

THE GAVEL

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

Volume 13, Number 2

April 2006

MESSAGE FROM THE PRESIDENT



I want to start my year by saying “Thank You” for bestowing the honor of a leadership role with such a distinguished group

of people. I want to thank all of those who participated in making the banquet such a beautiful and memorable evening for me. Your smiling faces will always be in my mind's picture book. I remember, as Chair of the Awards Committee, there is a lot of planning and work in making the events happen.

My goals for the organization this year is to build on our foundation. My view of the Probate Court is that we have two options, we can help in shaping the future of the Probate Court or we can set back and let someone else decide our fate. We have had strategic planning sessions, we have outlined our goals, and we have decided our Mission Statement now is action time.

I would like to see our committees be more active, maybe it is time to look at the function of the committees and make a need's assessment. We now have technology available that makes communication available, easier and faster. This should be a great asset to the committee function.

I appreciate those District

Directors that have attended the Board meetings. I would like to see all the District Directors get more involved. When a committee has items for discussion and input, if these items could be conveyed to the District Directors for discussion with the membership, this would be a great tool for the committees. One of the priorities of the strategic plan is communication, the Listserv is great evidence of the improvement of communication and I know there are other opportunities we can utilize. We can use our District meetings as training sessions, brainstorming or problem solving. Example, the session we just had on Public Guardians would be a great topic for a District meeting. In small group settings, it is easier to discuss matters and relay the information. I plan to have a meeting with District Directors to discuss responsibilities and plans for the meetings.

I know we all are very busy and I want the Council to be an asset to you and not a burden. I really appreciate those of you that have already agreed to serve on Committees, please don't hesitate to get involved, you are a valuable part of the Council, it doesn't matter the size of your Court or your responsibility. I hope you all would like to have a say in the future of the Probate Courts in Georgia. With the mindset of the Legislature this year concerning the Judiciary, it is hard at this point to make plans for the involvement of the AOC with our meeting and plans, I hope we will be able to continue in the same manner, but this maybe the first action in shaping our future.

I look forward to working with the Council, if you have any suggestions, concerns or comments, please do not hesitate to contact me.

Judge Betty Cason

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Farewell Message from Judge Bracewell



Our annual spring conference came earlier than usual this year, so we didn't have the final word on our

salary bill which was still active in the General Assembly. Now, of course, we know that it was finally approved on the very last day of the session. It was truly a team effort to get this legislation passed, but we owe a great debt to those probate judges who worked so hard on our behalf, especially our

new President, Judge Cason. My hat is off to her. I just wish I could have had the pleasure of announcing this news during our conference.

Many thanks again for the opportunity to serve this past year as your President. As I already stated, I learned a great deal, and only hope that I was able to provide some service to this exceptional

group of my fellow Judges.

Please give all your support to Judge Cason in the coming year. I look forward to doing some fishing with the new fishing gear which you presented to me. I appreciate the thoughtfulness very much, and look forward to seeing you all soon.

Judge Mike Bracewell

Goodbye for now...

After three years with the Administrative

Office of the Courts, I must bid you farewell.



Thank you for making my time here an experience I will never forget and allowing me to be apart of your family. I wish each of you continued success in and outside of the court.

*Sincerely,
Bernadette "Bernie"
Smith*

New Probate Judges



Pictured left to right - Judge Kelly Powell - Henry County, Judge Linda Mock - Jasper County, Judge Sheryl Hall - Worth County

Congratulations to the New CPCJ Officers



Pictured left to right - Judge Darin McCoy - Secretary/Treasurer, Judge Lillis J. Brown - 1st Vice President, Judge Betty B. Cason - President, Judge Walter J. Clarke, II - President Elect

Probate Judge Executive Committee Minutes

Sheraton Hotel • Atlanta, GA • January 31, 2006

Judge Bracewell called the meeting to order at 9:15 a.m. He welcomed all Executive Committee members and others in attendance.

Judge Samuel Ozburn, Chair of the Council of Superior Court Judges Security Committee addressed the members on the proposed substitute to SB 301. This is a bill to amend Chapter 21 of Title 15 to impose a \$5.00 technology and court security fee on filings (criminal and civil). This fee would provide for technology and court security boards in each judicial circuit. Judge Ozburn detailed the structure of each board and explained the funds generated could be used however the courts decided to improve security. It is his goal to garner the support of all classes of court for the bill, prior to approaching the Governor. The original author of the bill is Senator Jeff Mullis. After a brief discussion, the Committee agreed to support the bill.

Approval of Minutes

Judge Bracewell called for a review of the minutes from the November 15, 2005 meeting in Savannah, Georgia. Judge Brown, with a second from Judge Baker, moved that the minutes be approved as written. The motion passed with no dissent.

Financial Report(s)

Associated Funds - Judge Cranford provided a Treasurer's Report of association funds as of January 13, 2006 which included a summary report showing income and expenses for 2005. According to the statement, the Council's assets totaled \$76,072.22, including \$11,072.22 from Checking and \$65,000.00 from Certificates of Deposit. Expenditures to date were noted in the amount of

\$80,780.13. Judge Cranford reported the Council's expenditures were more this year due to purchasing A Layman's Guide to Probate Court for each court, awards for the spring banquet and the issuance of scholarships to name a few.

State Funds - Mr. Patterson reported on State-appropriated funds as of December 31, 2005. For the current fiscal year a total of \$65,138.00 had been allocated, with year-to-date expenditures being \$29,671.74; leaving a balance of \$35,466.26 in State-appropriated funds. Additionally, the committee was informed revenue from the sale of handbooks and mailing labels totaled \$1,725.24. Mr. Patterson further reported the funds are consistent with where the Council was last year at this time. At the current rate of expenditure, the Council could be in the "red" in the range of \$3,000.00 - \$5,000.00 depending on expenditures i.e. Westlaw, contractual agreements, conference expenses, per diems and newsletters. Staff will monitor to insure this does not happen. Ms. Moore announced there are no proposed cuts to the Council's FY07 budget. Additionally, a request for funding Westlaw was made for the FY07 budget. Judge Self added as an FYI, Judge Betty Cason is proposing a funding request of \$65,000.00 on the Council's behalf to update the Guardianship Video to reflect changes in the law. If the funding is received they will look into offering it on DVD and in Spanish.

Presidents Report

Judge Bracewell honored deceased Judge Del Buttrill with a moment of silence. Following this, he deferred to the report from the AOC.

Report from AOC

Mr. Patterson announced the Georgia Commission on Access and Fairness in the Courts (GCAFC) in conjunction with the States ADA's Office will be meeting to discuss efforts to introduce their training modules regarding persons with disabilities, cognition issues and developmental issues within the courts to the Council. Next, he announced the legislative intern that has been assigned to the Council through the Legislative and Governmental Affairs Section of the Administrative Office of the Courts (AOC) is Adair Swartz. Following these announcements, he invited Jorge Basto, Assistant Director for Technology to report. Mr. Basto announced a conference call had been set up for SUSTAIN users to address their concerns and for the AOC to explain the upcoming changes in the support model. He further explained the AOC plans to continue supporting the SUSTAIN application primarily on Citrix servers through use of the Internet. These changes will enable the AOC to continue paying the licensing and maintenance fees for this product so that the courts can have it at no costs.

Judge Self questioned if the Web Enabled Citrix will be able to support the imaging/scanning process. Mr. Basto responded that currently Citrix is not able to support those functions but they are working to correct this. Mr. Branch suggested having the images housed on the Courts local server may be one solution.

Mr. Harris explained the Traffic Information Processing System (TIPS), a true web-based application system, initially started out as a transmission piece for the Department of Safety (DPS). AOC IT is now looking at the possibility

Executive Committee Minutes cont.

of expanding the program to become a citation management product. They would like to work on this concept with the Probate Courts if the Council is interested. The idea would start with an advisory committee or user group to work with Mr. Basto to develop the web enabled case management system. Judge Bracewell concluded the Council will be in contact with them regarding the proposal.

Judge Brown stated there are two states that contract out to software vendors for the entire judiciary. If such a contract were to be let in Georgia, then all of the probate courts would have the same software and the AOC could manage it if there is a vendor out there that could fit the needs of all courts. She questioned why the AOC had not looked into this option. Mr. Basto responded that manageability, licensing (uncontrolled), controlled cost and maintenance diversity would be issues. However, Mr. Harris offered to research this and report back the finding at the March meeting, if Judge Brown supplied him with the States that are currently using this process.

Committee Reports

Awards & Recognition - Judge Bracewell reported on behalf of the Awards Committee. The nomination forms for Outstanding Judge of the Year have been mailed. He reminded everyone to submit their forms to Ms. Murphy if they had not done so.

Automation/Liaison to IT/GCAC Technology Strategic Planning

Judge Self reported on the strategic planning session facilitated by the Georgia Courts Automation Commission (GCAC). This was the follow up meeting to the data definitions session previously held. Participants worked on creating a technology strategic plan for the probate courts. Judge Self

noted this work could prove beneficial to the Council, should the Supreme Court elect to create the Judicial Technology Coordinating Council. Even so, the plan serves as a vehicle for the Council to embrace the use of technology in the probate courts. The group, in fact, adopted as its theme "Envision IT, Embrace IT, and Enjoy IT" - with the "IT" representing information technology.

With consideration given to the unique attributes and jurisdiction of the probate court, the group developed the following mission and vision statements:

Mission Statement: By using technology to better serve the public in the performance of our constitutional and statutory duties while safeguarding individual rights and personal dignity.

Vision Statement: Efficient service made accessible.

Judge Self disseminated a draft of the flow chart created during the session. What the participants envision coming out of this is the establishment of standards and certification for probate court case management software, with the Council being responsible for setting the standards. This will allow for communication between all software being used in the probate courts. Ultimately, they would like to see the probate courts integrated technologically with public records of probate-related matters electronically accessible among participating courts. The participants of the session are willing to serve as the tool to inspire all probate courts to adopt the technology plan/goal, and assist in the legislative initiatives that may be necessary. As a result of the two sessions, they have a complete listing of data elements used by 80% of the probate courts. That is, they have the fields defined needed for

whatever software package is utilized and the technology plan for probate courts. The draft must first be approved by the Automation Committee, and then submitted to the Executive Committee for approval at the March meeting.

Benchbook & Handbook - Retired Judge Floyd Propst reported the 2005 updates for the Handbook for Probate Judges of Georgia were complete. The latest updates include a new index, table of contents, table of authorities and all relevant revisions. These materials will be available for distribution through the AOC.

Additionally, it was reported the necessary arrangements to upload the handbook and the benchbook to the password protected section of the CPCJ website, as previously approved by the Council, have been made. Next, Judge Propst requested the Council consider a \$500 increase to each of the contracts for updating the handbook and benchbook. This would bring the total figure for services provided to \$19,500.00. Upon being properly moved by Judge Tate and seconded by Judge Clarke, the motion to approve the increase for the handbook and benchbook updates passed with all in favor.

Court Forms - Judge Clarke reported the standard forms and the additional guardianship forms have been revised. There are proposed revisions to the Temporary Letters for Administration and the Petition for Letters of Administration forms primarily in the asset breakdown. Additionally, there were two new forms developed; the Petition for Restoration and the Petition for Conservatorship. Letters of Testamentary are also included in the new forms. Judge Clarke also announced he has a new law

Probate Judge Executive Committee Minutes cont.

clerk, Trisha Hackelman assisting him. He requested everyone review the forms and notify him of any changes. The forms will be presented at the Spring Meeting in March.

Firearms Committee - Judge Tate reported there was a bill that passed last year to amend the Georgia statute to implement the Brady Law. There will be a new requirement for judges in counties with regional hospitals to report involuntary commitments to GCIC.

Legislative Committee - Judge Bracewell reminded members of previous discussions to amend to the Georgia Code so that Training Council representation would reflect the probate judges districts instead of the superior court judicial administrative districts. Judge Brown responded she has drafted language to change the make-up of the Training Council to whatever districts have been adopted by the Council now or in the future. She will forward the draft to Judge Bracewell.

Next Judge Bracewell deferred to Mark Middleton, CPCJ Lobbyist for a legislative update. Mr. Middleton reported the following:

SB 203, Indigent Defense Fees: The conference committee report for SB 203 has been agreed to by the Senate and House earlier in the session. This bill contains corrective language relating to the collection of indigent defense fund fees. The bill now goes to Governor Perdue for signature. It will be effective July 1, 2006.

SB 251: Passed the House.

SB 450, COAG Salary Bill: This bill is sponsored by Senator Brian Kemp of Athens and others and it levels the salaries for Probate Judges, Superior Court Clerks, and

Tax Commissioners. The bill will also include an additional 2.5% raise for each county officer. The bill will be heard in the Senate State and Local Government Committee on at 11:00 am today. A great job of keeping this bill moving has been done. He further reported he has spoken with Jim Grubiak, Association County Commissioners of Georgia (ACCG) regarding the bill and they are on board. Additionally, the Clerk's Authority will not oppose the bill.

Election/Traffic Supplements: It was relayed through Jim Grubiak that ACCG will not support an additional supplement this year as they are in support of the COAG salary bill. It is recommended the Council not go forward in seeking a supplemental increase for traffic and election jurisdiction.

HB 1130, Guardianship Bill: Rep. Mary Margaret Oliver and Judiciary Chairman Wendell Willard have introduced this bill that Mary Radford and the Fiduciary Law Section of the State Bar proposed. It provides corrective amendments to the Guardianship Code of 2005. The proposal would 1) change language in Title 10 relating to health care powers of attorney to reflect the new terminology of the Guardianship Code of 2005; 2) reinstate previous provisions relating to the jurisdiction for temporary guardianships allowing out of state persons to show they are temporary guardians; 3) reinstate provisions relating to allocation of expenses of hearings on guardianship and conservator petitions; 4) raise the amount that a probate judge can hold as custodian of custodial funds to \$15,000; and 5) address the ex officio issue. This bill was dropped last week. Representative Oliver has asked that the CPCJ take an affirmative action on this bill.

SB 383, Clerk's Bill: The Superior Court clerks have filed SB 383, which would have them serve as clerks of court in State, Juvenile, and Magistrate Courts. We have received assurances that they have no interest in including probate clerks. We are further told that an amendment to the current bill will address situations where the probate judge is also the magistrate judge. The bill was initially assigned to the Senate Insurance Committee but is now in the Senate Judiciary chaired by Sen. Preston Smith. Judge Aspinwall added she attended the meeting held by Senator Smith regarding this bill. She reported he announced at the beginning of the meeting exclusions in the bill would be probate judges, metropolitan counties and local legislation. There was a great deal of discussion at the meeting; superior court clerks were there in support of the bill but there were also several clerks from the various levels of courts in opposition. Mr. Middleton was directed to keep an eye on this bill.

Judge Baker requested everyone to watch out for any legislation regarding marriage license and parental consent.

Mental Health Committee - Judge Tate reported the revised Mental Health survey, with Dr. Greg Arnold's design assistance, has been tested. The Mental Health Association in Athens will assist in obtaining listservs and email addresses for associations, they will also assist in planning regional meetings. She also announced there has been funding for the grant to collaborate efforts to divert people from the criminal justice system into treatment centers. The grants will include \$75,000.00 for planning and \$75,000.00 for implementation over three years. Judge Tate will

Probate Judge Executive Committee Minutes cont.

provide additional information at the March meeting.

Newsletter - Judge Bracewell reported for the newsletter committee. The newsletter has been drafted and should be received within the next week. The next edition of the Gavel will go out in April.

Nominations - Judge reported the committee met by conference call. Everyone should have received their notice in the mail. The nominations to be voted on at the March meeting are as follows: President Elect - Judge Walter J. Clarke, II to succeed Judge Betty B. Cason, First Vice President B Judge Lillis J. Brown to succeed herself, Secretary-Treasurer B Judge Darin McCoy to succeed Judge Mary T. Cranford and for the Probate Judges Training Council, Judge Vicki Burnett for the position of Member-at-Large replacing Judge Beverly Nation.

Probate Judges Training Council

Judge Brown reminded the committee the Training Council is responsible for providing training at the Winter and Summer County Officers' Association of Georgia (COAG) conferences. Other trainings are the responsibility of The Institute for Continuing Judicial Education (ICJE) in conjunction with the Probate Judges Training Council, with ICJE funding the seminars. The training council has run into fiscal problems associated with audio visual, technology, meeting rooms and speakers as of late. The Council is charged with providing four to six hours of training during the COAG conferences. For example, a Westlaw/Handbook training session was originally slated for this meeting. Due to costs associated with the Internet the session was

scrapped and an alternative training is being offered. Judge Brown requested a budget from the Council's State Funds be put in place to assist the Training Council with its training needs. Ms. Moore advised the members the State Funds could be earmarked for this in their budget with the Council's approval. After a brief discussion, Judge Brown moved that \$1,000.00 each for the Winter and Summer COAG sessions be earmarked in the Council's State Funds for the training council, with a second from Judge Baker the motion passed with no dissent.

Next Judge Brown reported notices regarding the Clerks Certification have been sent. Good feed back has been received but questions have arisen regarding whether or not past college courses taken can be counted towards the curriculum. This will be on the agenda for discussion at the next training council meeting. Also, judges have been requesting attendance to the clerk's seminars in lieu of attending judges training. Judge Baker responded judges have always been allowed to attend, however hours weren't credited. This issue will also be discussed at the next meeting in March. Judge Brown further reported she has asked the AOC to assist the training council in drafting a policy book which will include all of the various guidelines and procedures the Council has adopted over the years.

Following this, Judge Ogletree proposed the Training Council look into requiring judges with traffic jurisdiction attend a separate training. A brief discussion took place regarding whether or not legislation was required to make the change. It was decided the training council had the authority to make it a requirement. Judge Brown will add this

discussion to the Council's agenda for March as well.

Old Business

Court Futures Committee

Judge Bracewell reported he has appointed ten members to serve on the Court Futures Committee. They are as the following: Judge Susan Tate, Judge William Self, II, Judge Mitchell Scoggins, Judge Johnnie Parker, Judge Patrice Howard, Judge Lillis Brown, Judge Ruby Nell Sanders, Judge Sam Davis, Judge Annie Doris Holder, and Judge Belinda Griffin. The committee was reestablished due to concerns regarding loss of jurisdiction in the probate courts.

Weighted Caseload Report

Dr. Arnold explained weighted caseload is developed by time and motion being reported by the judge and staff. Using caseload reports from two fictitious counties he demonstrated how the differences in filings of certain types of cases could affect workload even though total filings might be identical. He then reviewed the steps required to develop a weighted caseload system. Judge Brown moved to establish a weighted caseload report for the probate courts, with a second from Judge Ogletree, the motion passed with all in favor.

Adjournment

There being no further business, Judge Bracewell announced the next meeting date will be March 22, 2006 in Athens, Georgia.

Respectfully submitted,

LaShawn Murphy, AOC
For Judge Mary T. Cranford
Secretary

Fifth District Probate Judges' Meeting • 1/19/06

District Director Judge Henry Baker opened the meeting with prayer at the Walton County Government Building in Monroe with host Judge Greg Adams greeting the membership and providing an array of breakfast biscuits, fruit, doughnuts, juice and coffee. Greg and his staff have enjoyed this new building for one year and the association was impressed with the structure and furnishings. Present for the discussions were Henry Baker, David Anglin, Greg Adams, Tammy Brown, Beverly Nation, Betty Thomas, Margaret Deadwyler, Jim Burton, Eddy Fowler, Hoppy Royston, Susan Sexton, Susan Tate, Laverne Ogletree, and Mike Bracewell. Bob Smith was absent because of a medical appointment.

Henry discussed the need for our District to appoint a new member of the Training Council in conjunction with the Seventh District. These two districts com-

prise the geography that was the original Tenth Judicial District. Judge Tammy Brown was nominated and elected unanimously.

There followed a lengthy discussion about pending legislation led by Judge Baker and Council President Mike Bracewell. The consensus of the judges was that S.B. 383 is a misguided effort by someone that does not have the best interests of Probate Judges and Tax Commissioners at heart. One bill is designed to correct the assessment of IDF on subsequent filings after the initial charge in a specific estate. The Council and our association feel that our support should be given to the COAG salary bill and to the Probate Judges supplement bill, if the latter does not cause problems for the COAG instrument. There is a new Ethics bill in the mill that will increase fines for noncompliance and late filings. Greg Adams applauded the new forms that are coming out and it was reported

that there is still some work to be done on some citations. Judge Bracewell reported that part of the training at winter COAG would pertain to Court Security.

Director of Facilities Joyce Chambers gave a brief description and tour of the building. The next meeting will be in Barrow County on April 27, 2006.

Respectfully submitted,
Jim Burton

Sympathy

The Council wishes to extend sympathy to the family of Retired Probate Judge Alex E. Ferguson of Lincoln County who passed away on March 3rd

Thanks

"Thoughtfulness is always Remembered"

*Dear Council Members,
Thank you for the beautiful spring bouquet you sent me while I was in the hospital. Your thoughtfulness, concern and prayers were greatly appreciated. God bless each of you!*

Sincerely,
Sadie Voyles (Sadie of Grady)

Thank You for Your Expression of Sympathy

*To the Council of Probate Court Judges,
Thank you for your kindness.*

The Del Buttrill Family

Governor's Appointment

Board of Commissioners of the Judges of the Probate Courts Retirement Fund of Georgia

C. Caric Martin, 49, Powder Springs, GA, Member - Martin is the senior vice president and community executive at Georgian Bank. He previously served as the chief financial officer at Georgia State Bank and as a vice president of the general accounting department of the National Bank of

Georgia. He is a member of the city of Powder Springs' Downtown Development Authority and a former board member of the Sweetwater Valley Community Action Mission Project. He earned a bachelor's degree and master's degree in business administration from the University of Georgia. Martin and his wife, Grace, have three grown children and two grandchildren.

From the Bench & Bar

Moving to the New National Cemetery

By Judge Kip McVay

Reprinted with permission from the March 1, 2006 edition of the Cherokee Tribune.

The long-awaited Georgia National Veterans Cemetery will begin burials in its first phase this spring. Since construction is ongoing, including on the entrance at Highway 20, a back entrance will need to be used temporarily. The back entrance is on Mount Carmel Church Lane and comes up behind the offices, work and storage areas of the Cemetery. Just don't judge this Cemetery by the temporary entrance. When finished, it will be a "shrine" like no other in Georgia, a place of honor, a place of rest.

It is considered such a place of honor that many veterans already interred or entombed will be moved to it by their family members who are proud of their loved ones' service and know that the move is what he or she would have wanted. Many who are being moved are from here in Cherokee County. Others are being moved from other counties and even other states.

One might ask how a person who is already buried or entombed could be moved, but for veterans, it is not unusual at all. According to Ms. Sandra Beckley, Director, a veteran or veteran's spouse who relocates to another part of the country sometimes moves the deceased spouse to a nearby veterans cemetery to be closer.

In most states, all it takes for such a move is a disinterment permit granted to an authorized family member. If a veteran is buried or entombed here in Cherokee County, one would ask for a disinterment permit from Ms. Mirella Hannah, Registrar, at the Cherokee County Vital Records office. It is located at the Cherokee County Health

Department's South Annex office, 7545 North Main Street (old Highway 5), Woodstock.

There is no charge for the permit and it is not difficult to fill out. The permit calls for the name of the deceased, date of death, current location, cemetery in which to be interred, and the funeral home or agency handling the move. The applicant signs in front of a notary and is issued a Permit for Disposition of Human Remains. Although there is no charge for the permit, the family is responsible for any charges by the funeral home or vault company for the disinterment or disentombment and transportation to the National Cemetery. Once on site, there is no charge for the actual interment, which is handled by the National Cemetery for safety and other reasons. Vaults are already located in the ground and there is no charge for them to the family.

Unlike private or commercial cemeteries, one may not buy or "reserve" plots at a national cemetery. However, in the case of veterans and/or their spouses being moved at the same time from another location to the new National Cemetery, this is a rare opportunity to ask to be placed in the same area. According to Ms. Beckley, families of veterans and/or their spouses being moved at the same time could ask to be placed next to each other in the same area at the new National Cemetery.

Unfortunately, because of privacy laws, Ms. Beckley can not share her list of names of veterans whose families have requested they be moved to the new Cemetery. For that reason, it is up to individual families to contact

each other to see if any of their loved ones are being moved, and if so, whether they would like to arrange for group ceremonies and placed next to each other. Those being re-interred are afforded a service at a committal shelter nearby to the interment area. Those being located together could share in the same service. Ms. Beckley's office can be contacted at 866-236-8159.

One lingering question for many people is whether they or their loved one is qualified to be buried in a veterans cemetery. Many veterans have received benefits based on such Congressional language as "whomsoever having served." A veteran, his/her spouse, a minor child, and adult children who became disabled and dependent prior to the age of majority are some of the categories of persons qualified to be buried (together) in a national cemetery. However, the rules are very specific and a person might not qualify, even though he or she "served." The question is whether the person is or was a "veteran."

Generally speaking, a qualified veteran is one whose discharge was anything except dishonorable. One does not have to have served during wartime to be a veteran. However, one has to have served for at least one day on "active duty." If all of the entries on the discharge paper (DD214) state "training," one might not be eligible.

One example of a person not entitled to burial at the National Cemetery is the man who joined the Air Force Reserve, completed basic training, officer's candidate school, received flying training, was in the military for several

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Probate Judges Enjoy Success in 2006 GA

By Mark Middleton, CPCJ Lobbyist
404-806-0808 mark@middletonlaw.net

When the 2006 General Assembly ended with a bang at midnight on Thursday March 30, the Council of probate Court Judges concluded a very good legislative session. The following bills were passed and sent to Governor Perdue for his consideration.

SB 450, COAG Salary Bill: This effort to equalize salaries for the probate judges, clerks of court and tax commissioners was championed by Senator Brian Kemp (R-Athens) and Rep. Mark Butler (R-

Carrollton). In addition to leveling salaries through an increase to the highest paid officer within a given population bracket, the bill also included an additional 2.5% merit raise and COLA for each county officer. The bill received final passage in the waning hours of the final legislative day.

SB 203, Indigent Defense Collection: This bill defined 'civil action' to clarify and limit the circumstances under which a probate court must collect the indigent defense fee.

SB 534, Guardianship Bill: This bill provides corrective amendments to the Guardianship Code of 2005. The proposal would 1) change language in Title 10 relating to health care powers of attorney to reflect the new terminology of the Guardianship Code of 2005; 2) reinstate previous provisions relating to the jurisdiction for temporary guardianships; 3) reinstate provisions relating to allocation of expenses of hearings on guardianship and conservator petitions; 4) raise to \$15,000 the amount that a probate judge can hold as custodian; and 5) address the ex officio issue.

HB 251, Retirement Bill: This is the Council's retirement bill that would allow for additional flexibility for judges making the beneficiary designation.

SB 84, Elections Bill: This bill revises the voter identification law to address issues ruled unconstitutional by a Federal Judge this year.

SB 500, Election Bill: This bill provides for a pilot program in Bibb, Camden, and Cobb Counties for a paper record of every ballot.

HB 847, Marriage: This bill regarding emancipation was amended to include marriage provisions initially in HB 1023. These amendments make marriage unlawful, regardless of pregnancy, for anyone under the age of 16 and allow for marriage at ages 16 and 17 with parental permission.

The following bills of interest did not pass:

HB 535, Abolition of Criminal Penalties: This bill that abolishes the criminal penalties for failure to remit indigent defense fees passed the House, and the Senate Special Judiciary Committee, but did not get placed upon the floor calendar by the Rules Committee.

HB 1279: COAG Health Plan Bill: This bill by Rep. Mark Butler (R-Carrollton) would allow county officers to enter into the State Merit health plan pool, and pay premiums determined by the cost to the system. The bill passed the House on the "cross-over" day, but did not pass the Senate.

With the passage of four bills from the Council's agenda, 2006 was a very good year. We are indebted to the many legislators that worked on our legislation including Sen. Brian Kemp, Rep. Mark Butler, Senate Judiciary Chair Preston Smith, SLOGO Chair Sen. John Wiles, House Judiciary Chairman Wendell Willard, House Government Affairs Chairman Austin Scott, and Rules Chairs Rep. Earl Ehrhart and Sen. Don Balfour.

I would like to also thank the members of the Council of Probate Judges for their diligence in contacting their legislators on issues of importance to them. The participation of the judges makes the Council's legislative program a success.

From the Bench & Bar cont.

months and subject to being called to duty, and received an honorable discharge but, because he was never taken off of "training" status and "activated" even for one day, he was not considered a "veteran" for burial purposes.

To review the rules, one can look at the Veteran's Administration site at www.cem.va.gov. One should review his/her DD214 discharge papers. If qualification is still not clear, one can check with Mr. Jim Frederick at the main office of the Georgia Veteran's Service at 404-656-2300.

The Georgia National Cemetery is opening soon. We are honored to honor our military men and women in this way.

Kipling L. "Kip" McVay has served as judge of the Cherokee County Probate Court since 1997 and is the former custodian of Cherokee County Vital Records for the State of Georgia.

Photo Gallery



Probate Judges Spring Conference



Photo Gallery

Probate Judges Spring Conference



Probate Court Legislative Wrap Up

Administrative Office of the Courts Legislative and Governmental Affairs Division

The Georgia General Assembly wrapped up the 2006 Legislative Session on Thursday, March 30. Among the hundreds of bills that successfully moved their way through the House and Senate and now await action by the Governor are several that impact the Probate Courts. The following are some of the important legislation affecting the Probate Courts that passed this session. You can view all bills in full online. Go to www.georgia-courts.org and click on "Legislative Tracking." From there, you may enter a specific bill number or click on "Probate Court" to view all bills that affect the Magistrate Courts.

DEEDS/WILLS/TRUSTS

HB 1282 - Deeds; recording; provisions

This bill requires that a notice of settlement be filed with the clerk of the superior court in the case of conveyance of title in real estate cases.

Effective date: January 1, 2007

SB 533 - Statutory Living Will Form; revise

This bill makes modifications to the living will form to make it more clearly with respect to a person's wishes. It more clearly defines a person's options relating to the withholding of food or water if he or she were to fall into a permanent vegetative state and requires a person to initial next to the option desired instead of checking it.

Effective date: July 1, 2006

SB 534 - Trustee's Compensation schedule of conservators

This bill relates to compensation for services, so as to specify that when a trustee's compensation is not specified in the trust instrument it shall be based on the compensation schedule of conservators. It also states that probate court judges will be the depositories for and custodians of all monies of any heir to an estate who cannot be located.

Effective date: July 1, 2006

ELECTIONS (see also 'Local') SB 500 - 2006 Georgia Accuracy in Elections Act; permanent paper record of votes; provide for pilot program/electronic voting

This bill authorizes the Secretary of State to implement a pilot program testing the feasibility of having electronic voting machines produce a paper record of the votes recorded. The electronic machines will print out a paper record of a voter's choices before the vote is actually recorded. The voter will then have the chance to review the paper ballot for accuracy before officially casting his or her vote. The pilot program will be conducted during the 2006 November general election in Cobb, Bibb, and Camden Counties.

Effective date: upon signature of Governor

HB 1435 - Voting; persons with disabilities; provisions

This bill would amend the Election Code as it pertains to disabled individuals and their caregivers. It authorizes an attendant care giver to provide assistance in voting an absentee ballot. Further, this bill provides for the manner of assistance in voting for persons with disabilities.

Effective date: January 1, 2007

SB 386 - Apportionment of House/Senate; provide for composition of state senatorial districts 46,47,49; elections

This bill changes the apportionment of Senate districts 46, 47, and 49

Effective date: July 1, 2006

LICENSE

HB 1032 - Licenses to carry pistol or revolver; temporary renewal permit; provide for restrictions

This bill requires that non US citizens who wish to obtain or renew a handgun permit to provide proof of their citizenship and their right to be in the country. They must also go through a background check. In addition, this bill prohibits those not lawfully present in the US from obtaining a handgun permit.

Effective date: July 1, 2006

HB 1044 - Firearms; carrying and possession; municipal and city court judges; amend provisions

This bill allows permanent part-time municipal court judges to carry firearms.

Effective date: July 1, 2006

HB 1424 - Dogs; hunting; change certain provisions

This bill requires that any person 16 years of age or older who hunts deer using dogs must obtain a deer-dog license in addition to other normal hunting licenses. The license fee is \$5, and the license must be renewed yearly.

Effective date: July 1, 2006

Probate Court Legislative Wrap Up cont.

LOCAL

HB 1003 - Houston County, Magistrate Court of; elections

This bill provides for the election of a full-time chief magistrate of Houston County, who shall be elected in the same manner as the judges of the state court.

Effective date: upon signature of Governor

HB 1077 - Nonpartisan elections; Rabun County; office of probate judge; provide

This bill provides that future elections of probate court judges in Rabun County be nonpartisan elections.

Effective date: upon signature of Governor

HB 1079 - Randolph County; board of elections; provide

This bill creates a board of elections for Randolph County. It outlines the duties and authority of the board and provides for the appointment of members.

Effective date: upon signature of Governor

HB 1118 - Nonpartisan elections; Crawford County; office of probate judge; provide

This bill provides that future elections of probate court judges in Crawford County be nonpartisan elections.

Effective date: upon signature of Governor

HB 1119 - Nonpartisan election; Crawford County; office of chief magistrate; prov

This bill provides that future elections of the chief magistrate court judge in Crawford County be nonpartisan elections.

Effective date: upon signature of Governor

HB 1132 - Catoosa County; annual salary for judge of probate and clerk; amend

This bill makes the maximum allowance payable to clerical help for probate court judges \$130,000 and \$245,000 for clerical help to superior court clerks. This allowance is to pay full-time clerical help. It is not to be used for bonuses or for part-time help.

Effective date: October 1, 2006

HB 1199 - McIntosh County; probate judge; magistrate court; provisions

This bill does away with the position of chief magistrate of McIntosh County beginning January 1, 2009 and provides that the probate judge will serve ex officio as the chief magistrate from that day forward. The bill also repeals acts creating and amending the Small Claims Court of McIntosh County.

Effective date: July 1, 2006

HB 1208 - Cobb County Probate Court; compensation of deputy clerk; change

This bill raises the compensation of the deputy clerk of the Cobb County probate court to \$88,240.

Effective date: upon signature of Governor

HB 1289 - Candler County; board of elections and registration; create

This bill creates the Board of Elections and Registration for Candler County. It outlines the duties and authority of the board and provides for the appointment of members.

Effective date: upon signature of Governor for initial appointments only and fully effective on the first day of the second month following the approval of the Governor

HB 1303 - Cobb County; Probate Court; change compensation

This bill raises the salary of the Cobb County probate court judge to \$108,262.48 and the clerk of the Probate Court to \$74,866.39.

Effective date: upon signature of Governor

HB 1333 - Terrell County; Clerk of Probate Court; provisions

This bill allows the probate court judge of Terrell County to appoint someone other than the superior court clerk to serve as the clerk of the Probate court.

Effective date: July 1, 2006

HB 1494 - Morgan County; board of elections and registration; create

This bill creates the Board of Elections and Registration for Morgan County. It outlines the duties and authority of the board and provides for the appointment of members.

Effective date: upon signature of Governor

SB 630 - Town of Talking Rock; time of municipal elections; terms of mayor/council; change provisions

This bill changes the election time of the mayor and councilmen of the town of Talking Rock to the Tuesday following the first Monday in November. This change takes effect in 2009 and has been done in order to conform the charter to the requirements of state law.

Effective date: July 1, 2006

Probate Court Legislative Wrap Up cont.

SB 668 - Probate Court of Clayton County; judge; change compensation

This bill raises the salary for the Clayton County probate court judge to \$111,123 per year.

Effective date: July 1, 2006

RETIREMENT/COMPENSATION HB 251 - Judges of the Probate Courts Retirement Fund; designating surviving beneficiary

This bill allows probate court judges to designate a surviving beneficiary for their retirement benefits. The spouse of a married judge will be the designated survivor unless he or she designates someone else. This alternate designation must be approved in writing by the spouse. Unmarried judges may also designate a survivor.

Effective date: July 1, 2006

HB 1020 - Retirement; allowances; withdrawal of contributions; amend provisions

This bill provides clean up language for Georgia public retirement systems with respect to gender neutrality. It also allows the board of trustees of the Georgia Defined Contribution Plan to determine the minimum amount a member who ceases employment with the state may have to allow the board to require the member to withdraw all money and close the account. The bill further establishes the effective date of retirement as the first day of the month in which the application is received by the board, provided that date is not prior to the applicants last day of employment. This date change applies to discharge from the National Guard as well.

Effective date: July 1, 2006

SB 450 - Ad Valorem Taxation of Property; revise pay structure of certain county officers/officials; provide recalculation of min. salaries

This bill changes the salaries of several county officers. It raises the minimum salary and supplements of the superior court clerks, sheriffs, probate judges, chief magistrates, and tax commissioners. In addition, this bill will give a longevity pay increase to county commissioners for each term to which they get reelected and raises coroners' investigation fees to \$175.

Effective: Section 3 (Probate Judges) July 1, 2006; Section 6 (Magistrate Judges) January 1, 2006 for minimum salary and July 1, 2006 for COLA and Merit increase

TRAFFIC

HB 276 - Motor vehicles; licensing of ignition interlock device providers

This bill allows the Department of Driver Services to regulate companies that install ignition interlock devices on cars. These devices prevent the car from starting if the driver's BAC is over .02 or if the driver does not submit to the test. This bill establishes the conditions under which a company may receive a license to become a provider center and conditions under which that license may be suspended or revoked.

Effective date: January 1, 2007

HB 804 - Barratry; Code section; repeal

This bill repeals the crime of barratry, which is an antiquated law against inciting groundless action in court.

*Effective date: July 1, 2006
Signed by Governor on April 17, 2006*

HB 847 - Juvenile proceedings; emancipation of minors by petition

This bill creates a new Code section to establish the guidelines under which a minor may petition for emancipation from his or her parents. For the purposes of this bill, a minor is defined as a child who is between the ages of 16 and 18. It requires a minor wishing to be emancipated to file a petition in juvenile court, which must hear the case and determine if emancipation is in the best interest of the child. This bill also requires parental consent for 16 or 17 year olds to receive a marriage license in probate court.

*Effective date: July 1, 2006
Signed by Governor on April 18, 2006*

HB 912 - Civil practice; production of documents; amend provisions

The major provisions of this bill include the following:

- Grants legislators a continuance from trial for duties relating to his position with the General Assembly, regardless of whether the legislature is in session or not;
- Makes changes in 9-11-34 relating to the production of documents by nonparties and confidentiality;
- Details who are allowed to request the release of a deceased person's medical records.

Effective date: July 1, 2006

Please Recycle



Probate Court Legislative Wrap Up cont.

HB 1193 - Vehicles; false or secret compartments; prohibit owning or operating

This bill makes it a crime to create a secret or hidden compartment in any vehicle for the purpose of hiding drugs or other contraband from law enforcement. It is also a crime to operate a vehicle with such compartment attached. The penalty is between one and two years in prison and a fine of up to \$10,000.

Effective date: Signed by Governor on April 18, 2006

HB 1209 - Dept. of Public Safety; motorcycle enforcement program; provisions for payment

This bill requires that all fines paid for traffic violations written by the newly-created motor cycle enforcement unit of the Department of Public Safety be remitted to the Department for the purpose of maintaining the motor cycle enforcement program. This requirement does not apply to any fees or costs associated with the payment of a fine and only apply to violations that occurred on an "urban interstate system." For the purposes of this bill, "urban interstate system" means any portion of I-285 and the portions of I-75, I-85, and I-20 that are within the Perimeter.

Effective date: July 1, 2006

HB 1236 - Motor vehicles; registration; place of return; amend

This bill allows residents to register their motor vehicle in the county in which it is "functionally located", which is defined as the county in which a vehicle spends 184 days or more.

Effective date: July 1, 2006

HB 1253 - Drivers' licenses; certain provisions; clarify

This bill makes modifications regarding the suspension of personal and commercial drivers' licenses and also prohibits the use of social security numbers as driver's license numbers.

Effective date: July 1, 2006

HB 1275 - Commercial driver's license; violation; provide for revocation

This bill amends 16-8-12 relating to punishment for theft by calling for the revocation of a person's commercial driver's license for no less than one year if the theft involves a commercial vehicle. This bill also makes an addition to the Georgia DUI implied consent law stating that nothing in the code shall be deemed to exclude evidence of a DUI violation taken voluntarily or through a properly-obtained search warrant.

Effective date: July 1, 2006

HB 1392 - Drivers; right of way violation; collision; provide penalties

This bill adds farm vehicles to class C vehicles as long as those vehicles are less than 26,000 pounds and are used for farming reasons, not for contract carriers. This bill also creates a misdemeanor offense punishable by at least a \$250 fine for any motorist who injures a person while that motorist is committing a right-of-way violation.

Effective date: July 1, 2006

HB 1436 - Wine; restaurant patrons; resealed partially consumed bottle; authorize

This bill allows a restaurant patron to remove a partially consumed bottle of wine that had been purchased along with a meal. The restaurant will reseat the bottle in a bag, and the patron must put the bottle in the glove compartment or trunk of the car when leaving. As long as these conditions are met, possession of this open bottle will not constitute an open container violation.

Effective date: July 1, 2006

SB 64 - Law Enforcement Motor Vehicles; blue lights on roof; enforce requirement

This bill has three major parts:

- It allows a motorist who is directed to stop by a law enforcement officer in a marked police vehicle to continue to drive to a reasonably safe location before stopping. The motorist must indicate his or her intent by turning on the hazard lights or turn signal of the vehicle.
- It allows the Georgia State Patrol to have up to two police vehicles per post that are not equipped with exterior mounted lights. These vehicles are required to have an agency identifier in the front windshield.
- It changes the maximum fine for a violation of not making a lane change when passing a stationary emergency or maintenance vehicle to \$500.

Effective date: upon signature of Governor

Probate Court Legislative Wrap Up cont.

SB 531 - Motor Vehicle Liability Policies; uninsured motorist coverage; change certain provisions

This bill changes provisions in automobile liability policies relating to uninsured motorist coverage, requiring that all liability policies insure for bodily injury, loss of consortium, and death as part of the uninsured motorist coverage. It makes updates to the definition of "insured" in the case of insurance to include under the policy foster children of the named insured. It also requires that plaintiffs in motor vehicle injury cases exercise diligence to locate the driver whom the claim is against if that driver does not reply to a court summons.

Effective date: July 1, 2006

OTHER

HB 718 - Pretrial intervention and diversion programs; authorize certain courts to administer

This bill allows prosecuting attorneys for state courts, probate courts, magistrate courts, and municipal courts to create and administer Pretrial Diversion Programs.

Effective date: July 1, 2006

HB 1320 - Environmental offenses; littering; revise provisions

This bill revises the OCGA relating to litter and littering offenses in an attempt to make the definition of "litter" more coherent. It also establishes a new term "egregious litter" which refers to hazardous waste and waste over a certain amount. The bill establishes punishment levels for crimes of "egregious littering" from aggravated misdemeanor for first time offenders to a felony for repeat offenses. It also adds a "shame provision" which would require that the local newspaper post the name and address of a littering offender.

Effective date: upon signature of Governor for the purposes of adopting local ordinances and July 1, 2006 for all other purposes

SB 44 - Corrections; contracts with private detention/diversion centers; regulations

This bill allows for the Board of Corrections to enter into contracts with private probation companies. This bill provides for county and city operated probation departments to be registered and regulated by the County and Municipal Probation Advisory Council under the same terms the private probation companies are regulated.

Effective date: July 1, 2006

SB 203 - Public Defenders; indigent defense services; attorney's fees/cost recovered

This bill allows local court officers to collect the fees for victim's assistance programs, which may be distributed directly to the programs (if qualified) instead of the money going through the Superior Court Clerks Cooperative Authority. This bill also clarifies the fee collection for Probate Courts, gives Superior Court Clerks Cooperative Authority auditing authority over judges and courts, allows for a county or municipality to recover payment of indigent defense that was given to a defendant who was not indigent, and allows for work release programs to be a condition of probation.

Effective date: July 1, 2006

SB 462 - Sheriffs; authority of courthouse security; remove courthouses/jails from list of properties protected

This bill requires the sheriff of each county to develop and implement a comprehensive security plan for the county courthouse and annex. This plan must be approved by the

chief judge of the superior court and is will be funded from the sheriff's budget as approved by the county governing authority. Any meetings that are held to discuss the security plan will be in executive session, exempt from public inspection.

Effective date: July 1, 2006

SB 503 - Ga. Public Defender Standards Council; legal services to indigent persons; change provisions

This bill redefines an "indigent person" to mean any person whose maximum income is less than 125% of the Federal poverty level in the case of a misdemeanor and 150% of the Federal poverty level in the case of a felony. In no cases will a person with a maximum income level exceeding 150% of the Federal poverty level be considered an indigent person. The bill also makes changes to the Public Defender Standards Council, removing the requirement that they establish the guidelines for determining whether or not a person can claim to be indigent, leaving that responsibility to the circuit public defender. It also requires that the \$50 fee for obtaining legal service be imposed as a condition of parole if it has not been paid or waived at the time of sentencing.

Effective date: upon signature of Governor

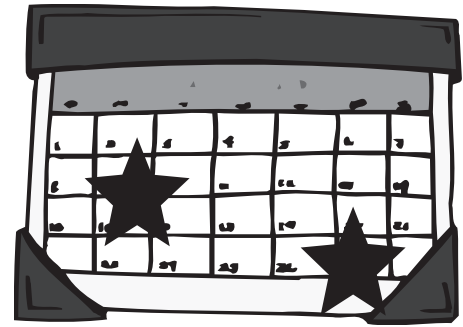
SB 637 - Georgia Driver's Education Commission; change membership; distribution of fines/forfeitures; definition

This bill makes revisions to SB 226 ("Joshua's Law"), which passed last year. It changes the number of members on the Driver's Education Commission from 9 to 8 and provides a definition for the term "approved driver's education course." It also repeals section 1 of SB 226, which gave the

Mark Your Calendar

2006 CLERKS/SECRETARY TRAINING
 Spring - Country Inn & Suites • Helen, GA
 April 18-21, 2006

Fall - Ocean Plaza Hotel • Tybee Island, GA
 September 12-15, 2006



COAG CONFERENCE DATES

Summer - June 20-22, 2006
 Evergreen Conference Center
 Stone Mountain, Georgia

Fall - November 14-16, 2006
 Savannah Marriott & Savannah Hyatt

2006-2010 PROBATE JUDGES SPRING SEMINARS

March 22-24, 2006 Athens, GA
 April 10-13, 2007 Athens, GA
 April 15-18, 2008 Athens, GA
 April 14-17, 2009 Athens, GA
 April 13-16, 2010 Athens, GA

OTHER IMPORTANT DATES

April 4-12
 Election Seminar-Savannah

June 28-30
 Traffic Seminar-Savannah

Probate Court Legislative Wrap Up cont.

Commission top priority on receiving money from court fees pursuant to 15-6-95. The new bill places the commission at the lowest priority.

Effective date: upon signature of Governor

SR 793 - Ga. Public Defender Standards Council; ratifying the initial minimum standard; Standard for Removal for Cause

This resolution ratifies and approves the Standard for Removal for Cause that was created by the Public Defender Standards Council. That document outlines the standards for removing a circuit public defender.

Effective date: upon signature of Governor

SR 954 - Performance Standards; ratifying the initial minimum standard; fiscal impact

This resolution ratifies and approves the Performance Standard that was created by the Public Defender Standards Council. That document outlines the performance standards for all public defenders.

Effective date: upon signature of Governor

SR 1027 - Court Surcharges and Additional Fines, Senate Study Committee; create

This bill creates a Senate study committee to study the issues surrounding the collection of court fees and fines. It will be comprised of 5 members of the Senate.

Effective date: March 14, 2006
Date passed by the Senate: March 14, 2006
Report to be made December 31, 2006

JUDGES OF PROBATE COURT RETIREMENT FUND

TO: JUDGE DARIN MCCOY
FROM: BOB CARTER

The Board of Trustees at the meeting held in December 2005 approved an increase in the Cost of Living Adjustment for all retired Probate Judges from 2% to 3%. The Fund by law provides an annual increase of 2% and the Board may add an additional 1% of the funds available. During the year 2005 the Fund had good investment results and good revenue. This allowed the Board to not only provide a COLA for the retired members

they were able to increase the salary cap for future retirees by 3%. Effective January 1, 2006 the new salary cap is \$34,757.37. This means that a Judge that retires after January 1, 2006 with twenty years of service credit in the Fund will draw a maximum benefit of \$2,898.78 per month. This amount may be reduced if an option is chosen to provide a benefit for the spouse. Currently HB 251 that will allow a judge to provide benefits to someone other than a spouse has passed the House and is now in the Senate Retirement Committee.

The Board has a new member appointed by the Governor, Ms. Jim Larsh. Jim is retired from the State of Georgia and served as the Director of the Employees Retirement System (ERS). He has a lot of experience in managing a large retirement system. Jim replaces Mr. Winford Poitevint who had served on the Board for a number of years. There is one additional opening on the Board since the retirement of Judge Virginia Andrews, Worth County. Virginia will continue to serve on the Board until the Governor appoints a replacement.

The Gavel

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