representative surety on their bonds, or other person removes himself beyond the limits of this state or absconds or conceals himself, the judge of the probate court shall have the power to cite such guardian, conservator, administrator, executor, personal representative surety, or other person to appear before him relative to the performance of his duties or any other matter related to the probate court pertaining to such person. Service may be had upon the guardian, conservator, administrator, executor, personal representative, surety, or other person by publication in the manner prescribed in subsection (b) of this Code section.

Title 29

Sealed Records - amend current laws to allow parties, to include surety companies, access to sealed records at the discretion of the probate court.

O.C.G.A. § 29-9-18. Proposed Changes to sealed records. The following proposed additions to O.C.G.A § 29-9-18 are in red and underlined All of the records

relating to any minor or adult guardianship or conservatorship that is granted under this title shall be kept sealed, except for a record of the names and addresses of the minor or ward and guardian or conservator and their legal counsel of record and the date of filing, granting, and terminating the guardianship or conservatorship. The sealed records may be examined by the ward, or the ward's legal counsel; and the parents of the minor, the minor or the minor's legal counsel; and by the guardian or conservator and the guardian or conservator's legal counsel, any surety for the conservator, or any legal counsel of record for the surety at any time.

A request by other interested parties to examine the sealed records shall be by petition to the court and the ward and guardian or conservator shall have at least 30 days' prior written notice of a hearing on the petition; provided, however, that for good cause shown the court in its discretion may shorten such notice period or grant the petition without notice. The matter shall come before the court in chambers. The order allowing access shall be granted upon a finding that the public interest in granting access to the sealed records clearly outweighs the harm otherwise resulting to the privacy of the person in interest, and the court shall limit the portion of the file to which access is granted to that required to meet the legitimate needs of the petitioner .

Supreme Court Opinion: *Smith v. Wyatt*

Supreme Court of Georgia.

SMITH v. WYATT.

No. S07A1613.

Jan. 8, 2008.

Background: Will contestant filed caveat to probate of testator's will. The Probate Court, Gwinnett County, Walter J. Clarke, III, J., dismissed petition, and contestant appealed.

Holding: The Supreme Court, Thompson, J., held that lack of transcript of hearing to determine testator's true heirs warranted presumption of correctness to trial court's determination contestant lacked standing to caveat petition to probate will.

Affirmed.

Lack of transcript of hearing to determine testator's true heirs warranted presumption of correctness to trial court's determination that will contestant failed to show that intervenor was not testator's daughter and sole heir, and therefore, that contestant lacked standing to caveat petition to probate will.

**581 Marilyn R. Gunther, Kent, WA, for Appellant. Leonard S. Luckett, Atlanta, John E. Tomlinson, Loganville, and Stephen H. DeBaun, Law Offices of Stephen H. DeBaun, P.C., Tucker, for Appellee. THOMPSON, Justice.

*902 Marjorie Starnes Smith appeals from the dismissal of her caveat to the petition to probate her sister's will in solemn form. Finding no error, we affirm.

Appellee Nancy Wyatt, in her capacity as executor, filed a petition to probate the will of Doris Starnes. The petition listed Tracie Jackson as decedent's daughter and sole heir. Marjorie Starnes

Smith, decedent's sister, filed a caveat alleging that decedent lacked testamentary capacity to execute the will and that decedent had been unduly influenced by Wyatt. Smith also alleged that Jackson was neither the natural nor legally adopted child of the decedent, thereby making Smith the decedent's sole heir at law.

The probate court ordered the parties to appear at a November 6, 2006 hearing to determine the true heirs of Doris Starnes. Wyatt filed her response to the caveat, and Jackson filed and the court granted a motion to intervene for the purpose of allowing her to present evidence establishing that she is the decedent's daughter.

After the grant of several continuances due to Smith's substitution of counsel and the illness of a witness, the probate court ordered Wyatt, Smith, and Jackson to appear at a March 2007 hearing **582 to determine the decedent's true heirs. The court's order informed the parties of their responsibility to present witnesses and evidence in accordance with the Civil Practice Act and that no further continuances would be granted.

The March 2007 hearing was held as scheduled and all parties appeared and presented argument and evidence on the issue of whether Jackson was the decedent's daughter. The hearing was not transcribed and although we find no copy of a motion to dismiss Smith's caveat in the record on appeal, the probate court issued an order dismissing the caveat because Smith failed to prove that Jackson was not the decedent's heir at law and therefore, Smith lacked standing to

caveat the petition to probate the will. The court then ordered that the will be admitted to probate in solemn form and that letters testamentary issue to Wyatt.

*903 Smith challenges the dismissal of her caveat on several grounds, claiming both procedural and substantive errors on the part of the trial court.FN1 IN THE ABSENCE OF a transcript for our consideration on appeal, however, we cannot say that the probate court erred by finding that Smith did not have standing to caveat the petition to probate the will or by admitting the will to probate. Without a transcript, this Court must assume the evidence adduced below was sufficient to support the probate court's findings. Price v. Price, 281 Ga. 126, 636 S.E.2d 546 (2006) ; Tanksley v. Parker, 278 Ga. 877, 608 S.E.2d 596 (2005) ; Collins v. Garland, 227 Ga. 239, 179 S.E.2d 916 (1971) . Even assuming Smith had properly requested a jury trial, the probate court determined Smith lacked standing to proceed on her caveat and she was not entitled to a jury trial. See OCGA ? 15-9-121(a) .

FN1. Smith enumerated as error the probate court's refusal to consider the affidavit of an absent witness, the court's failure to construe the evidence in favor of Smith, the sufficiency of the evidence, the court's denial of her right to a jury trial, and the admission of the will to probate in solemn form. Judgment affirmed.

All the Justices concur. Ga.,2008. Smith v. Wyatt 282 Ga. 902, 655 S.E.2d 581, 08 FCDR 60

LEGISLATIVE AGENDA CPCJ 2008 cont.

O.C.G.A § 29-3-3(h) to allow a “court in which the action is pending” to approve structured settlements. (to achieve the original intent of the legislation).

O.C.G.A. § 29-3-3(h) –Proposed Change (Housekeeping)

(e) If legal action has been initiated and the proposed gross settlement of a minor's claim is more than \$15,000.00, the settlement must be submitted for approval to the court in which the action is pending. The natural guardian or conservator shall not be permitted to dismiss the action and present the settlement to the court for approval without the approval of the court in which the action is pending. (h) If an order of approval is obtained from the court or the court in which the action is pending based upon the best interest of the minor, the natural guardian or conservator is authorized to compromise any contested or doubtful claim in favor of the minor without receiving consideration for such compromise as a lump sum. Without limiting the foregoing, the com-

promise may be in exchange for an arrangement that defers receipt of part, not to exceed a total distribution of \$15,000.00 prior to minor reaching age of majority, or all of the consideration for the compromise until after the minor reaches the age of majority and may involve a structured settlement or creation of a trust on terms which the court approves.

Title 10

Housekeeping O.C.G.A. § 10-6-36. Regarding effect of incapacity of principal on power of attorney. Change “guardian of property” to “conservator”.

O.C.G.A. § 10-6-36 Proposed Change (House Keeping)

A written power of attorney, unless expressly providing otherwise, shall not be terminated by the incompetency or incapacity of the principal. The power to act as an attorney in fact for a principal who subsequently becomes incompetent or incapacitated shall remain in force until such time as a guardian of the property

,conservator or receiver shall be appointed for the principal or until some other judicial proceeding shall terminate the power.

Title 53

Propose legislation to eliminate code section O.C.G.A § 53-5-3(2). Eliminate year’s support as a bar for probate of a will after five years.

Current Statute: O.C.G.A. § 53-5-3

- (1) The appointment of a personal representative of the decedent's estate;
- (2) An order granting year's support from the decedent's estate; or
- (3) An order that no administration is necessary on the decedent's estate;

O.C.G.A. § 53-5-3. Proposed Change

- (1) The appointment of a personal representative of the decedent's estate; or
- (2) An order granting year's support from the decedent's estate; or
- (3) An order that no administration is necessary on the decedent's estate;



T.I.P.S.

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TIPS is a NO COST software program that allows courts to transmit traffic citations to the Department of Driver Services electronically. TIPS was developed by the Governor’s Office of Highway Safety and the Administrative Office of the Courts.

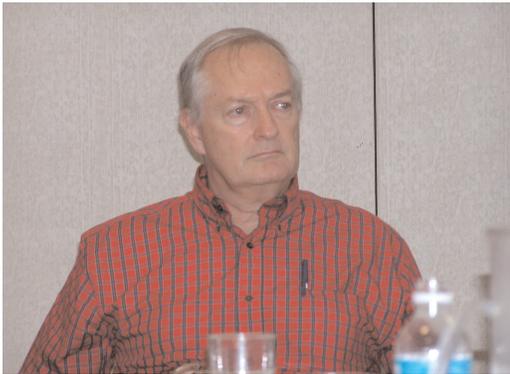
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Memory Lane...



Memory Lane...



Volunteer Guardianship Monitoring Programs: Increase Your Court's Capacity to Monitor Guardianship Cases WITHOUT Increasing Court Staff and Budget!

By Ellen M. Klem, J.D.

Would you like to enhance your court's capacity to monitor guardianship cases and assist guardians? What if I told you that you could without substantially increasing your court staff and budget? Well, you can and a recent study by the ABA Commission on Law and Aging proves it! The study, *Volunteer Guardianship Monitoring Programs: A Win-Win Solution* (the ABA study), found volunteer guardianship monitoring programs—probate court sponsored efforts to enhance the court's capacity to monitor the care, condition, and assets of incapacitated adults, and to assist guardians in fulfilling their responsibilities—enhance the court's capacity to monitor cases and assist guardians without substantially increasing court staffs and budgets. In the study, participants reported the programs successfully intervened and provided remediations for incapacitated adults at risk of abuse, neglect, or exploitation, and assisted guardians, all while maximizing scarce court resources.

How did they do it? Easy! They followed these simple ten steps.

First, fund the program.

Volunteer guardianship monitoring programs are not free. It takes time and money to develop and maintain a program. Some costs, like staff time required to manage

the program, are obvious. Others costs are not so obvious. For example supplies, office space, mileage and parking, computers and software, furniture and filing cabinets, postage, telephone service, copying capacity, volunteer recognition, and liability insurance.

Unfortunately, probate courts and other courts that handle adult guardianships face tight funding restrictions, and financial needs for guardianship monitoring must compete with other judicial needs. However, volunteer guardianship monitoring programs save the court money. Programs reduce the time judges and court staff spend visiting incapacitated individuals and auditing accounts; facilitate the flow of dockets; provide necessary interventions to incapacitated persons at risk for abuse, neglect, or exploitation; and provide much needed assistance to overwhelmed, overworked, under-resourced, and underfinanced guardians.

In addition to court budgets, there are several state and local, public and private sources of financial or in-kind support. They include the United Way, local foundations, local area agencies on aging, faith base organizations, social work, nursing and gerontology departments of colleges and universities.

Second, hire a paid program coordinator. It takes staff time and energy to plan and coordinate a volunteer guardianship monitoring program and unless the court has someone whose job duties include coordinating the program, the court's staff will be taking on extra, potentially time-consuming responsibilities. A paid program coordinator will ensure the planning and coordinating receive the attention it deserves.

Because most program coordinators only spend between one and 10 hours a week coordinating the program, it is not necessary for the court to hire a full-time employee for the sole purpose of coordinating the program—a part-time employee will suffice.

The court should be sure to develop a specific list of duties and responsibilities for the program coordinator. These could include recruiting and screening volunteers, training volunteers, scheduling volunteers, supervising volunteers, reporting case-related problems to the court, recognizing volunteers, tracking results of the program and reporting on performance to the court, and developing and overseeing the program funds.

Third, make room for the program. Programs need space. Volunteers and coordinators need room to review files and accountings, make phone calls to

continued page 17

Volunteer Guardianship Monitoring Programs cont.

guardians and incapacitated individuals, and speak to each other privately about their findings and next steps. Unfortunately, like funding, courts face tight space restrictions, and space needs for volunteer guardianship monitoring programs must compete with other judicial needs.

Fourth, recruit and screen a sufficient number of qualified volunteers. The average volunteer for a volunteer guardianship monitoring program is 65 years of age of older, female and retired. To recruit, regardless of age, sex, and employment status, programs should recruit by contacting newspapers, drafting and distributing ads and flyers, speaking to local civic and religious groups, contacting organizations like local AARP chapters, the United Way, and the RSVP (Retired Senior Volunteer Program), and visiting senior centers, libraries, congregate meal sites, and other locations where older adults gather, like Institutes for Learning in Retirement (ILRs).

But don't stop there—recruitment of volunteers is an on-going process. No matter how wonderful your program is and how many volunteers you recruited at its inception, your program will experience turnover. Because of this, your program must continue to recruit volunteers or it will end. Most of the programs that responded to the ABA study ended, not because of a lack of funds, or a lack of a court support, but because of a lack of volunteers and the impetus required to recruit them.

When your outreach efforts begin to produce results, you need to begin screening and interviewing potential volunteers to be sure that they are a good fit for your program. Careful screening is essential because volunteer guardianship monitoring programs need very different types of volunteers. For example, some volunteers need to adept at looking at accountings or financial reports; while others need to be knowledgeable on mental and physical health; and all volunteers need to be compassionate, yet accepting of their role as a monitor, not a social worker. To properly screen and interview volunteers, a screening form and protocols will need to be developed. For example, programs should determine who will speak to potential volunteers when they call and who will interview them. Written materials about your court's volunteer guardianship monitoring program and the duties and responsibilities of volunteers should also be developed and assembled for distribution to potential volunteers. (For more on developing volunteer specific duties and responsibilities see the step number 5.)

When screening volunteers programs must make certain potential volunteers do not have a record of conduct that poses a threat to the physical or financial safety of incapacitated individuals and guardians. For example, volunteers should not have a history of illegal drug use or convictions for violent crime, fraud, theft or burglary.

Fifth, clearly define the duties and responsibilities of the volunteers by deciding whether volunteers will: (1) visit incapacitated persons, (2) review records, (3) audit accounts, or (4) a combination thereof.

Once the court has decided what the volunteers will do, the court should create a list of volunteer duties and responsibilities. Duties will vary depending on whether the volunteer visits incapacitated persons, reviews records, audits accounts, or a combination therefore. However, all volunteers can be expected to commit to volunteer for at least a year, complete orientation and training, assignments in a timely manner, abide by court procedures and maintain accurate timekeeping records.

Six, form partnerships with state and local organizations. Partnerships with state and local organizations can help to ease the burden of recruiting, screening, training, and overseeing volunteers. AARP offices, for example, can be a valuable resources to volunteer guardianship monitoring programs; they may be able to assist with recruitment and training. Law and social work schools can also be a valuable resource. Some law schools require students to complete a certain number of pro bono hours before graduating and a partnership with your court's volunteer guardianship monitoring programs could ensure a steady stream of volunteers for years to come. Partnerships may also guarantee sufficient liability protection.

Volunteer Guardianship Monitoring Programs cont.

Seventh, recognize volunteers. Recognition includes both formal and informal efforts to engage volunteers and make them feel appreciated and part of a team. Efforts include appreciation luncheons and dinners, awards, certificates, gifts, thank you notes, and birthday cards. These take time and money but volunteers are critical to a program success—without them, the program would cease to exist.

Eighth, supervise and conduct comprehensive training for volunteers on a regular basis. Not only do volunteer guardianship monitoring programs need to attract volunteers but they also need to keep them and this means ongoing supervision and training.

Initial training is essential and should include: (1) an overview of the guardianship law and process, including the standards for appointment, obligations of the guardians, and the rights of incapacitated individuals, (2) an introduction to the court, including basic rules and definitions, (3) a discussion of ethics and liability, including confidentiality requirements.

an explanation of common physical and mental disabilities, (4) an explanation of program guidelines, including visitation schedules, assignments, and reports, and (5) an explanation of elder abuse and neglect. On-going training should review and expand upon each of these topics.

Initial and on-going training should be conducted by a mixture of individuals, including (1) program coordinators, (2) experts from the community, such as

lawyers, doctors and accountants, and (3) probate court administrators, staff, and judges.

Ninth, track results of the program and use this information to regularly inform the court of the program's importance. Collection and dissemination of program results, including the number of incapacitated persons visited, records reviewed, and accounts audited, can help courts recognize the significance of the program and quantify its value. An analysis of program results also helps the court determine if the program is working as planned and if it is making an impact on the court's capacity to monitor cases and assist guardians.

When your program tells the court how important the work it does is, it is important to include anecdotal evidence of this. Stories illustrating the success of the program can be just as effective, if not more, than facts and figures when informing the court of the program's importance.

Tenth, integrate the volunteer guardianship monitoring program into the larger monitoring programs at the court. Integrating the volunteer program into the court's larger monitoring program promotes coordination and interaction. A volunteer monitoring program is just one element of a larger monitoring system. For example, the courts may use investigators to follow-up on problems encountered by volunteers or may require the guardian to attend a hearing or compliance conference. This

coordination and interaction between the volunteer guardianship monitoring program and the court's larger monitoring program ultimately ensures the welfare of incapacitated persons.

Conclusion

Volunteer guardianship monitoring programs can enhance your court's capacity to monitor cases and assist guardians without substantially increasing court staffs and budgets, in just ten steps: (1) fund the program, (2) hire a paid coordinator, (3) make room for the program, (4) recruit and screen a sufficient number of qualified volunteers, (5) clearly define the duties and responsibilities of the volunteers; (6) form partnerships with state and local organizations, (7) recognize volunteers, (8) supervise and conduct comprehensive training for volunteers on a regular basis, (9) track the results of the program and use this information to regularly inform the court of the program's importance, and (10) integrate the volunteer guardianship monitoring program into the larger monitoring program(s) at the court.

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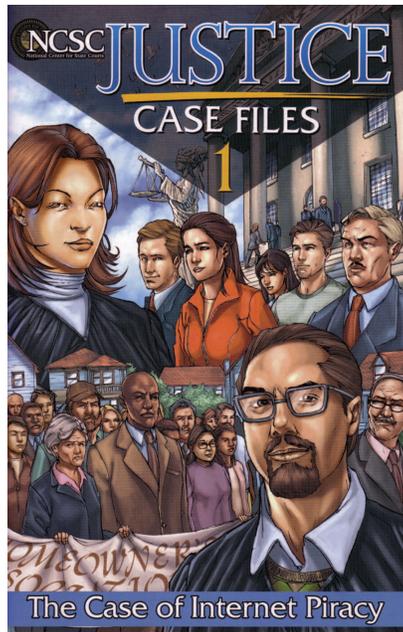
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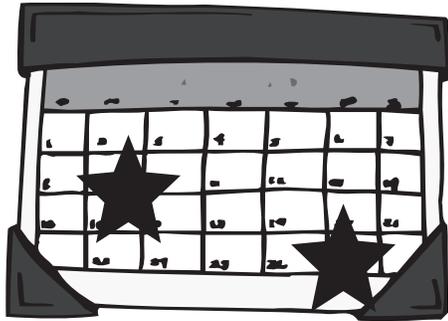
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Winter 2008 Conference January
28-30, 2008
Sheraton Atlanta Hotel, Atlanta
GA
(CPCJ Executive Committee
Meeting scheduled)

Summer 2008 Conference
The King & Prince, St. Simons GA
(CPCJ Executive Committee
Meeting scheduled)

Fall 2008 Conference November
17-20, 2008
Marriott Riverfront Savannah, GA
(CPCJ Executive Comm. & Training
Council Meetings scheduled)

2008 PROBATE JUDGES SPRING SEMINAR

April 16 – 18, 2008
Georgia Center, Athens
(CPCJ Executive Comm. & Training
Council Meetings scheduled)

OTHER IMPORTANT DATES:

June 1-5, 2008,
Election Seminar-
Jekyll Island Convention Center,
Jekyll Island, GA

June 26-27, 2008,
Traffic Seminar
Savannah Marriott, Savannah, GA

September 11-12,
Traffic Seminar
Athens GA at the Georgia Center

2008 CLERKS/ SECRETARY TRAINING

May 28 – 30, 2008
Jekyll Island Club,
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August 20 – 22, 2008
The Ridges Resort, Hiawassee GA

The Gavel

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