

THE GAVEL

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

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MESSAGE FROM THE PRESIDENT



Greetings everyone! This is my first article in "The Gavel" and I look forward to this and future opportunities to address you as your President. I am pleased to report all the exciting events taking place involving the Georgia Council of Probate Judges. First, I would like to report on the exceptional COAG Conference that began on August 13th at St. Simon Island. Michael T. Smith, County Administrator for Gwinnett County, did an excellent job of covering the various issues he encounters in administering estates and handling conservatorship accounts. Michael T. Smith's superb performance was apparent both during and after his presentation, when several judges attending the conference indicated that they would like another conference at which Mike would provide training to their county administrators.

Judge Darin McCoy gave a comprehensive lecture on Marriage Issues and Judge Kelley Powell covered Hot New Issues. One of the most interesting speakers was Judge Bill Clifton, who we fondly referred to as Bill Clinton, because one of the topics he spoke about was sexual harassment in

the work place. According to Judge Clifton, federal courts go to great lengths to protect judges who render judicial decisions. Judge Clifton discussed the circumstances when a judge removes his or her robe and begins dealing with administrative issues involving staff where judicial immunity may not apply.

The next hot topic I would like to mention is the upcoming Strategic Planning Session scheduled for September 24-26, 2007, at the Brasstown Valley Resort in Young Harris, Georgia. Travel expenses will be reimbursed to invited participants from Council Funds. This event will serve as a forum to address legislative issues at the forefront of the Probate community as well as other concerns. Committees will be given an opportunity to meet during this session as well. Therefore, I encourage all Probate Court Judges that are invited to attend. The session will end with the

Legislative Committee meeting. The Georgia statutes of interest will include the following:

1. OCGA § 44-4-1 concerning appointment of processioners.
2. OCGA § 15-9-127. Additional concurrent jurisdiction with superior courts. Add to the jurisdiction of Article Six Probate Courts the power to construe wills pursuant to OCGA § 23-2-92.
3. Modify OCGA § 15-9-120(2) to define "Probate Court" to mean "a probate court of a county having a judge who has been admitted to the practice of law for at least seven years. This would eliminate the need for a county population reaching a minimum size before the probate judge would have enhanced jurisdiction.
4. OCGA § 53-2-40 pocket part - Petition for no administration

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Probate Judge Executive Committee Minutes

Atlanta Sheraton Hotel • Atlanta, GA • January 23, 2007

Welcome and Opening Remarks

The Executive Committee meet on April 10th for a dinner meeting. The meeting was called to order at 7:10 p.m. Judge Cason welcomed everyone in attendance.

Approval of Minutes

Judge Cason called for a review of the minutes from the January 23, 2007 meeting at the Atlanta Sheraton Hotel in Atlanta, Georgia. Judges Harper and Griffin noted they were not in attendance at this meeting as reflected in the minutes.

MOTION: Judge Self, with a second from Judge Tate, moved that the minutes be approved with amendments to reflect Judges Griffin and Harper being absent. The motion passed unanimously.

Financial Reports

• Association Funds - Judge McCoy provided a three page Treasurer's Report on associated funds. His report indicated the Council's assets, as of March 31, 2007, totaled \$67,170.57, including \$41,974.10 from the investments from two certificates of deposits from First Georgia Bank. A written cash flow report detailing transactions from November 1, 2006 through March 31, 2007 was included in the treasurer's Report. This report showed the Association received \$10,037.50 from the County Officers Association of Georgia (COAG) for dues, \$36.00 for group photographs and outflows totaling \$13,323.10. Also included was a check register report from November 1, 2006 through March

31, 2007 detailing inflows totaling \$10,073.50 and outflows totaling \$13, 323.10 leaving a net total of - \$3,249.60.

MOTION: Judge McCoy moved that the association financial report be approved as presented. Seconded, by Judge Self, the motion passed with all in favor.

• State Funds – Ms. Murphy presented the report of State-appropriated funds activity as of March 30, 2007. Total funds appropriated for FY07 were \$60,138.00. The Council has an existing balance of \$2,702.54 with year-to-date expenses totaling \$57,435.46. Revenue from the sale of the handbook, standard forms and Westlaw subscriptions have been

received in the amount of \$11,713.02. Ms. Murphy added, three months of subscriptions have been paid from these funds bringing the total Council State funds available to \$6,737.86.

Judge Cason inquired as to what major expenditures remain for the fiscal year. Ms. Murphy responded per diem to members for this meeting would be paid from the current funds. Normally, meeting costs would also be paid but are being offset by vendor fees. Additionally, the monthly Westlaw subscriptions would still need to be paid as well as the contractual obligation to Judge Propst for the updating of the Probate Judges Handbook and Benchbook.

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Message from the President cont.

necessary. Propose legislation that would create a form similar to the certificate of award on a year's support action to be recorded in the deed room which would put title examiners on notice that a change in ownership of real property had been made.

5. Propose legislation to eliminate code section 53-5-3(2). Eliminate year's support as a trigger to prevent the probate of a will after five years have passed.

6. OCGA §15-9-4 Propose legislation to increase qualifications to run for probate judge in counties with populations of 50,000 or more to have obtained a four-year college degree or have four years experience as a paralegal or four years experience working in a probate court. Judges currently sit-

ting shall be grand fathered in. Eligibility and disabilities; restrictions on fiduciary role.

7. OCGA § 29-2-8 Termination of temporary guardianship; petition for termination of guardianship. Statute does not address situations where one or more temporary guardians file petition to terminate the temporary guardianship. See OCGA 29-2-31.

8. Propose legislation to allow probate judges in counties with populations of 500,000 or more to appoint an associate judge.

I invite your comments on my proposed legislative initiatives and any concerns you may have.

Walter J. Clarke, CPCJ President

Executive Committee Minutes cont.

Mr. Patterson expressed the Council's budget is being strained due to its contractual obligations to Judge Propst and the Westlaw subscription. Discussion took place regarding the Westlaw subscription. Judge Cason suggested a letter be sent to the entire Council notifying them the expenditure can no longer be afforded. It is the groups' consensus that counties who want to maintain the service can pay through their law libraries. Mr. Patterson noted 30 subscriptions have been issued to other classes of courts to date.

Motion: After a lengthy discussion, Judge Self moved to notify the probate judges via the listserv and the Gavel that effective July 31, 2007 they will be invoiced for the annual Westlaw subscription. If fewer than 55 counties maintain the subscription by July 31st the matter is to be brought back before the Executive Committee for further action. Being seconded by Judge Tate, the motion passed with all in favor.

Next, Judge Cason requested a \$5000.00 supplement from the Association funds to cover contractual obligations for Floyd Propst's updating of the Benchbook.

Motion: Judge Bracewell moved to approve the request for a \$5000.00 supplement from Association funds, with a second from Judge Buxton the motion passed with no dissent.

President Report

Judge Cason deferred her report.

Report from AOC

Ms. Lewis updated the members on staff changes at the Administrative Office of the Courts (AOC). Mr. Kevin Tolmich, formerly the Budget Officer at the AOC is now the Assistant Director for Planning. He joins the Planning and Research Division of the agency and is available to conduct strategic planning sessions.

The 2006 updates to the Probate Judges Handbook 2nd Edition are now available on CD. The CD contains PDF and Word versions of the document; copies will be distributed during the conference. The updated version will also be posted to the Council website within the next few weeks. In addition to this, as approved at the last Executive Committee meeting, I Present My Case has been posted to the Council website in Spanish and English.

Next, Ms. Lewis noted many requests are fielded for the Duties of Personal Representative of Decedents' Estates in Georgia pamphlet. This guide is in need of being updated due to changes in the statute and the AOC has not made any additional copies available for distribution. She has spoken with Mr. Alan Rothschild of the State Bars Fiduciary Law Section regarding updating the pamphlet since this was a project done previously in conjunction with the Council. Mr. Rothschild has stated if two judges would volunteer their time he could convene a panel to assist with the updating. Along the same lines, the Handbook for Guardians is in need of updating. Judge Self has updated the pamphlet into two separate booklets for Council consideration. Cost for printing would be in the range of about

\$1.86 per booklet. However, once usage is approved, the final version could be saved to PDF and uploaded to the Council website for access.

In final, Ms. Lewis announced the Council staff would like to endeavor in some new initiatives. Ms. Murphy has spoken with the Fiscal and IT divisions regarding the usage of the Pay Pal service for online payments for Handbook and Standard Forms purchases. There are plans for direct marketing regarding the sales of the Handbook, Standard Forms and Westlaw; in addition to a campaign to pursue subscribers delinquent in update payments. She then deferred to Ms. Murphy who showed members the area of the Councils website updated with the I Present My Case video. Following this Ms. Murphy attempted to show the members the probate resource section of the New Mexico Judicial Education Center website <http://jec.unm.edu/resources/judges-training-guides/probate-resource-guide.htm>. The site is very user friendly and illustrates the different resources available to the courts. Ms. Murphy was especially excited about the glossary on the site. There is currently a limited glossary on the GaProbate.org site. Ms. Murphy would like to see it expanded as well as adding a glossary to the Councils website.

Judge Cason requested two attorney judges to assist the State Bar in the updating of the Duties of Personal Representatives... Judge Jordan and Judge Self volunteered to aid in the project. Ms. Lewis will forward their names and contact information to Mr. Rothschild. She then suggest-

Probate Judge Executive Committee Minutes cont.

ed the Handbook be placed online in the PDF format for accessing. This would save the Council printing cost and aide in getting updates to the judges in a timely manner. The members were in agreement with adding the PDF version to the website but also continuing distribution of the CD version.

Committee Reports

Awards & Recognition Committee

– Judge Buxton reported in Judge Cranford’s absence the Awards Banquet scheduled for April 11th is set to go. All accolades have been purchased and are ready for presenting.

Benchbook Committee – Judge Propst proposed a \$500.00 increase for the 2007 updates of the Probate Judges Handbook, 2nd Edition and the Benchbook.

Motion: Judge Mullis moved to approve the \$500.00 increase for the 2007 updates of the Handbook and Benchbook. With a second by Judge Griffin, the motion passed with no dissent.

Next Judge Propst reported the Handbook on CD will be distributed during the conference. He then announced the Benchbook updates would also be available during the conference. It includes a revised table of contents, cumulative listing and an entirely new chapter four and seven. There are about 64 pages of updates. Chapters six and sixteen will be ready in November.

Caseload Committee – Judge Cason directed the members to the written report of delinquent counties for CY06 was included

behind tab four. As of April 3, 2007 there were a total of 42 delinquent counties. Judge Cason expressed the importance of reporting caseload and encouraged everyone to do so.

Court Rules and Forms Committee

- Judge Ferguson reported updated standard forms were sent to members in advance for review. The forms were updated with clerical changes. Judge Self noted the dates on the footnotes need to reflect the change date. Judge Ferguson moved to approve the changes with the footnote dates updated. Being properly seconded, the motion passed with no dissent. The forms will be presented at the Business meeting for Council approval.

Firearms Committee – Judge Tate stated judges have had questions about changes to the applications. She announced the Department of Drivers Services (DDS) said they would consider suggestions regarding social security numbers.

Legislative Committee- Judge Aspinwall deferred to Judge Bracewell. He reported he spoke with Mark Middleton; the session is still in progress. The proposed legislation for sealed guardianship files sponsored by Wendell Willaird passed out of the House. Judge Clarke explained he took the lead from some other states and language from the determination of parent’s rights in developing the proposed Bill.

Judge Bracewell further reported in regards to the amendments to Title 29, which attempts to change the confidentiality portion, the Bill has not been dropped.

Next, Judge Bracewell reported

Mark Middleton and Judge Cason meet with Representative Preston Smith regarding the supplemental budget request of \$60,000.00 for updating the guardianship videos. They are still awaiting the results of the appropriations meeting.

He then called on each legislative Co-Chair to report:

Elections – Judge Mullis reported there are two Bills regarding election registrars and office hours that should be monitored. She also noted the Federal government may be considering moving away from electronic ballots and returning to paper ballots (optical scan).

In final, Judge Mullis reported Mark Middleton assisted the Lanier County Senator with changing the language in the Bill to have the probate court judge serve as the chief magistrate. Judge McCoy added the Council needs to look into this type of legislation. It needs to be determined if this change is constitutional.

Traffic – Judge Ogletree reported SB125, the super speeder bill for two lanes or highways made it through the Senate. Also, HB254 which allows the judge’s discretion to issue temporary drivers permits to certain offenders was still alive.

Vital Records - Judge Baker reported there are currently three counties serving as test modules for the new vital records system.

Membership Committee - Judge Buxton reported the location of the hospitality available to the judges. She added there are seven

Probate Judge Executive Committee Minutes cont.

vendors at the conference and encouraged everyone to visit with them.

Mental Health Committee - Judge Tate reported she will be attending a Judicial Leadership Initiative representing the Council of Probate Court Judges. This will be a planning meeting regarding mental health policy headed up by Chief Justice Sears.

Newsletter Committee – Judge Davis reported the deadline for submissions for the Gavel is April 18th. It was reiterated, input is needed from everyone to make the newsletter a success. Anyone with submissions should contact either Judge Davis or Ms. Murphy.

Nominations – Judge McCoy reported the slate of Officers for the Executive Committee and Training Councils' Member at Large position is ready to be presented for the election scheduled for April 11th. Nominations are as follows:

Officers of the Council of Probate Court Judges
 President-Elect B Judge Lillis J. Brown to succeed Judge Walter J. Clarke, II
 First Vice President B Judge Tammy Brown to succeed Judge Lillis J. Brown
 Secretary-Treasurer B Judge Darin McCoy to succeed himself

Probate Judges Training Council
 Judge Kelly Powell for the position of Member-at-Large replacing Judge Darin McCoy

Probate Judges Training Council
 Judge Griffin reported the Training Council met earlier in the afternoon. The members

reviewed evaluations from the Fall and Winter COAG seminars. There was a presentation regarding cognitive issues in the courts from Ms. Silvia Gaines, Program Manager for the Georgia Committee of Access and Fairness in the Courts. Topics for the Summer COAG meeting scheduled for August 13-15, the June Traffic Seminar scheduled for June 27-29 and the Fall COAG meeting were all approved. She noted the Traffic seminar topics had to be approved by the Municipal Court Judges Training Council before becoming final. In final Judge Griffin reported the members also addressed judge delinquent for CY06.

Old Business

SJI Grant Proposals (update)

Judge Cason reported estimated costs for the updating of the Guardianships videos is around \$80,000.00. Estimates have been received. The Council expects to apply for and receive grant funds to complete the project with the assistance of the Judicial Liaison staff and Ms. Jane Martin, Assistant Director for Grants, AOC. This initiative will be of great benefit to the judges.

Fee and Fine Review

Judge Scoggins reported this initiative is an enormous undertaking. The Committee is still looking at the fees and fines. He will send an email out over the listserv next week regarding the fee and fine review.

Workload Assessment

Judge Cason reported the committee has met twice with the last meeting being earlier today. The members identified courts by

categories and discussed specific case types that will be reviewed during the process. Courts to partake in the study will be chosen soon. She encouraged judges to participate if chosen. In final, Judge Cason indicated a probate judge will be appointed as a representative on the Judicial Council Standing Committee; she would like to appoint Judge Kelly Powell for this position.

New Business

Floyd Propst Benchbook/ Handbook Contracts

Judge Cason reported the Committee met and discussed several different options in regards to the updating, distribution and usage of the handbook. One option in particular is the creation of a combined handbook for use by the probate judge and clerk. A survey will be distributed at the business meeting inquiring about usage, preferred version(s) and whether or not a combination handbook would suffice.

Adjournment

There being no further business, Judge Cason announced the next meeting date in conjunction with the Summer COAG Conference, August 14th. The meeting was adjourned the meeting at 9:15 p.m.

Respectfully,
 LaShawn Murphy, AOC
 For Judge Darin McCoy, Secretary

In the Spotlight ... Judge Torri Hudson

By Judge Sam Davis, Editor

From time to time we all seek a little bit of heaven on earth...looking for a place where we can forget about the cares of the office and just enjoy the solitude of a quiet life away from the daily grind of dealing with people in crisis.

For Judge Torri J. Hudson of Treutlen County, this solitude is found on the back of his four-year-old horse, a Tennessee Walker, or his three-year-old Buckskin mare or on a horse owned by his father.

"I've been around horses all my life. My dad had horses before I was born and I've never known a time when we didn't have horses," the first term Probate judge said. Judge Hudson, more affectionately known as "T.J." to his fellow Probate Court judges, can't imagine life away from horses. "I guess you could say I'm addicted to horses...once you get involved with them you can't get out."

Not only is T.J. an accomplished rider, he also breeds and trains horses, a task that he says can be done in a day but one that he takes weeks to do.

When he is not riding or training horses, he enjoys "just being around them," watching them eat, brushing them, or work-

ing around his barn that includes a tack room and four stalls. He admits he just likes the smell of horses.

"When a woman comes out to see me and she doesn't like horses or the smell of horses I quickly figure she ain't the woman for T.J." he jokingly added. But somewhere behind his ever-present smile you know there's a hint of truth to the statement.

While he has owned several breeds of horses, including Quarter horses, Appaloosas and Palominos, his favorite is the Tennessee Walker. "Sitting on a Walker is like riding in a Mercedes," he said. The gait of the Walker is a thing of beauty, he said, adding, "the gait makes riding a Walker like sitting in a rocking chair."

His life-long love affair with horses has not been without its pitfalls. "I've been bitten, kicked, thrown and stomped on, but every time you get thrown off you have to get up, shake off the dust and get back on. You have to show the horse whose boss and that you are not afraid. I'm not going to let an animal out do me."

Judge Hudson has scars on his right bicep to prove the biting

force of a horse. "I was 10 years old when this happened," he said as he showed off the ugly scars left by the teeth of an angry horse.

T.J. looks forward to the last weekend in July for the annual National Cowboy Day when he and other horse enthusiasts don their chaps, boots and cowboy hats for a three-day ride. "We have about 500 acres reserved for the ride. We camp out, cook wild hogs and just enjoy being in the outdoors with our horses," he said. This year he helped cook four wild hogs during the ride that was attended by about 100 riders from Georgia, North Carolina and South Carolina.

Judge Hudson, who has a degree in Criminal Justice from Mercer University in Macon, was a deputy sheriff prior to becoming the Probate Judge for Treutlen County, a place where he was born and raised. Judge Hudson is also the first male African American elected to a Probate Court.

"I enjoyed being a deputy sheriff and I really enjoy being the Probate Judge, but being on a horse in the middle of nowhere....well, that's my sanctuary."

Vital Events Registration System (VEIS)

Judge Darin McCoy, Evans County

Probate Courts and Health Departments that handle Vital Records have been eagerly awaiting the arrival of the Vital Events Registration System (VEIS). This electronic system will allow the direct registration of birth

records from the hospital and will allow any County Vital Records Office to issue certified copies of the birth record that occurred in Georgia. The system will eventually electronically register death records. The state has encountered

several problems with the systems, especially when more than 20 users are logged in at once. The system is currently down until further notice and modifications are currently being made.

CLARKE COUNTY AWARDED GRANT

Athens-Clarke County has been awarded a planning grant from the U.S. Department of Justice in the amount of \$45,000 to assist in the establishment of a mental health court. To increase public safety and make more effective use of limited criminal justice resources, the Superior and Probate Courts, working with the local mental health service provider Advantage Behavioral Health Systems as well as other groups, proposed to establish a mental health treatment court for offenders involved in the criminal justice system due to their mental illness.

This would actually be a program of Superior Court — a dedicated court docket for persons whose mental disorder was the underlying cause of the behavior that led to the arrest. This specialized docket, or calendar, would be managed by the Honorable David Sweat, Judge, Superior

Court of Athens-Clarke County, with backup assistance, as necessary, provided by Judge Susan Tate of ACC Probate Court. It is anticipated that judges in other Athens-Clarke County criminal courts would refer cases to the Mental Health Court. The program would divert eligible offenders whose crimes most likely would not have occurred were it not for their mental illness from jail into treatment. More incentives for individuals to enter into treatment and while holding them accountable during treatment would be built into the program through judicial rewards and sanctions, arranging community support services, and continuing supervision.

Experience in other communities shows that judicial supervision ensures effective mental health and substance abuse treatment, thereby reducing criminal behavior and leading to fewer arrests and less jail time while

improving the quality of life for the offender and their families. It is also the goal of the local group to achieve better transition planning for persons upon their release back into the community from the jail or hospital, as well as to explore all options for ensuring that treatment is readily available when needed, whether through the mental health court docket, or through traditional criminal or civil commitment.

The proposed Mental Health Court would be a joint endeavor with Athens-Clarke County Superior and Probate Courts; Athens-Clarke County Jail/Sheriff's Office and Police Department; Advantage Behavioral Health System, Inc.; the Mental Health Association of Northeast Georgia; and the Clarke County Chapter of the National Alliance on Mentally Illness.

Mark Your Calendar

COAG CONFERENCE DATES

COAG Fall 2007 Conference
November 12-15, 2007,
Savannah Marriott &
Savannah Hyatt •
Savannah, GA
(CPCJ Executive Comm. & Training
Council Meetings scheduled)

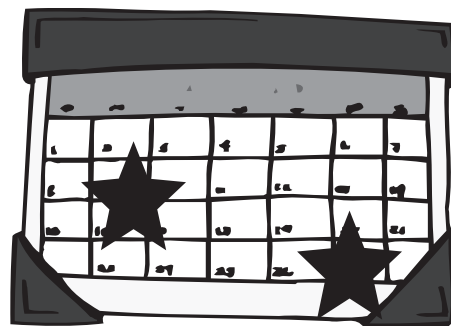
Winter 2008 Conference
January 28-30, 2008
Sheraton Atlanta Hotel,
Atlanta GA
(CPCJ Executive Committee
Meeting scheduled)

Summer 2008 Conference
T/B/A
(CPCJ Executive Committee
Meeting scheduled)

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

**2008 PROBATE JUDGES
SPRING SEMINAR**

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



2008 CLERKS/ SECRETARY TRAINING

May 28 – 30, 2008
Jekyll Island Club,
Jekyll Island GA

August 20 – 22, 2008
The Ridges Resort, Hiawassee GA

In Memoriam



Darien Mize, Field Operations Coordinator, Customer Service Licensing and Records Division. Darien is a former Georgia State Patrol Sergeant. He joined the Georgia State Patrol in 1985 and transferred to the Department of

Motor Vehicle Safety with the creation of the agency in July 2001. Darien was promoted to the Field Operations Coordinator position when the Department of Driver Services was created in 2005. DDS has established the “Darien

Mize Family Fund” at the DPS Credit Union for the benefit of his family. If you would like to make a donation, you may call the Credit Union at 404-624-7790. The account number is 17868.

Condolences to the family of **Juile Biddy**, former Director of the State Vital Records Division, who passed away on June 17, 2007 in Atlanta.

Condolences to the family of **Susan Garmon**, Chief Clerk Jackson County Probate Court

Retired Judge Margaret Peggy Hartman, Clarke County. She retired in 1997 after serving 20 years as Probate Judge for Clarke County.

Mrs. Robbie Nell Webb. Ms. Webb was married to the former Probate Judge, Johnny P. Webb and the daughter of Judge Susan Griner, Berrien County Probate Court.

Summer COAG Training

St. Simon's, GA



District 3 Crab Boil



St. SIMON'S, GA



Case Law Update

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

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

Incapacity, undue influence, and the Probate Court.¹

Son One filed a petition in Probate Court to be appointed his mother's guardian and conservator. Two days after filing, the Probate Court found probable cause and ordered an evaluation. Six days after filing, Mother conveyed her home to Son Two. Eight days after filing, Mother's doctor signed a written opinion that Mother was competent to manage her affairs. Twenty two days after filing, the appointed evaluator found Mother to be incapacitated because of dementia. The Probate Court then appointed Son One as conservator several weeks later. Son One sued to set aside Mother's deed to Son Two. The Court of Appeals held that at the initial incapacitated adult petition review stage when the Probate Court orders an evaluation, the proposed ward's incapacity "...remains an unproven proposition, not a proven fact." The court let stand the jury verdict which found Mother's deed to Son Two to be valid and free of undue influence.

An Article 6 Probate Court trying title to property.²

The Probate Court granted a petition for declaratory judgment regarding title to corporation shares. The appeals court held that clarification of the ownership of a company bears directly on what assets are in the estate and, therefore, there was a justiciable issue under Official Code of Georgia

Annotated, Section 9-4-4. (This code section involves declaratory judgments concerning trusts and estates and determining "...any question arising in the administration of the estate." This code section is one of those within the Article 6 expanded jurisdiction.)

Firearms applicant must wait for background check – even past 60 days.³

Settling an issue which has been discussed from time to time, the Court of Appeals held that the Probate Court must wait for the background check before issuing a carry permit, and that the 60 day issuance time limit is implicitly extended to accommodate reasonable delays in the investigative process. The Court of Appeals recognized there is "...a quandary..." and finally resolved the issue.

No pre-trial order?⁴

Watch out for that last minute amendment. This case simply points out that the old trick trial attorneys have used for ages to throw the opposition off balance can be used in Probate Court. An amended caveat was filed on the morning of trial. The Probate Court ruled it out as being untimely. The Supreme Court reverses, holding that because there is no pre-trial order, the pleadings can be amended at any time until the presentation of evidence begins.

A defective caveat to a probate can be amended after the 10 day answer period expires.⁵

In this case, the caveat as initially filed stated only that the will failed to identify heirs as being disinherited. The caveat was later amended outside the 10 day response period to add the grounds of undue

influence and lack of testamentary capacity. The Supreme Court held that the Civil Practice Act supplements the procedures set out in Title 53. An amendment to a caveat outside the answer period relates back to the original filing, even if the original filing did not contain facts sufficient to bring the case within the court's jurisdiction or is otherwise insufficient.

Another case in which the attorney receives will drafting instructions from those benefiting.⁶

This is another one of those cases where the set of children getting most of the property are the ones who went to the attorney and told the attorney what to put in Dad's will. The other set of children challenged the will. The jury found the will invalid, and found in favor of an earlier will. There were other facts involved, but the Supreme Court in upholding the jury verdict recited the facts surrounding the visit to the attorney and the fact that the other children were not told of the new will. All the facts authorized the submission of the question of undue influence to the jury.

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*Please
Recycle*



The National College of Probate Court Judges

<http://www.ncpj.org/>

The National College of Probate Judges was organized in 1968 to improve the administration of justice in courts with probate jurisdiction. The College was established in response to public concern with the time and costs involved in estate administration. It is the only national organization exclusively dedicated to improving probate law and probate courts.

Probate Courts are responsible for equitably handling many kinds of problems in our society. Though they deal primarily with the estates of deceased persons, probate courts also play an important role in protecting the rights of people with special needs -- the mentally ill, alcoholics, orphaned children, the aged, and developmentally disabled persons.

The major purposes of the College:

- To promote efficient, fair and just judicial administration in the probate courts and

- To provide opportunities for continuing judicial education for probate judges and related personnel.

These twin purposes are accomplished through a number of national and regional programs and projects, including conferences, publications and other materials

Goals

- To foster a court system that offers equitable and expeditious administration of estate and all other proceedings under probate jurisdiction.
- To encourage the preparation and distribution of materials that will aid in the administration of probate courts (for example, court practice manuals).
- To help probate courts take advantage of technological progress in court administration; for example, using computers for document management, court book-keeping, and fiduciary

accounting.

- To sponsor regular seminars and courses for the continuing education of probate judges and court personnel.
- To publish and distribute educational brochures and periodicals.
- To provide a continuing educational program as well as other measures that will improve probate judicial administration.
- To cooperate with other legal judicial organizations in efforts to improve judicial administration.
- To be a research and learning resource for judges and scholars studying probate administration.
- To assist in drafting modern probate legislation and provide expert opinions regarding proposed legislation.
- To encourage, where applicable, the preparation and adoption of standardized uniform practice procedures, both within and between states.

Case Law Update *cont.*

Quick takes on four cases:

1. A Probate Court cannot declare an act of the legislature unconstitutional when the issue is not properly raised in the pleadings.⁷

2. A will is construed according to the law in effect at the time of the testator's death. The intention of the testator must be sought.⁸

3. When the Probate Court issues its final judgment, the appeal must be filed within 30 days. A

motion for reconsideration or a motion to set aside does not stop that 30 day time from running.⁹

4. A person not a party to a year's support proceeding cannot appeal the Probate Court's grant of year's support.¹⁰

¹Chesser v. Chesser, 284 Ga. App. 381, 643 S.E.2d 764 (2007)

²In re Estate of Wallace, ___ Ga. App. ___, 645 S.E.2d 19 (2007)

³Moore v. Cranford, ___ Ga. App. ___, A07A0316 (May 25, 2007)

⁴Henderson v. Henderson, 281 Ga. 553,

604 S.E.2d 254 (2007)

⁵Deering v. Keever, ___ Ga. ___, S07A0419 (June 11, 2007)

⁶Lillard v. Owens, 281 Ga. 619, 641 S.E.2d 511 (2007)

⁷In the Interest of J.R.R., 281 Ga. 662, 641 S.E.2d 526 (2007)

⁸Folsom v. Rowell, 281 Ga. 494, 640 S.E.2d 5 (2007)

⁹In re Estate of Clarence E. Thomas, ___ Ga. App. ___, A07A0126 (May 31, 2007)

¹⁰Booker v. Booker, ___ Ga. App. ___, A07A0110 (June 30, 2007)

The 6th District Meets!

The 6th District met for what is estimated as the first time in 25 years. There were six judges out of 11 present. The following officers were elected: Judge Self, Chairperson, Judge Howard, Secretary. It was a positive meeting and exchange of ideas and concerns. We discussed a wide range of topics a few were: illegal alien issues, developing standards

for probate judges, and the workload assessment study.

In response to concerns about the workload assessment study, Judge Self wrote a letter to Dr. Greg Arnold which included the data he has compiled so far. Pending Dr. Arnold's response Judges, Blackwell, Greene, Howard and Self suspended participation. In

particular the consensus being that the forms need to be reworked or fully explained to result in uniformity among the participating courts.

All present were appreciative of Judge Greene's hospitality and the great lunch he provided.

Pat Howard, Putnam County

Thank You

Judge Cranford,
I just wanted to say thank you for the gift card I received from the Council of Probate Court Judge at the Spring Seminar. It is much appreciated!

Best Wishes,
Stacy Harvey, ICJE

I wish I could thank each probate judges individually for the appreciation you have shown me. I can by placing an announcement in the GAVEL!! Thank You, Thank You and Thanks again! You are such a wonderful group to work for and work with.

LaShawn Murphy, AOC

The Georgia Association for Women Lawyers (GAWL)

The Georgia Association for Women Lawyers (GAWL) is pleased to announce our half-year membership rates, available as of July 1, 2007. Membership benefits available under the half-year rates will be renewable at regular membership rates after December 31, 2007. The current membership rates are as follows: members of the judiciary and public interest attorneys, \$25; all other licensed attorneys, \$45; and law students, \$10.

GAWL is an exciting and dynamic organization, and we encourage you to take advantage of this opportunity to explore the benefits of membership. To join, please visit our website at www.gawl.org

For more information, contact Pilar Prinz, VP Membership (770-858-1288, pprinz@cpmas.com) or Kathy Harrington, Chair Membership (770-914-1413, kathy@patentax.com)

Congratulations!!!

Judge Lillis Brown graduated May 12, 2007 from John Marshall Law School. The ceremony took place at the Woodruff Arts Center's Rich Auditorium.

Judge Lee Deloach on the arrival of grandson - Mixon Stowe Deloach, born April 30, 2007 at 2:20 P.M.

District Three Minutes of Regular Meeting

August 3 Meeting

A regular meeting of the District 3 Judges was called to Order on August 3, 2007, at 12:00 p.m. at the dining room of the Georgia Tech Hotel and Conference Center, in Atlanta, Georgia, with the Honorable Kelley Powell (Henry County) presiding as Chair. The following District 3 Members were present:

The Honorable Kelley Powell, Henry County
The Honorable Lillis Brown, Rockdale County (Treasurer)
The Honorable Pam Ferguson, Clayton County
The Honorable Martha Stephenson, Fayette County
The Honorable Jeryl Rosh, DeKalb County

Invited Guests:

The Honorable Susan Tate, Clarke County
The Honorable Bill Self, Bibb County
The Honorable Keith Wood, Associate Judge, Cherokee County
LaShawn Murphy, Administrative Office of the Courts
Yolanda Lewis, Administrative Office of the Courts

NEW BUSINESS:

- Prior to the meeting, the attendees were given a presenta-

tion by Bob White, Director of the Henry County Development Authority, and Em Mosier, Communications Coordinator with the Georgia Resource Center.



The presentation outlined resources available at the Georgia Resource Center.

- Discussed ongoing concerns regarding the Probate Court Workload Assessments
- Judge Lillis Brown was honored by the 3rd District Council of Probate Judges for her recent graduation from John Marshall Law School.

Next, Judge Lillis Brown presented the Treasurer's Report for review.

Minutes prepared by Keith Wood, Secretary Pro Tem
August 6, 2007

August 13 Meeting

Numerous Probate Court judges

and their families joined the Third District Association at its meeting on Monday, August 13, 2007, which featured a Low Country Boil at Village Creek Landing, St. Simons.

At a short meeting to discuss several topics of concern, Forsyth County Probate Court Judge Woody Jordan informed Third District members of a proposal for an amendment to the firearms license statute which would make the statute more uniform and reasonable. The amendment would provide that, notwithstanding any exceptions in the Georgia statute, any person having completed three years free from charges after conviction

of a misdemeanor could be considered for approval of a license. Probate Court Council President Jim Clarke noted that the Legislative Committee will next meet in September at the Council's strategic planning session. The Third District members voted to endorse this proposal to the Legislative Committee at that meeting.

With no further business to attend to, the meeting was adjourned by Third District Legislative Committee President Kelly Powell.

Respectfully submitted,

Kipling L. McVay
Acting Secretary, Third District Judges

Fifth District Probate Judges' Meeting

May 3, 2007

Those in attendance for the 5th District Probate Judge's meeting in Hart County on Thursday, May 3, 2007 were as follows: Probate Judges Greg Adams, "Hoppy" Royston, Susan Sexton, Henry Baker, Tammy Brown, Beverly Nation, Mike Bracewell, Jim Burton, David Anglin, Bob Smith and Betty Thomas.

The meeting was opened with a welcome by Host Judge Bob Smith. Hart County provided fruit, pastries, and coffee for our enjoyment. The host County also opted to finance lunch for the entire group.

President Henry Baker offered prayer at the beginning of the discussions. The financial report was

accepted as presented. There was discussion on such topics as Indigent Defense and the problems in the District Attorney Office of Piedmont Circuit.

Judge Mike Bracewell reported on the Legislative Session. Pulaski County was the only successful county in local Nonpartisan legislation. Additional bills are as follows:

SB266 Misdemeanor for failing to bow to GSCCCA gods.

SB193 Health Care for County Elected Officials

HB24 Georgia Health Care Act (sent to Governor)

HB39 I can't remember

HB89 Hand gun in automobile (did not pass)

HB111 Delayed Birth Certificate (gives authority to Probate Court

similar to Superior Court)
HB235 Incapacitated Adults – For ability to consent to medical treatment

HB415 Permit for Suspended Drivers under age 21

HB527 Probation fees

Judge Hoppy Royston announced a meeting on June 21, 2007 in Danielsville with FBI for training re information via the Internet.

The next meeting of the Association is set for August 30th in Wilkes County.

Respectfully submitted,
Jim Burton

The Gavel

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