

THE GAVEL

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

Volume 12, Number 4

November 2005

MESSAGE FROM THE PRESIDENT



A successful Strategic/Implementation Planning Session for the Council of Probate Court

Judges took place on September 28th thru 30th at Red Top Mountain State Park in Bartow County. I am grateful to Judge Mitchell Scoggins, who hosted our group at dinner as this session began and made arrangements for us to have a personally guided tour of the Booth Western Art Museum in Cartersville. If you haven't had the opportunity to visit this amazing facility, I highly recommend it.

I am also very appreciative of those Probate Judges who gave their time and effort to help us make plans for the future and to prioritize our goals.

With the help of our superb facilitator, Dr. Greg Arnold, AOC, we addressed several issues of concern, including not least, the future of probate courts as we know them. Other topics of discussion included non-partisan legislation, probate judges training, clerks

training, clerk participation in our Council, working with local governments, funding, and technology.

The Georgia Courts Automation Commission and Mr. George Nolan offered to help facilitate a plan for the Probate Courts to improve the courts' abilities to collect, share and present more timely, complete and accurate information regarding activities occurring within the courts. I am very pleased to announce that we have accepted their offer. You will hear more information soon about the confirmed schedule for these facilitated sessions, which are being presented for all classes of courts. I anticipate needing additional judges and clerks to represent the Council at these sessions. The first session is the Data

Definition Session and is tentatively scheduled to be held the last week in November at Brasstown Valley Resort. Please let me know if you are interested in attending.

As usual, we extend our appreciation to the folks at AOC and ICJE who make all this happen - Richard Reaves, Sherry Carson, Marla Moore, LaShawn Murphy, Chris Patterson, and Sylvia Gaines.

As your President, I have also enjoyed representing you, along with Judge Betty Cason, at the June and August meetings of the Judicial Council.

I look forward to seeing you at the COAG meeting in Savannah for our fall training.

Judge Mike Bracewell

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Probate Judge Executive Committee Minutes

Valdosta-Lowndes County Convention Ctr. • Valdosta, GA • June 21, 2005

Judge Bracewell called the meeting to order at 3:40 p.m. He welcomed all Executive Committee members and others in attendance.

Approval of Minutes

Judge Harper, with Judge Self seconding, moved that the minutes of the meeting of the executive committee held on April 10, 2005 be approved as submitted. The motion passed with no dissent.

Financial Reports

a. State Funds: Ms. Moore presented a financial report that reflected a budget based solely on the funds available to the Council. This revision had been done at the request of the Executive Committee. The previous report had been based on state appropriations of \$61,571 and a projected \$15,000 income from sales. The revised budget of \$67,769.10 reflected the state appropriation and the actual sales amount of \$6,198.10. Staff estimated a possible surplus of \$4,500 and recommended that this amount be encumbered to go toward the contract with Judge Propst for Benchbook and Handbook. Judge Self, with Judge Cason seconding, moved that the staff recommendation be adopted. The motion passed with no dissent.

b. Association Funds: Judge Cranford reported that 154 counties have paid dues for the current year. While the total amount in the Council's accounts is \$77,832, some additional expenses at the April meeting have lowered the checking account and she will be moving additional funds into it to avoid charges or penalties. She also inquired of Judge Cason as to

when the COAG payment would come. Judge Cason confirmed that this would be in November.

2005 Strategic Planning Session

Judge Bracewell has been looking into this and is proposing that the Council use this as an implementation year. He would like to plan a session with a smaller group to focus on main issues that the committee needs to discuss to do the business at hand and set priorities. He will be working on this in the next weeks and will get back to the committee with his proposal.

Committee Reports

a. Automation Committee: Judge Van Horn introduced George Nolan, Executive Director of the Georgia Courts Automation Commission (GCAC). Mr. Nolan related that GCAC's mission has evolved from one of bringing automation to the courts to one of using their funding to assist local courts in providing help to make sure the courts are being well served. The focus is now on information, both in what needs to be collected and what needs to be shared. GCAC is providing funding for each of the Councils to hold a facilitated strategic planning session to determine the standards for collecting data and for sharing data. Each group will be in charge defining what is to be collected and shared. It will then be possible to give these standards to vendors and require them to be met.

It was asked how this would relate to the newly proposed Judicial Technology Coordinating Council (JTCC). Judge Self reported that this dovetails with the recommen-

dations of the Supreme Court Technology Committee. That committee recommended the JTCC which will have equal representation from all classes of court. This council will be charged with developing statewide standards. It is also hoped that a funding source for automation will be created so that all counties will have the ability to be automated and be part of an integrated system. Judge Self related that the report had been presented to the Supreme Court and it is expected that the Supreme Court will act favorably on the recommendations of the committee.

Judge Greene moved that the executive committee approve the proposal by GCAC and participate in a facilitated strategic planning session. This motion was seconded by Judge Mullis and passed with no dissent.

b. Benchbook Committee-no report.

c. Caseload Reporting-Judge Self noted that Judge Adams would not be in attendance but that his health is improving. Judge Brown, Vice Chair of the committee said there was no report. It was also noted that Judge Brown has been appointed to serve on the Judicial Council Workload Assessment Committee.

d. Court Rules and Forms-In Judge Clarke's absence, Judge Self reported that the new forms are out and it is expected that over the next months things will be identified that need to be revised next year. One form not included is an inventory plan for a minor guardianship. This needs to be significantly different from adult guardianship. There will be a form to use that will not actually become a standard form until next

Probate Judge Executive Committee Minutes cont.

year. Also, the forms are only available at this time in hard-copy. The electronic versions should be completed by the end of summer. He has asked for time on the November training schedule to review the forms. This request will be forwarded to the Probate Judges Training Council.

e. Firearms Committee-Judge Martin was not available to make a report. However, there was concern that the version on the disk allows one to fill out the license, but not the application. Ms. Moore will check on this. Also, it was questioned why this is on the website. It was noted that this is inappropriate and Ms. Moore will contact the webmaster to remove this from the public site.

f. Internal Assistance/Legal Research-no report.

g. Legislative Committee

1. Retirement-Judge Greene asked if everyone had gotten their new forms. He also reminded the group that there is a bill pending that would allow assignment of beneficiary.

2. Vital Records-no report.

3. Elections-Judge Mullis reported that the election supervisors are dealing with the HB that was passed and the changes that it will require in future elections. Several counties had created election boards in the last session.

4. General Probate-Judge Bracewell reminded the members that the guardianship legislation goes into effect July 1. A bill that slipped passed was HB 378 which allows those persons seeking a marriage license to pay a lesser amount with proof of marital counseling. In the short run it appears that this will cause an increase in retirement income and in county income. The non-partisan bill is still alive, but there are questions as to

whether this can be pushed in light of the continuing move by individual counties to get non-partisan status under the current law. A 2% increase was approved and will be effective January 2006. The revision of HB 1EX did not pass but the bill is still alive and it is believed it can be passed in the next session. The COAG salary bill did not get introduced because of political pressure put on the legislator who was going to carry the bill. The group will work on this in the next session. It is felt that opposition from the superior court clerks might have been the problem. It was noted that in the last hours of the session a bill was introduced to make all judges who are now elected non-partisan, become partisan.

h. Liaison to Information and Technology-report given during Automation Committee Report.

i. Membership Committee-no report.

j. Mental Health-no report.

k. Newsletter-Judge McCoy reported that work is being done on the next newsletter and we will have it out within the next few weeks.

l. Traffic/Criminal Jurisdiction-no report.

Report from AOC

Ms. Moore announced that Mr. Steve Nevels, Assistant Director for Judicial Liaison, has taken a position with the Georgia Public Defenders Standards Council and will be leaving the AOC on June 30, so she now has an opening. Ms. Bernie Smith is working in the Research Section of the AOC and is responsible for the caseload reporting and salary surveys and other research projects dealing with the courts of limited jurisdiction. Ms. Murphy continues to serve as the Judicial Liaison Officer.

Probate Judges Training Council

No report.

Report from President

Judge Bracewell reported that Judge Cason and Judge Van Horn accompanied him to the Judicial Council meeting earlier this month. Chief Justice Fletcher is retiring at the end of the month and Justice Leah Ward Sears will become the Chief Justice. At that luncheon it was announced that Harold Melton was the new appointee to replace Chief Justice Fletcher.

He brought to the committee a letter from Bill Linkus about a change in the statute to give the probate judges the ability to be custodian of funds up to \$15,000 rather than the current \$2,500 which is what will become effective on July 1. This will be introduced in the next session. There was discussion about those custodial funds that are held prior to July 1, 2005 that are in excess of \$2,500. They will ask that the ability to continuing holding these funds be grandfathered into the revision.

There being no further business, Judge Bracewell announced that the notice for the next meeting date would be sent when plans for the strategic planning session have been finalized. He then adjourned the meeting at 4:50 p.m.

Respectfully submitted,

Marla S. Moore

Sr. Assoc. Director, Court Services
For Judge Mary T. Cranford
Secretary

District Three Meeting

September 13, 2005

I. CALL TO ORDER:

A regular meeting of the District 3 Judges was called to Order on September 13, 2005 at 11:00 a.m. at the Gwinnett County Probate Court in Lawrenceville, Georgia, the Honorable Kipling McVay presiding.

The Honorable Walter J. Clarke arranged and hosted the meeting.

The following District 3 Members were present:

The Honorable Lillis Brown,
Rockdale County

The Honorable Jim Clarke,
Gwinnett County

The Honorable Hal Hamrick,
Douglas County

The Honorable Kipling McVay,
Cherokee County (Chair)

The Honorable Jeryl Rosh,
DeKalb County

The Honorable Pinkie Toomer,
Fulton County (Secretary)

The following District 6 Member was present:

The Honorable William "Bill" Self, Bibb County

II. APPROVAL OF MINUTES

Minutes had been earlier distributed to members, with no correction and stood approved.

III. REPORTS:

Treasurer's Report - Copies Distributed

IV. NEW BUSINESS:

- Invited Guest - Hon. William Self, Bibb County Probate Court. Judge Self made recommendation concerning proposed forms.

- Invited Guest - Ms. Susan Bentley, Department of Aging, DHR

- Invited Guest - Ms. Doris Clanton, Attorney for Department of Aging Ms. Bentley and Ms. Clanton discussed the division of adult protective services over the state and the availability of legal services for the elderly.

Follow up Action Required: They agreed to provide a map and

an organizational chart of how services were now divided.

- Ms Georgia Northrup, Staff Attorney for Judge Clarke, was present to discuss and review Proposed Form Revisions. A packet of proposed revisions was distributed for further review.

Follow up Action Required Comments and suggestions should be forwarded to Ms. Georgia Northrup.

The group joined the Gwinnett Bar Estate Planning and Probate Section for lunch. We introduced ourselves and entertained questions from the group.

V. OLD BUSINESS

VI. ANNOUNCEMENTS

VII. ADJOURNMENT

Prepared by: Judge Pinkie T. Toomer

District 3 Secretary
September 20, 2005

Distributed to all members:
September 22, 2005

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

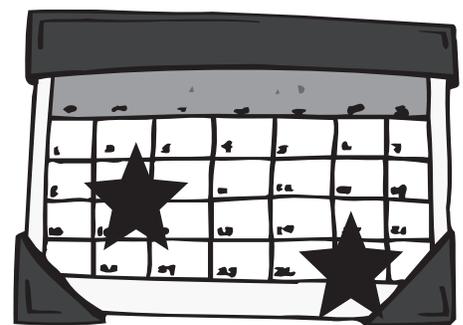
COAG CONFERENCE DATES

*Fall - 2005 November 15-17, 2005
Savannah Marriott

Winter - January 30 - February 1, 2006
Atlanta Sheraton Hotel

Summer - June 19-21, 2006
Marriott Evergreen Conference
Stone Mountain, Georgia

Fall - November 13-16, 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

Report to the Membership: Internal Affairs/Assistance Cttee

By Kipling L. McVay, Chair

At the Executive Meeting on September 29, 2005, the Executive Committee voted unanimously to establish the Internal Affairs/Assistance Committee. The document has scrivener errors which will be corrected before distribution to the Council's membership.

The document was approved for recommendation to the Executive Committee in April 2004 by the Internal Affairs/Research Committee. That Committee is now defunct.

The new Committee is patterned after the one creating the Internal Affairs Committee of the Council of Magistrate Court Judges in 2001. The Committee now consists of up to nine persons. Four persons are Council officers, that is, the President, President-Elect, First Vice President, and Immediate Past President. At least two members

must be members of the State Bar of Georgia. That requirement can be satisfied if any of the Council officers are attorneys, in which case the membership on the committee is reduced up to two persons. The remainder of the membership is appointed based on the Council's By Laws for Committee appointments, that is, by the President.

The mission of the Committee is to promote the highest degree of ethical and professional conduct by its members, educate, and foster judicial competency and integrity. The Committee chair will receive written requests for assistance from judges, as received by the Administrative Office of the Courts, or from Committee members. The chair then will request Committee members nearest the requestor or court in question to give input and recommendation.

The Committee may choose not to respond where Committee action will not benefit the Probate Court involved, the court system as a whole, or serve the public interest. Members of the committee may meet personally with judges to be of assistance. Pending litigation before a court or pending disciplinary proceedings are not entertained unless all parties have the same inquiry and all are seeking a response. Matters which are entertained include unprofessional judicial conduct, training, public relations, and administrative needs of a specific court.

As explained at the Council's meeting, the intention of the title of the committee is to convey to the public that Council members will look into matters involving fellow judges and to convey to the judges that committee members are there to be of assistance.

District Five Meeting

Past President Hoppy Royston opened the meeting in the conference room of the probate court at Banks County Courthouse. Our host, Judge Betty Thomas, had excellent homemade biscuits and pear preserves, plus fruit, muffins and coffee for our enjoyment. Judges present included Hoppy Royston, Eddy Fowler, Betty Thomas, Jim Burton, Susan Tate, Susan Sexton, Margaret Deadwyler, Bob Smith, and Mike Bracewell. Retired Banks County Probate Judge Milton Dalton was also present as was Natalie Cox, a striking law school student that works for Judge Tate. The meeting opened with a prayer by Judge Fowler.

Judge Royston called everyone's attention to the minutes of the last meeting and financial report to date which reflected a balance in our account of \$2,832.09. Dues have been received from all member counties.

There was a discussion about

computer research utilizing WestLaw On-Line and it was suggested that all should make use of this tool so that the service, paid for by the Council, would remain available. (Ms Cox gave a brief demonstration of the use of this research tool after we adjourned.)

The traffic court judges who were present talked of a meeting in August with Judicial Liaison Michael B. Mitchell in Oconee County. Judge Burton will coordinate this idea with Judge Anglin and Mr. Mitchell. The final plans and site will be transmitted by the Traffic ListServe. One of the topics would be the availability of driving histories and the extraordinary cost that is projected.

There was a discussion concerning guardianships that included information about what should be recorded and what may or may not be public information. The discussion also covered the fees to be paid to attorneys and physicians

for the appointed functions in this process. It was suggested that an increase in the stipend might result in a more thorough effort from the appointed attorney as well as preventing petitions for added expenses.

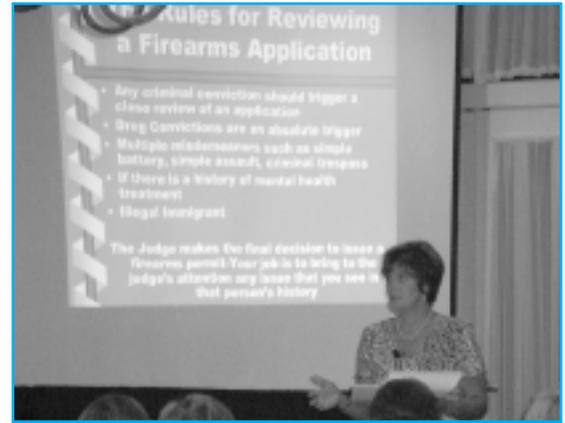
Judge Susan Tate offered some information about Firearms License and the use of the new form that became effective on July 1, 2005. She also mentioned that the Handbook update would contain more useful directions in this area. The legislature will be asked to tweak some parts of the Georgia Code that fail to comply with the Brady Bill.

The next meeting will be in Hart County on October 20th at a golf course with a nice restaurant. The facility had an American Indian name that no one could pronounce, much less spell.

The group adjourned and moved to Cracker Barrel for lunch.

Photo Gallery

Probate Clerks Fall Seminar



St. Simon's
Island



Virginia Andrews Retires

Dear Judges,

Even though the past twenty-five years that I have served as Probate Judge/Election Superintendent/Vital Records Registrar in Worth County have been good to me, I find retirement to look very favorable for the next twenty-five years, Lord willing. (The lazy days of fishing and enjoying my soon to be four grandchildren sound good to me!)

When Judge Darin McCoy asked that I send a letter to the Gavel, my first thought was that I could not have served with a more genuine and caring group of elected officials than the Georgia Council of Probate Court Judges. It goes without saying that I personally could not have been as productive without the support of the

AOC, The Institute of Continuing Judicial Education Center and the Election Division of the Secretary of State. I send many thanks to all of you for your support.

Among other things, I recall when our Courthouse burned (except for the probate court vault) to the ground in 1982, you responded with phone calls, typewriters, scissors, paper, pens, etc. all of which enabled me to open Court for business five days later which was the first Monday in February. Back in the early days I hardly knew what a computer was all about; just look at us now, we even vote on computerized equipment.

Along life's way, my calls to many of you have been responsive and always helpful. I will

truly miss discussing with you the business of the Court, elections, matters of law, your laughter and your company. Most of all, I will miss the kindness that you have shown to me through the years. As time goes on and I travel about our great State of Georgia, I hope to be able to drop in and visit with many of you.

My Chief Clerk, Sheryl Hall, will be assuming the position of Judge on January 1, 2006. I have confidence that she will serve with integrity. With my personal regards for peace in your work place and in your personal lives, I am...

Respectfully yours,
Judge Virginia D. Andrews

Humor



GA Firearms License No Exemption from NICS Check

By Judge Susan Tate, Athens-Clarke County

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) recently conducted an in-depth review of the statutory law of all 50 state statutes governing firearms licensing. As a result, the Bureau has determined that Georgia's firearms licensing procedures do not comport with Brady law criteria for allowing a valid firearms license to exempt handgun purchasers from checks through the National Instant Criminal Background Check system (NICS) at the time of purchase. The pertinent portion of the Brady law, 18 U.S.C. § 922(t), generally requires importers, manufacturers, and dealers to initiate a background check through NICS before selling or otherwise transferring a firearm to an unlicensed individual.

In a letter to Terry Gibbons, Assistant Deputy Director of Georgia Crime Information Center (GCIC)/Information Services of the Georgia Bureau of Investigation (GBI), John Spurgeon, Chief of the Firearms Programs Division at ATF's D.C. headquarters, noted that in order for a state firearms permit to qualify as an exception to the (NICS) background check, the Brady law and implementing regulations require that certain criteria must be met. Paramount among these is this: the law of the state must provide that such a permit is to be issued only after an authorized government official has verified that the information available to such official, including NICS check results, does not indicate that possession of a firearm by

the applicant would be in violation of Federal, State, or local law. (Emphasis supplied.) See 18 U.S.C. § 922(t)(3) and 27 C.F.R. § 478.102(d)(1).

Chief Spurgeon included a list of the specific problems with Georgia's statutory scheme. The listed deficiencies are:

- State law does not require that a permit and a renewal permit be denied to all persons prohibited under Federal from possessing a firearm.
- State law does not require a NICS check be conducted before a renewal permit is issued. While the State has a written policy to conduct NICS checks on renewal, a policy does not satisfy the Brady law requirements.
- Lack of confirmation that Immigration and Customs Enforcement (ICE) databases checks are being conducted on non-U.S. citizens.
- Temporary renewal licenses do not meet the requirements to be a NICS alternative, because no background check is required before they are issued.

The letter summarized herein also stressed the fact that the ATF is willing to work with Georgia officials to address the problems, offering guidance in how to go about correcting them and also making it clear that ATF would communicate with firearms dealers to no longer accept our permits as

an alternative, and providing information on how to register with NICS for those who are not already registered. In closing, Chief Spurgeon reiterated ATF's position: "We are sorry our response could not be more favorable. However, we are sure you understand that it is critical to strictly enforce the permit exception to ensure prohibited persons do not acquire firearms."

The GBI has taken the position that it is not going to pursue statutory changes, it being the Bureau's belief that everyone should have to undergo a NICS check every time they buy a handgun. The Department of Public Safety will in all likelihood adopt the same position. The Executive Committee of the Council of Probate Court Judges, on the recommendation of the Firearms Committee, has decided to defer to the legislature on this issue rather than taking a position on whether or not the law should be changed.

Absent changes in Georgia's statutory procedure for issuance of firearms licenses, popularly known as "gun permits," a Georgia license will no longer relieve the purchaser of undergoing the NICS background check at the time of purchase. This change is expected to be implemented by the end of October.

From the Attorney General's Office

Unofficial Opinion U2005-3
2005 Ga. AG LEXIS 6
July 7, 2005
TYPE: UNOFFICIAL OPINION

SYLLABUS: [*1]

Drug offenders who are later pardoned are ineligible to obtain a license to carry a concealed pistol or revolver pursuant to O.C.G.A. § 16 11 129, although they are permitted to possess a pistol or revolver inside their home, vehicle, or place of business without violating Georgia law.

REQUEST BY:

To: County Attorney

OPINION BY:

Kay Baker, Assistant Attorney General

OPINION:

You have asked whether a probate court may issue a firearms license pursuant to O.C.G.A. § 16 11 129 to a person who has been convicted of a drug offense and who is later pardoned and expressly authorized by the State Board of Pardons and Paroles to receive, possess, or transport a firearm. See O.C.G.A. § 16 11 131(c). For the reasons set forth herein, it is my unofficial opinion that the probate court may not issue a firearms license to such a person.

While the right to keep and bear arms is generally secured by the Second Amendment to the United States Constitution, individual states and the federal government may regulate citizens' rights to possess and carry a firearm. *Presser v. Illinois*, 116 U.S. 252 (1886). Pursuant to that authority, the Georgia General Assembly has developed a two-tiered approach [*2] in determining who may possess a firearm, and who may further be afforded the privilege of being licensed to carry a firearm in a concealed manner.

In Georgia, the right to possess a firearm in a home, vehicle, or place of business does not require a license. See O.C.G.A. §§ 16 11 126 and 16 11 128. Rather, as noted in those Code sections, Georgia law merely prohibits certain persons from possessing any firearm. A license issued pursuant to O.C.G.A. § 16 11 129 authorizes a person to carry a firearm in a concealed manner outside a home, vehicle, or

place of business. The lack of a license issued pursuant to O.C.G.A. § 16 11 129 does not prevent a person from possessing a firearm otherwise in conformity with the law.

On the question of who may possess a firearm, as noted above, Georgia law specifically prohibits any unpardoned felon or person on first offender probation from possessing a firearm. See O.C.G.A. § 16 11 131. Those persons not disqualified from possessing a firearm by O.C.G.A. § 16 11 131 must then be approved by the county probate court to receive a license to carry a firearm in a concealed manner pursuant to O.C.G.A. § 16 11 129. Georgia law specifically [*3] excludes certain persons otherwise eligible to possess a firearm from obtaining a license pursuant to O.C.G.A. § 16 11 129, including persons under age 21, unpardoned felons, and those pardoned felons who are convicted of offenses involving controlled substances. See O.C.G.A. § 16 11 129(b).
n1

n1 Marijuana is considered a controlled substance as that is defined in O.C.G.A. § 16 11 129(b)(5)(B)(i). See 1997 Op. Att'y Gen. U97-29.

It is well settled that a specific statute will prevail over a general statute unless there is indication of a contrary legislative intent. *Garden Hills Civic Association, Inc., v. MARTA*, 273 Ga. 280 (2000). Georgia's statutory scheme clearly establishes that the requirements to be licensed to carry a firearm in a concealed manner outside one's home, vehicle, or place of business are more stringent than the minimal restrictions on the mere possession of a firearm. Plainly, then, the more specific requirements of O.C.G.A. § 16 11 129 would prevail, to [*4] the extent of any conflict, over the more general restrictions found in O.C.G.A. § 16 11 131.

Moreover, a later enacted statute is presumed to be enacted with full knowledge of any existing statutes. *State v. Davis*, 246 Ga. 761 (1980). Such statute should be construed in harmony with the existing law, and the meaning and effect will be determined in connection with those previously enacted statutes. *Id.* This canon of statutory construction is helpful in this instance, wherein O.C.G.A. § 16 11

129(b)(5)(A), which prohibits a pardoned convicted felon from obtaining a license, was enacted in 1990, ten years after the statute which authorizes a pardoned convicted felon to possess a firearm. See O.C.G.A. § 16 11 131. Thus, an examination of the differing legislative objectives of these two statutory provisions further reveals the intent of the General Assembly to further restrict those persons with drug convictions from being licensed to carry firearms.

Your inquiry alludes to a contradiction between O.C.G.A. § 16 11 129 and O.C.G.A. § 16 11 131; when read in *pari materia*, however, those two provisions can be harmonized. Official Code of Georgia [*5] Annotated § 16 11 129(b)(3) generally provides that probate courts may issue a license to carry a firearm to a person convicted of any felony if that person has received a pardon. Pursuant to O.C.G.A. § 16 11 129(b)(5)(A), however, if the conviction is for an offense arising out of the unlawful manufacture, distribution, possession, or use of a controlled substance or dangerous drug as defined therein, that person may not receive a license pursuant to that Code section, even if the person receives a pardon for that conviction. Official Code of Georgia Annotated § 16 11 131 only protects the convicted felon who has been pardoned from being charged with the crime of possession of a firearm by a convicted felon; it does not afford him the privilege of obtaining a license to carry that firearm in a concealed manner outside his home, vehicle, or place of business.
n2

n2 Fain v. State, 259 Ga. 708 (1989) does not affect the above analysis of a controlled substance violation as defined in O.C.G.A. § 16 11 129(b)(5)(A) because the court in *Fain* was reviewing a non-forcible felony conviction, and not a controlled substance conviction.

[*6]

In summary, it is my unofficial opinion that a probate court may not issue a license pursuant to O.C.G.A. § 16 11 129 to a person convicted of a drug offense as that is described in O.C.G.A. § 16 11 129(b)(5)(A), even if that person has been pardoned.

News from the AOC...

Research Division Strives for 100% Participation

The Administrative Office of the Courts' Research Division is striving to collect 100% of caseload reports for calendar year 2005. Currently the Division has collected 86% of the caseload for the first and second quarters of the year. The Research Division strongly believes the Probate Courts can achieve 100% submission by the end of fourth quarter reporting.

Caseload reporting is the quarterly compilation of information on warrants, hearings, cases, and revenues of the

courts. This form of data collection is important because it serves as a basis for determining budget support for additional resources such as funding and personnel. It is also a source for determining caseload trends which may assist in grant application support.

The Research Division understands the various challenges of data collection and submitting caseload reports. For this reason we are available to assist you and your court as necessary. If your county requires assistance from our staff, please notify us

in a timely manner to allow our office to make arrangements accordingly.

The Division would like to extend its sincerest thanks to you, the Probate Court Judges and Clerks, for your continued participation in this annual process. The Division would also like to thank the Council of Probate Court Judges' Case Count Committee for being pro-active in encouraging 100% caseload participation.

Quarterly Report	Submit to AOC by	Date Published
1st Quarter January 1 - March 31	April 28	May 15
2nd Quarter April 1 - June 30	July 31	August 15
3rd Quarter July 1 - Sept 30	October 31	November 15
4th Quarter October 1 - Dec 30	January 31	February 15

How to Submit Reports

Mail:
 Administrative Office of the Courts
 244 Washington Street, S.W. Suite 300
 Atlanta, Georgia 30334

Fax: (404) 651-6449

Online: <http://caseload.gaaoc.us/>
 (Please contact research staff for user name and password information)

2005 Probate Salary and Personnel Survey

Please note that salary surveys were due in September. The information compiled from the survey often plays a vital role in gaining additional judicial staff, funding for equitable compensation and addressing other needs in the court. Each survey submission truly counts. If you have not submitted your information, please send it to the Research Division using the abovementioned contact information. Salary forms are available upon request. Thank you.

Caseload and Salary Survey Contacts

Bernadette Smith (primary contact)
 (404) 463-5219
 smithb@gaaoc.us

Ebone' Richardson
 (404) 436-4245
 richarde@gaaoc.us

News from the AOC...

Program-Based Budgeting

By: Kevin Tolmich, Budget Administrator

The State of Georgia made a drastic shift in the way budgets are appropriated to state agencies. In the past, budgets were determined and assigned by using object classes or major categories of expenses (i.e. personal services, travel, rent, etc.) for an entire agency. Today, budgets are determined by programs within that agency. These programs are specific functions, activities, projects that are performed by the agency.

Program-based budgeting is based on what you do and what resources are needed to meet the goals and objectives of specific programs. Program-based budgeting allows for the "bang for the buck" factor. Organizations can use performance measurements to track how well a program is meeting goals and objectives. This allows for better justification for any future increases and/or decreases in funding.

As an example, the Judicial Council of Georgia has five different programs: Judicial Council, Office of Dispute Resolution, Institute for Continuing Judicial Education, Judicial Qualifications Commission and the Resource Center. Within the program of Judicial Council, there are several projects: Administrative Office of the Courts (AOC), Council of Magistrate Court Judges, Council of Probate Court Judges, Council of Municipal Court Judges, Council of State Court Judges, Victims of Domestic

Violence, etc. Then within the AOC project there are 39 different activities: Director's Office, Administration, Finance, Court Services, Judicial Liaison, General Counsel, etc.

As you can see from the example above, the AOC is budgeting based on what services the organization provides.

This allows for better control of the budget by individual managers and allows for a clear picture on the funds expended for certain operations. Each of these activities will have performance measures that can be tracked to ensure the success of the activity.

FY 2006 General Appropriations

<i>Supreme Court</i>	7,647,980
<i>Court of Appeals</i>	12,537,586
<i>Superior Courts</i>	51,488,656
Council of Superior Court Clerks	144,925
Council of Superior Court Judges	800,000
Judicial Administrative Districts	2,253,718
Drug Courts	1,000,000
Superior Court Judges	47,290,013
<i>Prosecuting Attorneys</i>	43,925,448
District Attorneys	39,495,618
Prosecuting Attorneys' Council	4,429,830
<i>Juvenile Courts</i>	6,233,940
Council of Juvenile Court Judges	1,519,101
Grants to Counties	4,714,839
<i>Judicial Council</i>	13,176,292
Georgia Office of Dispute Resolution	362,494
ICJE	1,126,382
Judicial Council	10,629,370
JQC	258,046
Resource Center	800,000
<i>Georgia Public Defender Standards Council</i>	42,079,060
Public Defender Standards Council	10,607,210
Public Defenders	31,471,850
TOTALS FOR THE JUDICIAL BRANCH	\$177,088,962

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News from the AOC...

SUSTAIN OVER CITRIX (SOC): Case Management at no Expense

Case Management Over the Internet

By: Kriste Pope and Byron Branch, AOC Information Technology

The best case management system available to any court — SUSTAIN Justice Edition® — has been around in Georgia since 1993 and its biggest weakness is that most courts do not realize that the Administrative Office of the Courts (AOC) provides this case management software to any court — at no cost. SUSTAIN JE® is installed locally in 107 courts (30 Superior, 16 State, 20 Juvenile, 15 Magistrate, 12 Probate, 4 Municipals, 3 District Attorney's, 5 Solicitor-Generals, and 1 Recorders' Court). There are currently 14 courts pending local installation of the SUSTAIN JE® software.

Last year with the signing of HB1EX, it became necessary to re-evaluate the Court Information System (CIS) products that were developed in-house for Probate, Magistrate, and Traffic Courts, as well as adjust the accounting features at existing local sites. The CIS products were simple programs for simple times. In order to meet the demands of today's comprehensive fine and fee laws, the AOC turned to an industry standard computer model that has been used by other State agencies for several years. Citrix® allows powerful servers to be purchased and maintained at a central location yet the software that runs on those servers is available to any Court with an Internet connection. SUSTAIN® over Citrix® is a more comprehensive program to address the comprehensive needs of the modern court in Georgia.

Citrix also addresses a very serious situation that exists in many of the Courts in Georgia. Funding restraints prevent these Courts from running their choice of software at its full potential, thus, the birth of SUSTAIN® over Citrix® (SOC). By using one of the AOC's five (5) Citrix servers, courts only need a high-speed Internet connection, an average speed computer and a laser printer to take full advantage of the same

software package used by courts with local area networks (ex. Douglas, Floyd counties).

A team consisting of Byron Branch, Deborah Gunn, Richard Denney and Kriste Pope with the AOC IT Division were charged with the task of re-configuring SUSTAIN® to address HB1EX as well as replace the current CIS products. SUSTAIN® has been modified to meet the requirements of SB50 (electronic transmission of criminal dispositions to GCIC), SB176 (electronic transmission of civil filings and dispositions to GSCCCA), and HB1EX (partial payments and priority of fees and fines).

The team worked on this project for approximately six months and walked away with a product that could not only completely address HB1EX, but also give the court a complete, comprehensive case management system. SUSTAIN® offers a complete accounting package so clerks can receipt fines and fees, collect restitution,

print checks in batch, reconcile bank statements and soon - print invoices to attorneys and volume filers. Currently 1 Juvenile Circuit, 12 Magistrate, 8 Probate, and 9 Municipal Courts are using SOC in their court. There are 27 pending sites that will "go live" on SOC after their database is setup and they have completed training.

When multiple courts in the same jurisdiction share SUSTAIN®, they can take advantage of the built-in data exchange feature. This feature enables data to be exchanged between multiple databases, thereby eliminating redundant data entry (ex. Solicitor sends data to State Court database and State Court sends disposition and sentencing data back to Solicitor database).

Any court that is interested in taking advantage of the state-provided software, should submit a request by contacting the Client Service Center at 1-800-298-8203.

State Accounting Office to Explore Consolidated Banking

By: Thomas Randall Dennis, CPA, CGFM, Chief Accounting Officer

The State Accounting Office (SAO) is developing the systems to facilitate the implementation of a consolidated banking model in response to the Commission for a New Georgia's recommendations on cash management for the State of Georgia. This model involves new functionality in PeopleSoft (the state's accounting system) and business process changes in the SAO, Office of Treasury and Fiscal Services, and at all State Agencies.

The Administrative Office of the Courts (AOC) has been identified by the SAO as a strategic agency in order to identify the range of banking and cash management business process. AOC Chief Accounting

Officer, Randy Dennis, will participate with the SAO and their consultants during the analysis phase of this project. The analysis phase will begin the week of October 24th with the following actions considered:

- Develop and implement cash management policies that begin bank account consolidation.
- Leverage PeopleSoft functionality to streamline the banking processes, bank information reporting, reconciliation, and cash management.

Hopefully these efforts, as well as many others, will assist in achieving the Governor's vision of "Best Managed State".

News from the AOC...

Georgia Judicial E-filing and Data Exchange Project Update

By: Rex McElrath

Appellate:

Supreme Court: A production implementation is in place for the Supreme Court. The system allows for appellate transcript filings from trial courts. Test filings into the system have been received from the 11th Federal Trial Court, Fulton County, Douglas County, and Butts County. The system was initially built in response to a need for a more efficient way to receive the many hundreds of pages of trial transcripts associated with death penalty appeal cases, but the system can receive many other types of appeals. The filing process has been tested from remote sites as far away as Utah and California and sending and response times remained very fast despite the large geographic distance from the court. Large trial transcripts have been sent over a dial up speed connection in a matter of seconds. The project is also listed on the Office of Justice Program's Website as an organization using the GJXDM.

Superior Courts:

Bibb County: The Bibb County Superior Court agreed to take part in the project to help handle the volume of child support cases that are received into the court and on October 14th received a gemstone server with the e-filing and data exchange system. Bibb County is the 4th largest county in Georgia with a population of over 190,000 persons with second highest rates of child support related cases in Georgia. New child

support related filings comprise 54% of all new civil filings in Bibb County Superior Court. Also a forward thinking court, Chief Judge Wilcox and Chief Superior Court Clerk Diane Brannen have been very receptive to the project as well as have Child Support Enforcement Manager Don Mince who has helped push for an automation of the child support enforcement processes. Bibb County Superior Court has also signed a court order allowing the use of digital signatures in the court.

Walker County: The Walker County Superior Court will be receiving a gemstone system with the e-filing and data exchange system in November. Chief Judge Wood and District Court Administrator Jody Overcash have paved the way for this court to receive the system and have even built a relationship with the Walker County Sheriff's office to allow for integration of the system with the Sheriff's office to save the Office of Child Support Enforcement, the court, and the sheriff's office time, money, and man hours.

Washington County: A Gemstone is installed and functional in Washington County Superior Court. The application is functional and is ready to receive filings from the Office of Child Support Enforcement. This court was chosen due to the progressiveness of Superior Court Clerk Joy Connor and Chief Judge McMillan. It is a technologically advanced court that will be a great initial

site for this project in a Superior Court. The Washington County Superior Court will be receiving child support related filing from the Office of Child Support Enforcement during the initial implementation phase. The project is also listed on the Office of Justice Program's Website as an organization using the GJXDM.

Summary:

The project's product is installed in two Superior Courts and the Supreme Court. We have seven different fully XML document types that can be filed in and this number will be growing quickly as expanding document processing capability is a priority for the next update to the system. The project's current product has been demonstrated for and very well received by seven states across the US, is listed on the Office of Justice Programs website, and has received attention from the National Center for State Courts. We are working on a module to allow Judge's to digitally sign court orders, a sole practitioner/pro se filing module, and fully XML documents to allow richer workflow automation from key words and sections of legal documents. The fully XML documents can help save time and expense greatly with courts that use forms heavily, such as in the probate courts, by allowing smaller document size, higher security documents, less reliance on paper, and more robust full text searching and document retrieval

TIPS: Traffic Information Processing System

By: Kelly McQueen, System Placement and Program Planner

The deadline to change from paper to electronic citation transmission has passed - July 1, 2005

Federal law mandates that all driving convictions must be reported to DMVS within 30 days at present and within 10 days by 2008. If not, Georgia risks losing millions of dollars in federal highway funds.

In an effort to help Georgia courts come into compliance with Federal and State laws

regarding electronic citation transmission, the AOC information technology staff developed a web-based program called TIPS. This program was funded by the Governor's Office of Highway Safety and was completed in close collaboration with DDS. TIPS allows Georgia courts to file traffic citations in the electronic format required by the Georgia Department of Driver's Services (DDS) at NO COST to the court.

TIPS not only correctly processes the

citation, it also calculates and manages the fees that must be paid to different funds by each county, as mandated by state law and local ordinances. The web page that appears on the screen is modeled after the paper citation, for ease of use by the court clerk. The AOC offers training courses and on-site assistance as requested.

For information about TIPS, contact Kelly McQueen at mcqueenk@gaaoc.us or (404) 463-5420.



Photo Gallery: Strategic Planning Red Top Mountain



The Gavel

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