

# THE GAVEL

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

Volume 13, Number 3

October 2006

## MESSAGE FROM THE PRESIDENT



I want to start my letter by expressing my sincere appreciation to all of you that have so graciously agreed to serve as Chairs and Vice Chairs

of the Committees. Hopefully by now you have your committees appointed. I cannot believe how fast this year is going, I hope I am not overlooking items that need attention, if so please let me know.

We had an interesting and informative meeting in August in Milledgeville. Dr. Arnold from the AOC refreshed our memory of some of our goals and how to work on the future of our Council. Jorge Basto, also from the AOC, gave us mini computer training on how to have committee meetings on line. This is a great asset for us; I know that it is difficult with our geographies to meet.

However, it is important that our committees function because they are the foundation of our organization.

Our Legislative Committees met in Milledgeville to start our legislative agenda for the up coming session. The items discussed were some "clean-up" items in the Probate Code, Vital Records Committee had some discussion and will make a decision later as to if there needs to be any legislative changes to the Vital Records area. Other items that were discussed included, changing the term of court to be 3 months instead of one month; from the Training Council, changes the membership to comply with the Districts of the Judicial Council. There will be a final legislative agenda approved at the November Board meeting.

I would like to thank Judge Todd Blackwell for his efforts in assisting with our meeting by arranging a tour of Central State Hospital. This was a very eye opening experience for all of us.

We met with the Chief Medical Officer and the Staff of Central State for a round table discussion. They are facing many of the same problems that we face in dealing with the mental health. They were very appreciative of our interest in working on a solution that would benefit all our communities.

Also, I would like to thank Chris Patterson and LaShawn Murphy for all their efforts in making our meeting successful. I am afraid we may lose LaShawn when her stock in Chick-fil-A matures. Only joking LaShawn, you did an outstanding job as always.

We have the Fall COAG Conference in November; this would be a great time for committee meetings.

I know everyone is busy and I really appreciate all your effort in making the Council of Probate Court Judges what we are today.

*Judge Betty Cason*

### District of the Month

CONGRATULATIONS DISTRICT THREE - For the month of June. District Three, under the leadership of Judge Kip McVay of Cherokee County implemented a Phone Tree for communication purposes. Great job guys! This is a tool all districts can use to disseminate information. For more information, please contact Judge Betty Cason.

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## Probate Judge Executive Committee Minutes

The Georgia Center • Athens, GA • March 22, 2006

Judge Bracewell called the meeting to order at 9:05 a.m. He welcomed all Executive Committee members and others in attendance.

### **Approval of Minutes**

Judge Bracewell called for a review of the minutes from the January 31, 2006 meeting at the Atlanta Sheraton. He asked that the minutes be amended to show Judge Judy Mullis was absent from the January meeting. Judge Self, with a second from Judge Brown, moved that the minutes be approved as amended. The motion passed with no dissent.

### **Financial Report(s)**

Associated Funds - Judge Cranford provided a Treasurer's Report on associated funds as of March 8, 2006. Her report indicated the council's assets totaled \$85,522.40, including \$20,522.40 in checking and \$65,000.00 in certificate of deposits. A cash flow report for detailing the collection of \$14,200.00 in membership dues and \$3,577.82 in expenditures was also provided.

State Funds - Mr. Patterson reported on State-appropriated funds as of February 28, 2006. The council has a current balance of \$29,505.92, with year-to-date expenditures totaling \$35,632.08. Mr. Patterson also reported \$2,127.75 had been generated from the sale of probate handbooks and mailing labels. An initiative to increase handbook sales by notifying law firms of the handbook update is under way.

### **National College of Probate Judges Dues**

Deviating from the agenda, Judge Bracewell called for discussion on the National College of Probate Judges dues. Mr. Patterson began by informing the

council of a number of pending and anticipated expenditures, including a recently received invoice from the National College of Probate Judges. The invoice itemized the annual membership dues of ninety-three (93) current probate judges, which totaled \$7,905.00 (\$85.00 per member). Mr. Patterson expressed concern that State-appropriated funds would be insufficient in covering the dues along with the other council obligations. He suggested the dues for the National College of Probate Judges be paid out of the council's private funds. Judge Self reminded the committee of last year's decision to pay the annual dues for judges who elected to continue as a National College of Probate Judge member. He proposed polling all probate judges to determine the level of interest in retaining National College membership. Judge Cranford suggested including a question regarding the counties' willingness to pay the individual judges' NCPJ dues. The council would then be relieved of this financial burden for those judges whose county will pay and could utilize private funds to pay the dues for judges who wish to continue their membership but whose county is unable to pay. Judge Scoggins proposed having AOC staff conduct the membership survey by sending out letters to all probate judges and posting to the listserv. Judge Cason moved to utilize council private funds to pay the 2006 membership dues for those judges who wish to continue NCPJ membership but whose county won't pay and to have AOC staff poll the membership. The motion was duly seconded by Judge Tate and passed with two dissenting votes. Judge Self agreed to speak with NCPJ officials regarding a special discount rate if a certain percentage

of probate judges retain their membership. Following this, Judge Van Horn, with a second from Judge Brown, moved to have next year's dues include membership to the National College of Probate Judges. After some discussion, Judge Van Horn moved to amend the previous motion in favor of deferring the matter to committee. The motion was seconded by Judge Self and passed with no opposition.

### **Report from AOC**

Mr. Patterson updated the committee on the substitute to SB301-Security/Technology Bill, as previously presented by Superior Court Judge Samuel Ozburn. The bill was not brought up for discussion by 'crossover day' and therefore is dead for the 2006 Legislative session. Next, he informed the council of an expressed concern by AOC-Fiscal Dept. that reimbursement for portage services invites an audit. According to state travel regulations, portage is reimbursable when performed out of necessity, rather than convenience. Accordingly, judges are asked include an explanation of portage services when requesting reimbursement. Finally, Mr. Patterson deferred to Jorge Basto, who provided an update on several AOC-IT initiatives.

Mr. Basto began by revisiting issues raised at the January meeting relating to the Sustain case management system, data transmission and imaging.

### **Committee Reports**

Awards Committee - Judge McCoy reported the Awards Committee is fully prepared and excited about tonight's Awards Banquet. The Probate Judge-of-the-Year recipient will be announced and other awards presented. At tomorrow's luncheon, the committee will rec-

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## Executive Committee Minutes cont.

ognize the efforts of a retired judge and remember the contributions of two sitting judges who passed during the year.

Newsletter Committee - Judge McCoy announced the next edition of the newsletter would be published at the end of April. He asked that newsworthy articles and events be forwarded either to himself or LaShawn Murphy no later than the second week in April. Judge Brown inquired if an automated reminder for article submission could be posted to the listserv.

Automation Committee - Judge Van Horn informed the membership of enhancements to the website. The Council currently has two websites in operation, a public website - [www.gaprobate.org](http://www.gaprobate.org) and a site through the Georgia Courts - [www.georgiacourts.org](http://www.georgiacourts.org). A password-protected section is being created on the [www.georgiacourts.org](http://www.georgiacourts.org) site. The restricted area will house a bulletin board, form downloads, discussion threads, etc and will provide an excellent forum for committees to solicit membership input. The area will be accessible via uniform user id and password. Next, Judge Van Horn explained the IT Strategic Planning Committee is experimenting with conference calls to hold its meetings. The associated cost is 10¢ per minute/ per user, with average meeting expenses of \$32.00. After some discussion, Judge Van Horn, with a second from Judge Brown, moved to grant the IT Strategic Planning Committee an annual budget of \$600.00 for meeting expenses. The motion passed with no opposition expressed.

Handbook and Benchbook Committee - Judge Propst disseminated a written committee report authored by Judge Toomer (see attached). Following this, he oral-

ly reported the following: The 2005 supplements to the handbook were delivered in two parts - the guardianship chapters (13-17) were provided in November and the remaining updates dispersed at the January meeting. Judges not in attendance at the January meeting will receive their updates during tomorrow's training session or via U.S. mail. A CD version of the updates is currently in production and will be mailed to each probate court in the coming weeks. Arrangements to post the handbook and benchbook to the restricted-access area of the website are being made. Work continues on the 2005 supplement to the Benchbook. Judge Propst hopes to have the updates completed and made available by late April.

Court Rules and Forms Committee - Judge Clark reported the latest changes to the guardianship forms will be presented for approval at the next business meeting. In some cases the original forms were merely touched up, while in other instances a completely new form was crafted. Permanent administration forms, for example, have been revised to require more disclosure of the estate's assets. A new form related to transfer of adult guardianship is also included. Final adjustments to the forms will be completed in April and subsequently submitted for Council approval.

Legislative Committee - Judge Propst relayed the following information, which was received from Mark Middleton:

*Senate Bill 450 (COAG Salary Bill)* received quick passage in the Senate and was presently in the House Governmental Affairs Committee. The committee is chaired by Rep. Austin Scott, who has taken issue with both the longevity provision for the county

commissioners and the five year population review interval. The committee will convene at 4:00pm today.

*House Bill 1279 (COAG Health Plan Bill)* is now in the Senate Insurance and Labor Committee. The plan would grant county officers and employees the option of participating in the state health benefit plan. According to Mr. Middleton, the Governor's Office is concerned by the cost assessed to the employee for program inclusion. Judge Bracewell noted a conversation with an acquaintance of the Insurance and Labor Committee Chair suggests the bill will not move through committee.

*Senate Bill 534 (Guardianship Bill)* addresses compensation for services issues and establishes when a trustee's compensation is not specified in the trust instrument it shall be based on the compensation schedule of conservators. The bill passed the Senate as of yesterday and was currently in the House Rules Committee.

*House Bill 535* - abolishes criminal penalties for failure to remit indigent defense fees. The bill passed the House and is now in the Senate Rules Committee.

*Senate Bill 500* - a pilot program to provide a paper receipt of recorded votes. Receipts shall be retained for use in recounts and election challenge proceedings. The program will be piloted in one precinct in each county. SB500 is expected to be ratified.

*House Bill 251* - allows retirement benefits to be designated to someone other than a spouse. It has passed in both the House and Senate; however, the House has to agree to the changes made in the Senate.

## **Probate Judge Executive Committee Minutes cont.**

Judge Self informed the membership he wrote to Rep. Mary Margaret Oliver regarding SB420. The bill is intended to allow a custodial parent to designate, by power of attorney, a grandparent or great grand parent for the care of child, to enroll him/her in school, and consent to medical treatment. In his opinion, the legislation is well-intended but poorly written. He also noted the language of the statute limits the guardianship to these purposes; however, the accompanying forms essentially grant full parental rights to the caretaker.

It was also reported the Training Council's redistricting bill was not introduced during the legislative session.

### Traffic/Criminal Jurisdiction

Committee - Judge Ogletree reported the Traffic Benchbook is complete and will be distributed among traffic jurisdiction judges. She then recognized the efforts of Judge Carlos Rogers and the AOC staff in bring the manual to fruition. The membership was reminded that this is the inaugural edition; thus feedback and suggestions for future versions is encouraged and greatly appreciated. Judge Ogletree then disseminated a draft copy of the proposed Criminal Rules for the Probate Court. The rules were drafted with assistance from Keith Scott, former Magistrate Council Uniform Rules Chair. It is hoped the rules will be reviewed and adopted at the next Council meeting.

Mental Health Committee - Judge Tate reported the Mental Health survey has been forwarded to Dr. Greg Arnold, AOC, along with address listings of executive directors, presidents of the various associations, and stakeholders. Several completed surveys have been received. Judge Tate then reported the release of grant funds

for mental health courts. Grant applications are expected to be published in the coming weeks. The deadline for grant proposals would be eight weeks after applications are made available. Interested parties should contact the Justice Department or SAMSHA. Judge Tate volunteered to post related information to the listserv as it becomes available. Twelve planning grants and eight-to-ten implementation grants will be awarded.

### **Probate Judges Training Council**

Judge Brown reported the Training Council held a lengthy but productive meeting. New officers were elected as follows: Judge Belinda Griffin, Chair; Judge Lillis Brown, Vice-chair; and Judge Vicky Burnette, Secretary. The training slates for the summer and fall conferences were approved. Topics for the June 19-21 Summer Conference (COAG) include sessions on standard forms, case updates, and a legislative review on Tuesday, June 20th. On Wednesday, Judge Winston Bethel, Chief Magistrate of DeKalb County, will facilitate training on the impact of mental health courts followed by a session on the court system from an immigrant's perspective. During the Fall (COAG) Conference representatives from the State ADA Coordinator's Office will conduct separate sessions on cognitive disabilities; ATF personnel will update the membership on prohibitors for firearms, blasting and fireworks. Attendees will also receive training on adult guardianships, with emphasis on asset management planning, and power of conservator for incapacitated adults. The joint training session has been moved to Tuesday, the topic of the session is Budgeting 101. Judges in need of 12 hours training must attend the joint training as well as probate

judge training sessions.

A twelve hour mini-orientation for new probate judges will be held December 6-8, 2006. The session is offered every two years at the Georgia Center in Athens, Georgia. Currently four judges are mandated to attend. Veteran judges who wish to participate as a refresher course are welcome to enroll.

The Training Council adopted policy mandating nine hours annual traffic training for traffic jurisdiction courts. This training requirement would be in addition to the twelve annual hours required for all probate judges. Elections-related training will not count towards this mandate. A policy statement from the Training Council is forthcoming.

The Training Council also elected to bring a disturbing set of circumstances to the Executive Committee's attention. A judge who failed to complete mandatory training in 2005, failed to respond to delinquency notices, and has thus far failed to register for training in 2006 was awarded a scholarship from the Council to attend a National College of Probate Judges conference in Orlando, Florida. It was noted probate judges are offered six local training opportunities each year. The matter was tabled pending a formal request from the Training Council to amend the scholarship policy.

Next, Judge Brown reported the Training Council ratified a policy change relating to the Clerks Training Certification program. Training accrued prior to program enrollment will not count towards certification completion. The program is intended to promote continuing training and on-going professional development. It is the Training Council's position that the accreditation of prior educa-

## Featured Judge — Judge Donald Boyd

*(This is the first of a series of stories we plan to develop on unusual or unique hobbies/interests of Probate Judges in Georgia. If you have an unusual or unique hobby or interest or know someone who does, please contact Sam Davis samdavis@bryan-county.org, 912-653-3856) or LaShawn Murphy at murphyla@gaaoc.us ).*

Judge Donald Boyd of Troup County enjoys being a Probate Judge in his county of 65,000 plus citizens in west Georgia, an office he has held since August, 2000. When he isn't busy in his office, Judge Boyd is filling the airwaves with gospel music through radio and television.

But after almost 40 years singing in a gospel group, almost 25 years of hosting a radio program, more than 10 years of hosting a television program and a near devastating accident this year, Judge Boyd was contemplating "slowing down."

And then he remembered April.

April lives in Alabama and after graduating from high school she contracted a debilitating disease that left her unable to speak and bed-ridden.

Judge Boyd and his group "The Followers", which also consists of his wife, Gayla, a daughter Jenna, and a brother, were singing

in an eastern Alabama community and was asked by April's mother to come by to meet her daughter, a faithful listener to his radio program. "Her mother told me she never misses my radio show and sets her clock to wake up in time just to listen," Judge Boyd said. "We went by her house, gathered around her bed and sang some songs...we were all crying when we finished. That experience opened my eyes and made me appreciate more fully all that I have, including my health." Judge Boyd said he begins his early Sunday morning radio show with a dedication to April. "She counts the number of times I mention her name," he said. Following his accident in March of this year, Judge Boyd thought for a moment about slowing down. "Every time I think about giving up I think about that invalid girl in Alabama and the many elderly who listen to our programs. I do it for them," he

added.

Judge Boyd started singing Southern Gospel music in his father's Baptist church when he was about 7 years old. He started the radio program in 1982 and airs every Sunday from 6-10 a.m. and his television program airs every Tuesday evening on a local cable network.

While Judge Boyd plays guitar only in the privacy of his home, his wife, Gayla, plays the piano while daughter Jenna is "the musician in the family." She plays the piano, is a song writer and sings.

"Music is the love of our lives," he said, adding it provides a welcomed break from the pressures of work.

Judge Boyd and his wife have three children, Stacy, an editor in New York, Kylie, a nurse in Troup County, and Jenna, a teacher's assistant in the local school system. They have three grandchildren.

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## Probate Judge Executive Committee Minutes cont.

tional experiences runs contrary to the spirit of the program. Training submitted for consideration must first gain the approval of the local probate judge and then forwarded to the Training Council for certification. The Clerks Training Certification program is a voluntary program. Program participation or completion neither implies nor guarantees a pay increase.

Finally, the Training Council, in conjunction with AOC staff, is working to produce a training policy manual. The purpose of the manual is to provide the membership with a comprehensive information base of training policies, regulations, and protocol.

### Old Business

#### GCAC Technology Strategic Plan (Approval)

Judge Van Horn delivered a PowerPoint presentation highlighting the efforts and accomplishments of the IT Strategic Planning Committee in developing the technology strategic plan. A draft of the plan was disseminated to council members for review (see attached).

At the conclusion of the presentation, and after some discussion, Judge Tate moved that the Executive Committee approve the draft of the strategic plan as amended after feedback from the districts meetings and that an absentee voting process be insti-

tuted to provide a voting opportunity to those unable to attend the June meeting. The motion was seconded by Judge Self and passed with no dissent.

### Adjournment

There being no further business, Judge Bracewell announced the next meeting date as June 19, 2006 in conjunction with the Summer COAG Conference. He then adjourned the meeting at 12:00 p.m.

Respectfully submitted,

Chris Patterson, AOC  
For Judge Darrin McCoy  
Secretary

## Case Law Update

Judge Lynwood Jordan, Jr.

The following material is from my June 2006 COAG training session updated through June 30. These are not extensive case briefs and all facts and issues are not discussed. Please read the particular case for the entire holding. Citations are in the footnotes with the actual date of decision.

### ***Death of a Last Will and Testament.*<sup>1</sup>**

Mother left a will devising real property to her son. The son filed a petition to probate the will. The Probate Court continued the case to allow service upon the other heirs at law. Thereafter, the case sat on the shelf for 15 years. Nothing happened. The Probate Court then dismissed the case under the five year rule. The son, the propounder, did not re-file the petition to probate within six months of the dismissal order as he is required to do. The result of that failure to re-file within six months is "...that Nettie Ward's will has no validity whatsoever..." (emphasis supplied). The son does not receive the real property which his mother left to him in her will. Instead, all of the heirs at law are owners of the property as tenants in common. The will can never be probated? Query?<sup>2</sup>

### ***Wait a while, then rescind the assent (perhaps even after probate?).*<sup>3</sup>**

A man had a will. He and his wife were later married. He died without making new will after the marriage. The wife signed the usual "Acknowledgment of Service and Assent to Probate Instanter." The petition to probate and all assents were filed with the Probate Court on January 7, 2005. The documents contained the usual language that any objection to the will had to be filed within ten days of service of

the petition. Long after ten days, on March 2, 2005, the wife rescinded her prior assent and asserted her statutory entitlement to an intestate share of the estate resulting from the pre-marital will not contemplating marriage.

The Supreme Court held that the Probate Court has discretion to extend the time to object notwithstanding the standard form language so long as the will has not been probated. The Probate Court did not err in determining that the wife had not waived her right to assert the statutory entitlement. The Supreme Court specifically stated that it was not deciding whether this could be done after a will is probated. Justices Carley and Thompson stated in the special concurrence their view that an intestate share right can be asserted after a will is probated. It is quite likely this issue will appear again.

### ***Creditors come first, administrator is out, no legal fees.*<sup>4</sup>**

The administrator distributed estate assets before paying estate debts. This is a breach of fiduciary duty. The administrator paid himself. Where the representative's interests either actually conflict with his duties, or *might* conflict (emphasis in original), either with the interests of the estate or the interests of the beneficiaries, such may be sufficient grounds for removal of the personal representative.

The administrator's ability to receive his legal fees depends on the outcome of the case. If his conduct brings about the suit, and he is removed, he does not receive his legal fees from the estate. Had there been no misconduct, but only a charge of misconduct, he would have been entitled to reasonable reimbursement.

### ***Personal representative appeals removal - a temporary administrator can be appointed - no notice necessary.*<sup>5</sup>**

The administrator was removed, he appealed, and the Probate Court without notice to anyone appointed a temporary administrator. The administrator complains that none of the heirs were given any notice or input into the selection process. No error. During the appeal of the removal, the estate is "essentially" unrepresented. It is therefore proper to appoint a temporary administrator, and the statute specifically states such can be done with no notice to anyone.

### ***Don't pay the bequest and you may pay prejudgment interest.*<sup>6</sup>**

Bequest was not paid by executor. Two years after testator's death beneficiary filed for an accounting. Probate Court found that the asserted bases for failing to pay were "dubious" and "without authority." The Probate Court ordered that the beneficiary be paid the full amount of his bequest plus pre-judgment interest. The Court of Appeals upheld this judgment holding that the probate court "...did not abuse its equitable discretion in awarding prejudgment interest on the general testamentary gift...."

### ***Think you can use Momma's POA before her death to get her money? Not! You're go-ing to pay.*<sup>7</sup>**

Prior to his mother's death, son used a power of attorney from her to add his name to some of her accounts. On the date of her death, he created a payable-on-death account in his and his mother's name. Then, over a period of time he moved the funds from the accounts to which his name was added into the POD account. He was then appointed executor. He never, as personal

## Case Law Update *cont.*

representative, showed these funds as estate assets. He was not personal representative at the time he moved the money, but was appointed later. He also sold some estate real estate to his wife at below value.

It does not matter that he was not executor at the time he moved the money. His retention of the money he removed from his mother's estate is a breach of his fiduciary duty as he is promoting his own personal interest to the detriment of the heirs at law. Although he may have taken the money before his fiduciary duties as personal representative arose, he nevertheless had a duty after his appointment to recover those funds - and he breached his fiduciary duty by not doing so.

In addition, the Probate Court was authorized to require an appraisal of the real estate, was authorized to award costs and attorneys fees against the personal representative, was authorized to impose damages against him, and was authorized to declare his commissions forfeited. The power of the Probate Court relative to the administration of estates is exclusive and broad.

### **When can an attorney not settle a case?<sup>8</sup>**

When "the family" of an incapacitated adult hires him. An adult was injured in a car wreck, he was in a coma, the family hired an attorney, the attorney settled the case with the other driver and his insurance company. The adult was incapacitated as a result of the

accident. A guardian (now conservator) was appointed, sued the other driver, and is able to do so. The "settlement" does not matter. The injured man is an incapacitated adult. He did not hire the attorney before he became incapacitated. Only a legally appointed guardian (now conservator) can settle an incapacitated adult's claim and the guardian (now conservator) must also obtain Probate Court approval of the settlement. Sorry.

### **Two cases on undue influence: (1) this one is not<sup>9</sup> (2) but this one is.<sup>10</sup> These are two cases to read together and compare.**

In the first case, there is a laundry list of factual items present which are important to a finding that no undue influence exists. The attorney dealt only with his client, the testatrix. The attorney met with the testatrix alone, the beneficiary was never present, the attorney did not discuss the will with the beneficiary, the beneficiary did not isolate the testatrix, etc. There was no evidence of influence, deception, force, or coercion. An opportunity to influence coupled with a benefit under the will is not enough. Note: this is not a "presumption" case arising from a confidential relationship where the beneficiary is not the natural object of the testator's bounty.

In the second case, the Supreme Court found that presumption to be applicable. The testator signed a will naming his daughter as executrix and primary

beneficiary. He then had lung cancer, suffered a stroke, and had terminal brain cancer. Less than a year after the first will, he signed a second will making his sister executor and leaving 75% of his estate to his caregivers. The daughter contested this second will. This case differs from the first case because here the caregivers were involved in almost every aspect of the preparation of the second will in which they became beneficiaries. The court found some evidence of a confidential relationship. There was also evidence that the caregivers isolated the testator from his daughter. The court held that the jury verdict in favor of the daughter was authorized by the evidence.

### **Probate Court retains jurisdiction over estates after removal for construction.<sup>11</sup>**

Administration was pending in Probate Court. It became necessary to construe the will. This was not an Article 6 court and the will construction issue was removed to Superior Court. After the case was referred to Superior Court, the parties filed additional pleadings there. The Superior Court construed the will, did not rule on the other matters, and sent the case back down to the Probate Court. A party appealed. Held: the appeal was not proper. The administration of the estate remains pending in the Probate Court and the order construing the will in Superior Court was not a final order subject to direct appeal.

**continued page 11**

<sup>1</sup>*Ward v. Morgan*, \_\_\_\_ Ga. \_\_\_\_, 629 S.E.2d 230 (2006) [April 25, 2006]

<sup>2</sup>It has been said that "there is no statute of limitation upon the time within which a will may be probated ... and if a will is finally offered, its proof and record cannot be denied upon the ground of delay by the propounder, nor because of acts on his part from which an estoppel might arise in other cases." *Walden v. Mahnks*, 178 Ga. 825, 174 S.E. 538 (1934). If that still be true, and the six month rule only applies "as to limitation" as is specifically stated in that statute, how was the six month rule applied to this situation where there is no limitation? In other words, how can a rule intended to

give one six months to file upon dismissal if the statute of limitations has expired be applied in a case where there is no statute of limitations to expire?

<sup>3</sup>*English v. Ricart*, 280 Ga. 215, 626 S.E.2d 475 (2006) [February 13, 2006]

<sup>4</sup>*Ray v. National Health Investors, Inc.*, \_\_\_\_ Ga. App. \_\_\_\_, \_\_\_\_ S.E.2d \_\_\_\_ (2006) [June 21, 2006]

<sup>5</sup>*Ray v. Jolles*, \_\_\_\_ Ga. \_\_\_\_, 629 S.E.2d 250 (2006) [April 25, 2006]

<sup>6</sup>*In Re Estate of Barr*, \_\_\_\_ Ga. App. \_\_\_\_, 630 S.E.2d 135 (2006) [April 13, 2006]

<sup>7</sup>*Greenway v. Hamilton*, \_\_\_\_ Ga. \_\_\_\_, \_\_\_\_

S.E.2d \_\_\_\_ (2006) [June 26, 2006]

<sup>8</sup>*Anaya v. Coello*, \_\_\_\_ Ga. App. \_\_\_\_, \_\_\_\_ S.E.2d \_\_\_\_ (2006) [May 25, 2006]

<sup>9</sup>*Smith v. Liney*, \_\_\_\_ Ga. \_\_\_\_, \_\_\_\_ S.E.2d \_\_\_\_ (2006) [June 12, 2006]

<sup>10</sup>*Bailey v. Edmundson*, \_\_\_\_ Ga. \_\_\_\_, \_\_\_\_ S.E.2d \_\_\_\_ (2006) [May 17, 2006]

<sup>11</sup>*Bandy v. Elmo*, 280 Ga. 221, 626 S.E.2d 505 (2006) [February 13, 2006]

<sup>12</sup>*Field v. Mednikow*, \_\_\_\_ Ga. App. \_\_\_\_, \_\_\_\_ S.E.2d \_\_\_\_ (2006) [May 12, 2006]

# Photo Gallery



*Traffic Seminar*

*June 29, 2006*



# Report on the National College of Probate Judges Fall Conference

Anchorage, Alaska • September 9, 2006

William J. Self, II, Judge, Probate Court of Bibb County

It's true! Alaska is unbelievably and indescribably beautiful! What a joy it was to attend NCPJ's Fall Conference in Anchorage. Fellow Georgia judges Woody Jordan (Forsyth County) and Steve Burkhalter (Floyd County) also attended.

2006 Fall Curriculum Chair, Judge Jack Puffenberger [Lucas County Probate Court, Toledo, OH], presented an excellent educational program for the attendees. The program topics and speakers were:

• **Effects of Aging Population on Probate Courts**

Prof. Rebecca Morgan, Stetson U. College of Law

• **Probate Paralegals**

Victoria Newman, PACE Reg. Paralegal

• **Anna Nicole Smith and the Probate Exception to Federal Jurisdiction**

Prof. Theresa Radwan, Stetson U. College of Law  
Adam Streisand, Esq., Los Angeles, CA

• **Planned Giving and the NCPJ Legacy Society**

Hon. John Maher, Rockingham County, NH  
Robert Brink, Esq., Anchorage, AK  
David Hillemeier, CLU, Anchorage, AK

• **Private Guardianship Certification**

Sally Hurme, Esq., Nat'l Guardianship Foundation  
Terry Hammond, Esq., Exec.Dir., NGA  
Betty Stanley, RG, Pres., NGA

• **Tribal Justice Alaskan Style**

Hon. Alicemary Closuit, Probate Master, Fairbanks  
Diane Payne, Children's Justice Spec., Tribal Law Policy Institute, Anchorage  
Wilson Justin, Board Member, Alaska Native Justice Center, Anchorage

Our conference and the awards banquet were held at the Anchorage Hilton. Hon. Arnold H. Gold, retired probate judge from Studio City, CA, was the recipient of the 2006 Treat Award. Hon. John Kirkendall, Washtenaw County Probate Court, Ann Arbor, MI, ascended to the Presidency of NCPJ. Hon. Joseph A. Egan, Ridgefield Probate Court, Ridgefield, CT was elected as President-Elect, and Hon. Irvin G. Condon, Charleston County Probate Court, Charleston, SC was elected Secretary-Treasurer. Hon. William J. Bate, Passiac County Probate Court, Paterson, NJ, and Hon. John W. Voorhees, Bath ME were reelected to the Executive Committee. Hon. Mike Wood, Harris County Probate Court, Houston, TX was elected as a new member of the Executive Committee. Hon. Jack Puffenberger (OH), Ms. Mary Joy Quinn, Probate Director, San Francisco Superior Court, and I will continue on the Executive Committee, with our terms expiring next year.

In the next few weeks, you will each receive a letter from me about some changes and improvement initiatives being undertaken by NCPJ to encourage new and renewed memberships. I do hope that a majority of Georgia Probate Judges will find it desirable to join, re-join or remain a member of NCPJ.



**Judge Ray Broadrick (Whitfield County) and Justice Robert Benham (Supreme Court of Georgia) at the Law Day Ceremony and Open House for the newly expanded Whitfield County Courthouse, May 4, 2006.**

# News from the County & Municipal Probation Advisory Council

By Lisa Durden, Asst. Director for Regulatory Services

## NEW LEGISLATION

Senate Bill 44, which brings all city and county probation systems under the regulatory authority of the County and Municipal Probation Advisory Council (CMPAC), was signed into law by Governor Sonny Perdue in May. Since the signing of this important piece of legislation, the Council has been working diligently to prepare for the July 1, 2006 effective date and subsequent report to the Legislature in January 2007. This Council previously provided oversight to only private probation providers in Georgia. With the incorporation of city and county probation systems, the umbrella of the Council was greatly expanded.

## NEW RULES

On July 12, 2006, the Council met at the Georgia Public Safety Training Center in Forsyth, Georgia, and adopted necessary Council rules amendments incorporating the requirements found within SB 44 as well as the adoption of certain Council rules which will improve the quality of the oversight of all misdemeanor probation systems in Georgia. By

working with GMA and ACCG, Staff identified and mailed out over 700 notices regarding the new law and requirements. Additionally, CMPAC Staff Director Ashley Garner and AOC staffer Pamela Dixon have been busy identifying and locating those governmental entities providing misdemeanor probation services in Georgia.

## ORIENTATION

The 2007 registration period is from October 1, 2006, through December 31, 2006. During this time, ALL governmental entities providing probation supervision must register with the Council. This registration period coincides with the annual registration renewal period for private providers. On September 20th and 21st, staff will conduct Orientation sessions for the governmental entities which will cover the registration process, Council rules, and reporting forms. These Orientation sessions will be held at the AOC Macon office. Private providers that are currently registered with the Council will not need to participate in these sessions. A web-cast

is being scheduled during the month of October and all misdemeanor providers will be invited to participate.

## LEADERSHIP RECOGNIZED

On August 17, 2006, during the quarterly CMPAC meeting held at Jekyll Island, Georgia, Judge Jim Burton was honored for of his outstanding leadership during the past year as Chairperson of the Council. The Council also recognized Judge Neal Dettmering for his work during the past year as Vice-Chairperson. Both Judge Burton and Judge Dettmering made significant contributions in preparing the Council for the upcoming changes due to the changes in the statute. The Council elected Sheriff Steve Cronic of Hall County as Chairperson and Mr. Michael Nail of the Department of Corrections as Vice-Chairperson for the 2006-07 year.

Information about the Orientation sessions and the Council rules may be found at [www.georgiacourts.org](http://www.georgiacourts.org) under Councils / Probation Advisory Council, or by contacting Ashley Garner at the AOC at 478-471-5778.

# Mark Your Calendar

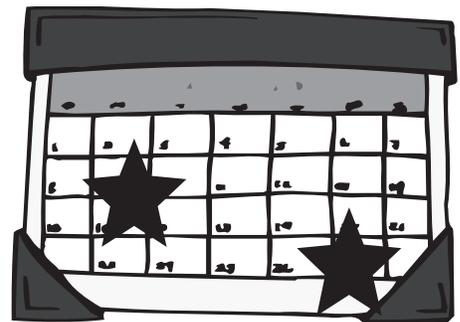
## 2007-2010 PROBATE JUDGES SPRING SEMINARS

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

## PROBATE CLERKS 2007 CERTIFICATION

May 23 - 25, 2007  
The Ridges Resort •  
Hiawassee, Georgia

August 22 - 24, 2007  
Jekyll Island Club • Jekyll  
Island, Georgia



## COAG CONFERENCE DATES

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

## Board of Court Reporting Rules Revisions

By Lisa Durden, Asst. Director for Regulatory Services

Several amendments have been made to the Board of Court Reporting rules. Earlier this year, the Board voted to recommend these revisions to the Judicial Council of Georgia, and the Judicial Council approved these revisions at its meeting on August 29, 2006. The revisions are to the Rules and Regulations, Section A, Article 3.A. and Article 9.D. The revisions are as follows:

### A. The Certification Process

1. **Written Exam.** A written exam will be administered by the Board as part of the certification process. The written exam consists of objective questions on court reporting, spelling, grammar, and medical and legal terminology. The use of a dictionary or other reference materials will not be permitted during this written portion of the test. Once the written portion is passed with 80 percent accuracy, credit will be given for all future exams, unless an applicant's certificate has been revoked. Passing the written exam is a prerequisite to taking the Takedown and Transcription portion of the exam.

2. **Takedown and Transcription.** An applicant must pass each of three sections as follows: The dictation portion of the test exam will be given at speeds of 200 wpm for the Questions and Answer section, 180 wpm for the Jury Charge section, and 160 wpm for the Literary section. For each section, there will be two five-minute dictations using different material for each. Applicant, however, will turn in only one transcript per section.

Each applicant shall take down this dictation in writing, voice, or other form of personal takedown. Voice writers and machine shorthand reporters must be completely inaudible from a distance of three feet, and will be tested for quietness.

The applicant will be allowed four hours to complete the transcription. The test packet sent to candidates by the Board prior to the exam will list the permitted types of equipment which may be used during the exam. A minimum passing grade on each section shall be 96 percent accuracy.

All sections of the dictation portion must be completed in the same method of takedown. If an applicant chooses to change methods, all sections previously passed must be retaken. Only one method may be used during any one testing period.

### D. Sanctions for Not Meeting Training Requirements

3. **Notice of Suspension.** A Notice of Suspension will be sent to any reporter who has not met the ten credit hour training requirement for the previous year. Effective January 1, 2007 a Notice of Suspension will be sent to any reporter who has not met the ten credit hour training requirement for the previous year by December 31st. Suspension is immediate, but individual requests for extensions of time will be considered on a case-by-case basis, according to Part I.D of the CRTC Rules.

The Board of Court Reporting Rules may be found at [www.georgiacourts.org](http://www.georgiacourts.org) under Commissions and Projects / Board of Court Reporting. Paper copies of these revisions will not be mailed; however, if you would like to receive a paper copy, please contact:

Aquaria Smith, Program Manger  
Board of Court Reporting  
244 Washington St., S.W., Suite 300  
Atlanta, Georgia 30334-5900  
Phone: 404-651-8707  
Email: [smitha@gaaoc.us](mailto:smitha@gaaoc.us)

## Case Law Update *cont.*

### *Who may sue on behalf of an estate?*<sup>12</sup>

Usually the personal representative is the person to manage estate litigation, but not always. In this case, the decedent conveyed real estate to the executrix prior to his death. The deeds had some serious problems not important here. Since the executrix was the recipient of the deeds, she did not bring an action to set the deeds to herself aside. Two siblings who were beneficiaries under the will brought a suit to set the deeds aside. The personal repre-

sentatives do not have the exclusive right to bring this type of action. The Supreme Court held that where a personal representative refuses to pursue a claim by the estate to set aside an allegedly invalid deed, the beneficiaries of the estate may do so. The court felt it important that the plaintiffs were beneficiaries under the will, not just heirs at law. This fact demonstrated "...a sufficient interest in the property to maintain a suit in equity for the cancellation of the deeds."

**Please Recycle**



## Cognitive Disabilities Conference Hosted in Atlanta

The “Persons with Cognitive Disabilities and the Courts Conference” held recently at the State Bar Conference Center in Atlanta attracted 70 local and national participants. Sponsored by the Georgia Commission on Access and Fairness in the Courts and the State Coordinator for the Americans with Disabilities Act, the conference focused attention on improving access to the justice system for this specialized group of court constituents.

A workshop entitled *Judicial Perspectives* presented by Judge Cindy Morris of the Conasauga

Judicial Circuit and Judge Susan P. Tate of Athens-Clarke County Probate Court offered insight on



(Left - right) Judge Susan Tate, Judge Cindy Morris and Mr. Marc Wilkerson, State ADA Coordinator's Office moderate the “Judicial Perspectives” workshop.

the ethical obligation of judges in assisting cognitively-disabled defendants while also maintaining impartiality and fairness. Often cognitive disabilities are not easily

identifiable and may become apparent to the judge during the course of a hearing.

Mr. Ron Braswell, Program Director for the Albany Advocacy Resource Center, participated in the *Programs for Individuals with Developmental Disabilities* panel

which discussed local criminal justice programs designed to assist defendants with cognitive disabilities.

Contact Ms. Stephanie Chambliss, AOC Court Services Division, at (404) 463-3927 for additional information or to receive a report of the conference proceedings.

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## News from the Ninth District

The Probate Judges of the ninth district met Wednesday, October 18th and elected new officers. They were as follows: Director: Mary Jo Buxton, Johnson County; Vice Director: Helen Harper, Laurens County and Secretary/Treasurer: Rubie Nell Sanders, Montgomery County.

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## The Gavel

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