**Outline for Overview of Probate Court**

I. What is Probate Court?

A. Court of record

B. Constitutional office

1. Probate Judge, Clerk of Court, Sheriff, Tax Commissioner

2. Independent of County Commission

3. For the most part, staff works for officer and not county

II. Where did Probate Court come from?

A. Constitution of 1798

1. Superior Court – Circuit Court

2. Justice of the Peace – Two in each “Captain’s District” nominated by the Inferior Court and handled civil matters with a $30.00 limit.

3. Inferior Court – County court and also Court of the Ordinary or Register of Probate. As Court of the Ordinary, would issue marriage licenses.

B. 1851 Amendment to Constitution of 1798 – Court of Ordinary became a separate entity from the Inferior Court

C. Constitution of 1868

1. Abolishes the Inferior Court and disperses duties to Superior Court and Court of Ordinary

2. Court of Ordinary is vested with powers over management of the county. Last two counties to hold such authority were

3. This version also gave the legislature the power to establish county commissions. Last counties to hold county governing authority stopped doing it in 1984 (Towns and Union)

D. State Highway Patrol Act of 1937

1. Vested the Court of the Ordinary with jurisdiction over misdemeanor traffic cases in counties where there was no city or county courts.

2. Still about 89 probate courts with this jurisdiction.

E. Constitutional amendment of 1974 was a ballot measure to change court of the ordinary to the probate court which went into effect on Jan. 1, 1975. One judge left who was an ordinary.

F. 1986 Legislation

1. Established Article 6 courts.

2. Original threshold was population of 150,000 at the last census.

3. Currently population of 90,000 at the 2010 census or any

subsequent census.

4. Attorney as judge

5. Currently 22 Article 6 courts with 8 other courts being “vergers”

III. Jurisdiction

A. Probate – O.C.G.A. §15-9-30(a)

1. Estates (Title 53)

2. Guardianship and Conservatorship (Title 29)

3. Mental health (Title 37)

B. Licenses

1. Marriage licenses – O.C.G.A. §15-9-30(b)

2. Weapons Carry licenses – O.C.G.A. §16-11-129

C. County duties

1. Administer oaths – O.C.G.A. §15-9-30(b)

2. Fireworks - O.C.G.A. §25-10-4

3. Miscellaneous or as designated by legislature

D. Criminal Jurisdiction when not superseded by another court

1. Traffic - O.C.G.A. §15-9-30(b)

2. Game and Fish – O.C.G.A. §15-9-30.3

3. Misdemeanors – O.C.G.A. §15-9-30.6

E. Vital Record Registrar/Custodian (About 112 judges)

F. Elections - O.C.G.A. §15-9-30(b)(2) when not superseded by a separate election superintendent

IV. Article 6 v. Non-Article 6 courts

A. Article 6 Judges have the same qualifications as a Superior Court judge.

B. Differences between Article 6 and Non-Article 6

1. Expanded Jurisdiction concurrent with Superior Courts – O.C.G.A. §15-9-127

2. Jury Trials – O.C.G.A. §15-9-121

3. Appeals are to Court of Appeals (mostly) O.C.G.A. §15-9-30.6

V. Concurrent jurisdiction with Superior Courts

A. Any probate court

1. Determination of heirs – O.C.G.A. §53-2-20

2. Amendment Birth and Death records – O.C.G.A. §31-10-23

3. Warrants for peace officers, LEO, teachers and school administrators for offenses committed while in performance of duties – O.C.G.A. §17-4-40

4. Writ of habeas corpus – O.C.G.A. §9-14-4

B. Article 6 courts

1 Orders to disinterment and DNA testing pursuant to O.C.G.A. §53- 2-27

2. Approval of Settlements under O.C.G.A. §53-5-25

3. Declaratory judgments under O.C.G.A. §§9-4-4, 5 and 6

4. Tax Motivated planning for Wards pursuant to O.C.G.A. §§29-3-36 and 29-5-36

5. Trust stuff

a. Appointment of new trustee pursuant to O.C.G.A. §53-12-201

b. Acceptance of resignation of trustee pursuant to O.C.G.A. §53-12-220

c. Conversion to a unitrust pursuant to O.C.G.A. §53-12-362

6. Direction and construction of a will O.C.G.A. pursuant to §23-2-92