



Judicial Council of Georgia

Court Fee Committee

Minutes of Meeting on February 24, 2005 at 1:30 p.m.

110 Holiday North Drive, Suite B

Macon, Georgia

A. Members present:

Judge Hugh W. Stone	Chair
Ms. Elizabeth Blackwell	Clerk, Gwinnett County Recorder's Court
Mr. Carlton W. Blair, Jr.	Clerk/Court Administrator
Judge Edward E. Carriere, Jr.	Dekalb County State Court
Judge John Kinsley Edwards, Jr.	Valdosta Municipal Court
Judge J. Mike Green	Magistrate/Probate Court of Jones County
Judge E. Wayne Jernigan, Sr.	Juvenile Court of Marion County
Ms. Sherri Lanford	Clerk, Probate Court of Bibb County
Judge Robin W. Shearer	/Clerk, Clarke County Juvenile Court
Mr. P. Vinson Harris	Associate Director for Administration (AOC)
Mr. Bob Bray	Assistant Director, Training and Development

Judge Hugh W. Stone opened the meeting at 1:30 p.m. he introduced himself, welcomed everyone, and asked everyone present to introduce him or herself.

B. Items of Interest and Handout Materials:

Each member received a packet of handouts which included the following materials:

- Meeting Agenda
- Minutes from the Previous Committee Meeting
- Draft of Proposed Mission Statement
- Bond Fee Assessment Chart
- 7 Legislative Recommendations of the GSCC Authority to improve Fee Practice
- State of the Judiciary 2005 by Chief Justice Norman S. Fletcher
- Filed House and Senate Bills as listed Infra

C. Approval of Minutes:

Minutes were approved as submitted and will be made available on the web site next week at <http://www.georgiacourts.org/councils/courtfeescomm.html>.

D. Old Business:

a. Report on the Georgia Superior Court Clerk's Cooperative Authority by Judge Stone

i. Judge Stone went to the GSCCCA (hereinafter referred to as the Authority) open forum meeting on December 10, 2004 attended by representatives from a cross-section of courts, a representative from the Public Defender's Standards Council, the Authority representative from the Attorney General's office, and their lobbyist was there as well as officials from interested agencies and organizations. The meeting gave the Authority lots of input and information about ten items that they wanted to address about changes to former HB 1EX. They discussed problems associated with criminal fees and those associated with civil filing fees such as the one identified by judges of Probate Courts requesting a clearer definition of what actions the fees apply to. The meeting then

examined specific issues related to fees. The most significant recommendation was to remove the criminal sanctions associated with reporting requirements. The attendees discussed that there are sufficient penalties in place that address individuals that do not fulfill their official duties and responsibilities. Municipal Courts did not know who was ultimately responsible for fee disbursement under their processes since many of the tasks are performed by other city officials. They discussed restoring the reporting requirements of the local victim's assistance back to the county and they discussed some problems associated with bonds forfeitures. The Audit function was discussed and there is no good system in HB 1EX for that function. Some Superior Court judges are waiving the state mandated fees. Judge Stone believed that it was a good meeting.

ii. Judge Stone reported that the Authority met as scheduled on January 12, 2005 and took the points raised at the December meeting and refined them from several points down to 13 points. The Authority reported that they were told that no legislation would be permitted without the Governor's approval. If the Governor does not support the proposal then they will not introduce it. Without the sanction of the Governor the Authority was not going to introduce any amendments to HB 1EX.

iii. The Authority met again on February 2, 2005, Judge Stone reported, and refined the 13 points to 7 points which are included in today's packets. No Bills have yet been filed that relate to these 7 items of interest other than the Bill on Local Victim Assistance and a Bill has been introduced to clear up the definitions for Probate Courts which states that if we open up an estate proceeding – the fee surcharges are only collected once at case initiation. A discussion was held about utilizing a flat fee of 30%. It will be interesting to see how this develops because everyone spent a lot of money to modify or rewrite technology to reflect the legislative intent of HB 1EX and any changes would create more rewrites and expense to repeatedly update software applications. How is the pie to be divided? The Attorney General is drafting a Bill that would give Auditing authority to GSCCCA, at least to selected courts that they do not think are functioning. Information on the money collected by the Authority was presented. The Authority has collected a little over \$31 million since the implementation of HB 1EX. A report was presented on the courts that were complying between July and November of 2004 and the percentages of courts in compliance have fallen off since then – there are fewer courts in compliance since July. The Authority has conducted several training classes and handed out balance sheets showing the flow through of the collections and Judge Stone found it interesting that there was a \$2.3 million liability to the indigent defense fund. The Authority lives off of the funds they collect quite efficiently and they have an impressive computer room and are able to operate for three days with their backup generators. Also handed out was a report on the courts that are not in compliance (again July – November). According to the Authority, more juvenile courts are in noncompliance than the other courts. Municipal courts were not listed.

iv. Assistant Director Bob Bray reported on the court fee calculator available on the Authority's web site and proffered that there are now many examples of new fee legislation that promote different principles and concepts and that we as a group need to be both knowledgeable and conversant about in order to articulate to others the specific impacts they may have on the judicial branch. Questions involving the appropriateness of changes such as a flat percentage and a "division of the pie" to beneficiaries ensued.

One member commented that a judge should only be concerned about the punishment sentenced and not the fees and surcharges or the people who might benefit from these funds. Once the fine is established – everything related to fees is immaterial to the judge in the aspect of how the fine is to be determined. Another member asked the question as to whether there was a number or percentage statewide that indicated the collection rate on fines and fees. Judge Stone agreed that such information would be quite useful and all of the committee members participated in a lively discussion of this and correlating issues. Associate Director Harris of the AOC noted that the number of pending Bills clearly indicates that the use of fees added to criminal fines and civil fillings is like a runaway train and that there should be a statement perhaps from the Judicial Branch that establishes what the best practice should be for Georgia. Discussions by the committee members raised the following questions: Should we reconfigure this practice to utilizing just one fee as a percentage that is added from which the beneficiaries dip into the bucket? At what amount should the percentage be set? What are the drawbacks? Why are the funds that benefit from these surcharges not funded through budget processes? Judges Jernigan, Judge Edwards and Judge Shearer noted that municipalities focus on fines assessed by their judges and anticipate certain revenues generated from fines and if the judge wants to remain as the judge they must accommodate those expectations. Judge Shearer gave an example of being approached by her county officials to discuss how the juvenile court might contribute to increasing revenues – when juvenile courts generally do not impose fines except for traffic offenses. Recorder’s Court Clerk Libby Blackwell stated that she has to fill out a revenue projection form indicating how much she anticipates that she will collect from fines for the year, and the county finance office may reject her number and impose a higher number. She is also expected to raise those numbers every year and last year she protested when the county officials made her increase her revenue anticipations. Judge Edwards identified a major concern that the other two branches of government are now placing upon the judicial branch a “taxing-to-generate-revenue” requirement which historically never existed before and may adversely impact the fundamental purpose of courts and impair their ability to fulfill their role in government. The question raised is should courts tax? Judge Shearer noted that the judicial branch has come under some tremendous criticism during this legislative session that is totally unwarranted and based upon incorrect information. On one hand the judicial branch is criticized as being inefficient and on the other the legislature places more taxing authority upon the courts, creating greater inefficiencies. Municipal courts feel as though they are catching a vast majority of the criticism, yet it is acknowledged that they generate and collect most of the surcharges assessed even as the amounts to be retained by the governing authority ever diminish. Such practices seriously threaten the justifications for the existence of such courts.

b. Report of the Subcommittee on the Mission Statement by Chair Elizabeth Blackwell

i. Subcommittee Chair Elizabeth Blackwell reported that the Mission Statement Subcommittee met on January 14, 2005 at Houston County Superior Court and was hosted by Superior Court Clerk Carolyn Sullivan. The proposed mission statement that the subcommittee drafted and being presented broke it down into three elements:

1. The Court Fee Committee should be the cognizant resource on court fee practice; the place to seek and obtain information on surcharges and fees;

2. Provide a forum to discuss issues, laws and practices related to surcharges and fees and their impact upon the judicial branch;
3. Make recommendations as necessary to the Judicial Council.

As an example, Associate Director Vince Harris noted that initiatives by the Clerks' Authority to audit courts would require research to explore the ramifications of such a fiscal examination by the Executive Branch and related funding problems related to the making of such an audit. Judge Stone shared the position of the Clerks' Authority and several items that would be necessary to audit courts on issues related to surcharge fee practice. Recorder's Court Clerk Elizabeth Blackwell shared how audits can be abused to hide political agendas instead of legitimate purposes. The discussions also focused on the Clerks' Authority's enforcement of surcharge collections while at the same time directly benefiting as a fee beneficiary. The issues surrounding audits would be one that needs to be referred to a committee to examine and make appropriate recommendations to the committee with possible actions on behalf of the Judicial Council.

The proposal by the subcommittee was presented with an amendment to add the following words "court fees" so that the mission statement would read as follows:

Draft Mission Statement of the Court Fee Committee as amended

"The mission of the court fee committee of the Judicial Council is to be the cognitive resource of all laws, rules, regulations and issues pertaining to court fines and assessments; to provide a forum to identify court fee concerns and issues that impact the Judicial Branch of state government; and to make recommendations to the Judicial Council."

The Chair noted that subcommittees can further our mission and he will later discuss the need for two subcommittees. One could examine legislation and research how other states are handling this practice; and another can provide a forum to listen to what people have to say and can collect field reports and observations of fee assessment and collection practices in the courts and see the impacts on implementation of these laws; and when we meet as a whole we can marry what we learn to determine some course of action that may need to be addressed and presented to the Judicial Council when it is appropriate.

The mission statement as amended was adopted by the Court Fee Committee by unanimous consensus.

E. New Business:

a. Pending Legislation to Date:

i. Assistant Director Bob Bray identified some of the pending legislation that has been filed to date during this session that will impact court fee practice in Georgia. The proposed legislation was presented as an example of the varied methods and concepts that are introducing themselves into the thinking behind the drafting of these Bills. The following Bills were mentioned:

HB 64 - reduces confinement in probation detention and diversion center may impact the court's ability to collect fines, fees and restitution.

HB 77 & 79 - provide for the a DATE fee to also go to local juvenile diversion

- Programs.
- HB 192 - LVAP not reported to GSCCCA, but restores process to remit funds to local jurisdiction.
 - HB 172 - Restitution in criminal cases and juvenile actions, enforcement as for civil judgments.
 - HB 176 - New subclass of crime with fine only on traffic violation bureau offenses, adds new category for license suspension for failing to pay a fine.
 - HB 242 - Requires detailed red-light camera information and reports to Legislative as well as to Executive Branch.
 - HB 294 - (Mentioned but not included) Civil traffic offense of speeding by photographic device.
 - HB 366 - Opt out of Public Defender Standards Council
 - HB 413 & 414- Adds \$8.00 technology fee in Magistrate and Probate cases in Lumpkin County.
 - HB 419 - Fines for speeding on interstate highway goes to state.
 - HB 475 & 476- Superior Court Clerks as clerks for other courts, increases fees assessed for Superior Court Clerks Retirement Funds.
 - SB 101 - Right to elected judge to hear or try a matter.

b. Fees Assessed on Bonds:

i. Next Bob Bray discussed the Bond Fee Assessment Chart included in the handout packet. This chart indicates the fees associated with criminal cases that are to be assessed on bonds. It was noted that the practice of assessing fees on bonds, especially cash bonds that are common in traffic cases, is not understood and that courts are assessing and collecting fees that are not required by law to be assessed. We will be incorporating this tool in the court fee training provided by the AOC and included in the publication on court fees in Georgia. Judge Stone agreed that this practice needed to be examined further.

c. Creation of Subcommittees and Appointments

i. *Legislative and Research Committee*

To look at legislation and the practice in other states to come up with ideas for Georgia.

Judge F. Gates Peed, Chair
 Carlton Blair
 Judge John Kinsley Edwards, Jr.
 Judge J. Mike Green
 Judge/Clerk Robin W. Shearer
 Carolyn Sullivan

ii. *Reports and Implementation Committee*

To gather observations from the field or court experiences to determine the impact of implementation of fee practice and how to improve the process. Included in the purview of this committee would be to identify the problems associated with cloudy or confusing interpretations of fee statutes, opinions and rules.

Judge Edward E. Carriere, Jr. Chair
Libby Blackwell
Judge E. Wayne Jernigan, Sr.
Sherry Lanford
Judge/Court Administrator Stefani Searcy
Judge Susan P. Tate

The Committee staff will be in touch with the Chairs of these committees to establish a meeting schedule along with the appropriate details and should be held prior to the next Committee meeting on May 26th. The *Legislation/Research Committee* should be focusing on the legislation that was passed in this session and examine the practice in other states, such as South Carolina that imposes a flat fee of at least 100%. The *Reports and Implementation Committee* should be examining the practice associated with fees assessed on Bonds and other problems associated with fee practice and collection of the monies assessed. Judge Stone will serve as an *ex officio* member of both subcommittees and will attend subcommittee meetings as his schedule permits. Judge Stone suggested that the subcommittees concentrate on meeting in central locations as much as possible.

d. Related Fee Matters

i. Associate Director Vince Harris asked about the determination of civil filing fees and the issues related to their imposition under new methods of filing such as E-Filing of pleadings and case documents. It would be helpful as we discuss fees assessed in courts that we identify best practices so that these may be shared by the courts.

F. Announcements:

The subcommittee members will be notified in writing of their appointments and direction of focus and should hold at least one meeting before the next scheduled Court Fee Committee meeting on May 26th.

G. Next Committee Meeting:

The next scheduled meeting of the Court Fee Committee will be held at 1:30 p.m. on Thursday, May 26, 2005 at a place to be announced later.

H. Adjournment:

The meeting was adjourned at 3:45 p.m.

Respectfully submitted,

Bob Bray
March 4, 2005



Mission Statement Subcommittee Members (l-r) Carlton Blair, Stefani Searcy, Carolyn Sullivan, Bob Bray and Libby Blackwell