

**BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS
STATE OF GEORGIA**

SUPREME COURT
OF GEORGIA
FILED

2009 JUN 11 PM 3:51

THE CLERK

In re: **Inquiry Concerning
Judge Kenneth E. Fowler**

Docket No. 09-17

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NOTICE OF FORMAL PROCEEDINGS

TO: The Honorable Kenneth E. Fowler
Probate Judge of Twiggs County

This is to notify you that the Judicial Qualifications Commission (the "Commission"), after conducting an extensive investigation of the complaints against you has concluded that formal proceedings should be instituted for the purpose of determining whether you are guilty of violations of the Code of Judicial Conduct, willful misconduct in office, or other conduct prejudicial to the administration of justice, which brings your judicial office into disrepute. The purpose of these proceedings is to determine whether:

COUNT ONE

You violated Canon 2 or 3, or both, of the Code of Judicial Conduct, and the Constitutions of the State of Georgia and the United States, when you improperly stated to criminal defendants appearing before you in the Probate Court of Twiggs County that they carried the burden of proof to prove their innocence on the charges filed against them. Examples of this misconduct occurred on, but are not limited to, court sessions held on November 20, 2007, March 19, 2008, and October 28, 2008.

COUNT TWO

You violated Canon 1 or 2, or both, of the Code of Judicial Conduct, and the Constitutions of the State of Georgia and the United States, when you found various criminal defendants guilty, without first allowing those defendants to hear sworn testimony from the charging peace officer or other witnesses. Examples of this misconduct include, but are not limited to the following:

On July 26, 2005, during a driving under the influence charge, you allowed evidence of a blood test to be introduced without permitting the defendant to examine the witness who drew the blood for the test;

On March 20, 2007, you held a bench trial and without hearing any evidence for either the defendant, Michael Wayne Adams (Case # 07-T-11860) or any representative of the State, found Mr. Adams guilty of the charges against him.

Neither the arresting officer, nor any other witness for the State or the defense, was called or appeared in court;

On April 24, 2007, you found a criminal defendant guilty based on notes written on the traffic ticket by the issuing officer. Neither the charging officer, nor other witnesses, appeared in court;

On July 17, 2007, you found a criminal defendant guilty based on notes written on the traffic ticket by the issuing officer. Neither the charging officer, nor other witnesses, appeared in court;

On August 21, 2007, you found a criminal defendant guilty based upon notes written on the traffic ticket by the issuing officer. Neither the charging officer, nor other witnesses, appeared in court.

COUNT THREE

You violated Canon 2 or 3, or both, of the Code of Judicial Conduct, when you attempted to dissuade various defendants from exercising their right to request that their cases be transferred to the Superior Court of Twiggs County for disposition. An example of this misconduct occurred on, but is not limited to, the following:

On May 15, 2007, a criminal defendant asked that his case be transferred to the Superior Court of Twiggs County. You stated: "Why you want to go to Superior Court? You done [sic] admitted to lying to me."

COUNT FOUR

You violated Canon 2 or 3, or both, of the Code of Judicial Conduct when you improperly expressed prejudgment or bias in criminal matters being heard before you in the Probate Court of Twiggs County. Examples of this misconduct include, but are not limited to, the following:

On April 19, 2005, during the trial of a traffic charge, you stated to the defendant: "I don't believe this officer would just stop you . . . I don't believe this officer made a mistake. This man knows his job;"

On May 17, 2007, during the trial of a speeding case, you stated to the defendant: "I believe this [officer]. He's wearing a badge. If he loses his credibility he loses his job. He must have had some reason to pull you over;"

On September 25, 2007, during the trial of a traffic case, you stated to the defendant: "If this [officer] is lying, he will lose his job. There must be some reason he stopped you;"

On November 20, 2007, during the trial of a speeding case, you stated to the defendant: "That radar ain't gonna be wrong. I've rode [sic] in them [sic] [patrol] cars;"

On July 29, 2008, you stated to a defendant: "You want to plea [sic] not guilty? What's gonna be your defense? From what I've heard, I don't know what your defense is gonna be. I don't see why we need to try this;"

You also stated to a defendant in court: "So you want to plea [sic] not guilty? Then I'll just bring the officer in here and let him prove you were drunk" while driving.

COUNT FIVE

You violated Canon 1 or 2, or both, of the Code of Judicial Conduct, and O.C.G.A. § 16-1-5, by failing to understand and apply the proper legal standard for a finding of guilt in criminal matters. Examples of this misconduct include, but are not limited to, the following:

On April 17, 2007, you stated when pronouncing a sentence of guilt "Based on the preponderance of the evidence, I find you guilty;"

On August 28, 2007, you stated when pronouncing a sentence of guilt "Based on the probable cause in this case, I find you guilty."

COUNT SIX

You violated Canon 1 or 2, or both, of the Code of Judicial Conduct when you gave false and misleading information to criminal defendants appearing before you as you explained the conditions of probated sentence.

You improperly described the conditions of probation, stating to various defendants that “any home or auto you are in, owned by anybody, is subject to a search at any time in the State of Georgia.” Examples of this misconduct occurred on, but are not limited to, the following court dates: May 15, 2007; June 26, 2007; August 21, 2007; and September 25, 2007.

COUNT SEVEN

You violated Canon 1 or 2, or both, of the Code of Judicial Conduct when, serving as the Magistrate Judge of Twiggs County, you improperly questioned and interrogated criminal defendants in derogation of your duties and in violation of the defendant’s rights. Examples of this misconduct include, but are not limited to, the following:

On November 4, 2002, you questioned an unrepresented juvenile suspected of a criminal act. You stated to the suspect: “Now tell me, what you got to say for yourself?” “Juvenile [Court] don’t [sic] come under me but I know the Juvenile Judge real good. I ought to call the Juvenile Judge right now;”

On October 18, 2002, at 1:00 a.m., you assisted a deputy sheriff with the questioning of an unrepresented burglary suspect. You stated to the suspect: "You want to waive your right to an attorney and get this over with?" "This deputy is gonna ask you some questions;"

On September 26, 2003, you questioned an unrepresented felony murder defendant about his alleged offense after the defendant had requested an attorney (Case # CR-03-629).

COUNT EIGHT

You violated Canon 1 or 2, or both, of the Code of Judicial Conduct when you, without statutory or other authority, allowed criminal defendants to "buy out" the community service portion of their criminal sentence.

The "fees" collected from various defendants through this unauthorized process were then deposited into an account with a local bank. That account was referred to as the *Middle Georgia Community Probation Services, LLC Community Service Account*. You maintained exclusive custody and control over holding and the disbursement of funds from this account by requiring a court order, signed by you, to be issued prior to all disbursements.

You also violated Canon 2 or 3, or both, of the Code of Judicial Conduct, and O.C.G.A. § 40-13-26, when you failed to either turn over or provide the

monies that were collected from the unauthorized “fees” to the governing authority of Twiggs County.

You violated Canon 1 or 2, or both, of the Code of Judicial Conduct, and O.C.G.A. § 16-10-20 (Making a False Statement or Writing), when questioned about all monies or other accounts maintained by you as the Probate Judge for Twiggs County when you provided a false official writing to the governing authority of Twiggs County.

You signed a document, dated September 9, 2008, which stated in part: “The following list includes all bank accounts held in an official capacity by this Office and, further, all financial activities of this Office have been transacted within these accounts.”

In making this statement you failed to disclose the *Middle Georgia Community Probation Services, LLC Community Services Account*, which was under your exclusive custody and control, to the governing authority of Twiggs County.

You further issued improper court orders, and other official documents, which then directed the payment of monies from the *Middle Georgia Community Probation Services, LLC Community Services Account*, for various expenditures decided and approved by you. Examples include of this misconduct include, but are not limited to, the following:

<u>DATE</u>	<u>CHECK #</u>	<u>PURPOSE</u>	<u>AMOUNT</u>
July 7, 2006	unknown	K-9 equipment	\$2,077.00
July 10, 2006	1256	Stop sticks	\$2,362.00
July 18, 2006	1259	Trailer repair	\$982.00
September 5, 2006	1262	Flashlight chargers	\$1,327.20
October 12, 2006	1264	Taser w/laser sight	\$909.78
October 30, 2006	1268	Truck equipment	\$240.40
November 8, 2006	1269	Taser camera	\$404.95
November 21, 2006	1270	Radar for State Patrol	\$1,615.00
January 15, 2007	1273	Radar for Sheriff	\$645.00
February 23, 2007	1275	Computer	\$609.96
March 5, 2007	1278	Camera	\$956.00
March 15, 2007	1279	Digital scale	\$995.00
May 1, 2007	1287	Tool boxes (x2)	\$670.00
May 1, 2007	1288	Window tint	\$300.00
May 11, 2007	1291	Trophies for schools	\$95.00
May 11, 2007	1292	Drug test kits	\$719.00
May 23, 2007	Unknown	Generator	\$1,499.99
September 18, 2007	1302	Bulletin boards (x4)	\$2,656.00
November 15, 2007	1306	Patrol car video system	\$2,620.00

March 4, 2008	1320	Headstone for deputy	\$708.08
March 11, 2008	1322	Electric drill	\$31.99
March 26, 2008	1325	Patrol car video system	\$2,620.00
March 26, 2008	1326	Hand-held intoximeter	\$805.00
July 21, 2008	1341	Drug test kits	\$340.00
August 4, 2008	1345	Camera for D.N.R.	\$682.00
August 15, 2008	1347	Patrol car repairs	\$3,514.60
September 12, 2008	1351	Catherine Battiste bus ticket	\$114.00

COUNT NINE

You violated Canon 1 or 2, or both, of the Code of Judicial Conduct, and O.C.G.A. § 15-9-60, when you ordered “costs” to be paid by defendants in amounts higher than allowed by law.

You improperly, and without legal authority, ordered the payment of “costs” in excess of \$25.00. Examples of this misconduct include, but are not limited to, court sessions on the following dates: October 25, 2005 (\$50.00); March 14, 2006 (\$33.00); May 15, 2007 (\$75.00); May 15, 2007 (\$100.00); June 26, 2007 (\$33.00); August 28, 2007 (\$100.00); September 18, 2007 (\$75.00); September 25, 2007 (\$75.00); November 20, 2007 (\$33.00).

COUNT TEN

You violated Canon 2 or 3, or both, of the Code of Judicial Conduct by failing to be patient, dignified, and courteous to individuals appearing before you. You have routinely used rude, abusive and insulting language towards parties appearing in Probate Court. During trials you often loudly argue with defendants and witnesses. Examples of this misconduct include, but are not limited to, the following court dates:

On July 17, 2007, during court, you screamed at a defendant to “shut up;”

On November 20, 2007, during court, you said to the defendant, “God damn, you [sic] asking for trouble;”

On March 19, 2008, you insinuated during court that a female defendant had provided sexual favors to a Georgia State Trooper who had stopped her for a traffic violation. (*State vs. Leslie Arbin Lash*, case # 08-T-772). According to witnesses, you stated to the defendant: “You must have really turned it on. You must be something good. You must have really showed [the officer] a good time;”

On August 8, 2006, and March 19, 2008, during court, you referred to African-American persons appearing before you as “colored;”

On August 8, 2008, you stated to a defendant during court: “Why you in Twiggs County? You got no business here.”

You have failed to perform your judicial duties diligently and to adhere to the requirement that the task of serving as a judicial officer must take precedence over all other activities. You have failed to show the proper decorum while presiding in Probate Court by improperly answering telephone calls, while sitting on the bench, thus interrupting court sessions. Examples of this misconduct include, but are not limited to, court proceedings held on the following dates: August 4, 2004; July 21, 2005; and October 26, 2005.

COUNT ELEVEN

You violated Canon 3(B)(7) of the Code of Judicial Conduct by initiating and considering *ex parte* communications. Examples of this misconduct include, but are not limited to, the following:

On August 4, 2005, while speaking to defendant Roderick Dewayne Curry, you stated in court: "This game warden done [sic] told me all about your case" prior to court;

On March 20, 2007, while speaking to the arresting officers, you stated in court: "Ya'll talked to me about this case. And I done [sic] a little investigating, which I am bad to do;"

On April 17, 2007, you stated to a defendant: "Your grandmother come [sic] and see [sic] me about your case;" (*State v. Lowery*)

On October 20, 2008, you allowed Judge Brian Tiller, a judicial officer from Bibb County, to influence you with regard to a DUI case involving his friend. (*State of Georgia vs. Darin S. McClure*, Case # 09-T-1418)

COUNT TWELVE

You violated Canon 2 or 3, or both, of the Code of Judicial Conduct, when you improperly, and without lawful authority, disposed of criminal matters in your court that are outside the scope of your authority as Probate Judge.

You have improperly disposed of cases where defendants were charged with O.C.G.A. § 16-13-1 (Possession of Drug Related Objects), O.C.G.A. § 16-5-60 (Reckless Conduct), O.C.G.A. § 16-10-25 (Giving False Name), and O.C.G.A. § 16-5-70 (Cruelty to Children). This misconduct occurred, but is not limited to, the following court dates:

July 21, 2005, Case # 05-T-2416 (Possession of Drug Related Object);

July 26, 2005, Unknown case # (Cruelty to Children);

July 29, 2005, *State vs. George B. Warren* (Giving False Name);

May 15, 2007, Case # 07-T-12298 (Reckless Conduct);

June 26, 2007, Unknown Case # (Possession of Drug Related Object).

COUNT THIRTEEN

You violated Canon 1 or 2, or both, of the Code of Judicial Conduct when you became involved in a judicial matter not properly before your court and used the prestige of your judicial office to improperly influence a litigant.

On or about August 6, 2008, you called a tenant on behalf of a Twiggs County property owner, and after identifying yourself as the judge for the Probate Court of Twiggs County, ordered the tenant to vacate a rental property. This action led to an assault on the person of Jackie Waller. (*State v. Cheryl Ann Bryant*, Twiggs County Incident Report #2008-09-343)

You also violated Canon 2 or 3, or both, of the Code of Judicial Conduct, and O.C.G.A. § 16-10-70 (Perjury), when, on October 23, 2008, during a hearing in Magistrate Court involving the assault of Ms. Waller and after a lawful oath had been administered to you, you made a false statement to the Magistrate Judge of Twiggs County denying your involvement with either Ms. Waller or Ms. Bryant.

COUNT FOURTEEN

You violated Canon 1 or 2, or both, of the Code of Judicial Conduct by issuing court orders attempting to prohibit the sheriff of Twiggs County, or other lawful custodian of inmates, from awarding "good time" in accordance with

O.C.G.A. § 42-4-7. An example of such misconduct includes, but is not limited to, the following:

On July 29, 2008, you signed a court order which stated that an inmate, Kenneth A. Sawyers, “must serve every day” of a six month sentence.

COUNT FIFTEEN

You violated Canon 1 or 2, or both, of the Code of Judicial Conduct and O.C.G.A. § 15-9-34, when you illegally sentenced a defendant charged with contempt of court, to more than 20 days in custody.

On April 17, 2007, you sentenced a woman to imprisonment for 30 days for contempt of court.

COUNT SIXTEEN

You violated Canon 2 of the Code of Judicial Conduct when you improperly allowed unqualified persons to serve as interpreters in your court. An example of this misconduct includes, but is not limited to, the following:

On October 21, 2008, you permitted and allowed an individual, who acknowledged to the court that he could not speak Spanish, to attempt to act as an interpreter. Not only was this individual unqualified to serve as an official court

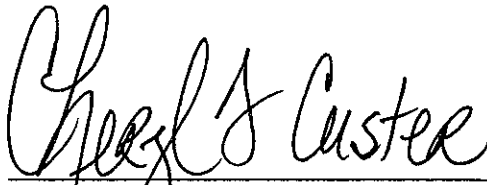
interpreter, he was also an acquaintance or friend of the defendant, thus calling into question his impartiality.

Pursuant to Rule 5(b) of the Rules of the Judicial Qualifications Commission, you are hereby notified that you have a right to file a verified answer with the Commission to these charges. Your answer shall be filed within thirty (30) days after service of these proceedings and shall consist of an original and six (6) copies.

Respectfully submitted this 11th day of June, 2009.



Benjamin F. Easterlin, IV
Chairperson
Judicial Qualifications Commission
Georgia Bar Number: 237650



Cheryl E. Custer
Executive Director
Judicial Qualifications Commission
Georgia Bar Number: 261695

Judicial Qualifications Commission
8206 Hazelbrand Road
Suite C
Covington, Georgia 30014

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Formal Proceedings** has been served upon the following by Hand Delivery and U.S. Mail, respectively, properly addressed and postage prepaid, on this the 11th day of June, 2009.

Hand Delivered by JQC Investigator, Richard Hyde, to:

Judge Kenneth Fowler
Probate Court of Twiggs County
425 Railroad Street
Jeffersonville, GA 31044

By Regular U.S. Mail to:

Jon Franklin Helton, Esq.
Hilbun & Helton LLC
910 Bellevue Avenue
P.O. Box 188
Dublin, GA 31040-0188



Cheryl F. Custer
Executive Director

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