COUNTIES & THE LAW

This edition of *Counties & the Law* includes decisions of interest to county attorneys published in the Daily Report Opinions Weekly between April 9, 2016, and April 15, 2016.

We welcome your suggestions and opinions regarding Counties & the Law. Please contact Kelly Pridgen at kpridgen@accg.org or Joe Scheuer at jscheuer@accg.org with your comments.

ANNEXATION

City of Lovejoy v. Clayton County

Georgia Court of Appeals
April 13, 2016; A15A0724

This case involves a purported annexation under the 60% method, O.C.G.A. 36-36-36. The Court of Appeals upheld a trial court granting of summary judgement to the county. The city failed to substantially comply with notice and opportunity for hearing requirements. The city failed to publish a notice that accurately described the property to be annexed and thus failed to provide pre-annexation notice to adjoining property owners. Since the notice was mandated by statute prior to the adoption of the zoning ordinance, the defect was not cured and the trial court could not correct the deficiencies and uphold the ordinance.

CRIMINAL MATTERS

Anderson v. Sentinel Offender Services, LLC

Supreme Court of Georgia
April 14, 2016; S15Q1816

{This case continues matters involved in Sentinel Offender Services v. Glover. See Counties and the Law 2014 Compilation Edition, pp. 32-33.}

The U.S.D.C. for the Southern District of Georgia certified two questions to the Supreme Court of Georgia: 1) Is tolling authorized for privately supervised misdemeanor probated sentences under Georgia common law? Yes. Under common law, a misdemeanor sentence, even one served on probation, is not extinguished by the passage of time, and any unserved term of that sentence may be enforced beyond the expiration of the original sentence. This principle tolls the expiration of the sentence and extends the jurisdiction of the sentencing court. 2) If so, has the common law rule that allows tolling of misdemeanor

probated sentences been abrogated by the Statewide Probation Act? No. Common law rules remain in force and effect unless expressly changed by statute or necessary implication. Probation is a creature of statute. Construing the Probation Act to abrogate common law tolling would render misdemeanor probation unenforceable in some case. A defendant could avoid a sentence by simply avoiding apprehension until the expiration of the original sentence.

Wright v. Brown

Georgia Court of Appeals
April 15, 2016; A15A1788

Under O.C.G.A. 42-12-7.2 of the Georgia Prison Litigation Reform Act, a prisoner cannot file as a pauper if on 3 or more occasions while incarcerated, the prisoner has filed actions in any court of this state which were dismissed as frivolous or malicious. The phrase "courts of this state" DOES NOT apply to actions filed in federal courts. Federal actions do not count as strikes under state statute.

Mallory v. State

Georgia Court of Appeals
April 11, 2016; A15A2343

A defendant was convicted of robbery, false imprisonment, and battery and sentenced to 10 years imprisonment plus 15 years' probation including banishment from the counties comprising the judicial circuit. Although the state constitution prohibits banishment beyond the limits of the state, nothing prohibits banishment from areas within the state. Banishment is permissible if not unreasonable and if it bears a logical relationship to the rehabilitative scheme of the sentence.

IMMUNITY

City of Hapeville v. Grady Memorial Hospital Corporation

Georgia Court of Appeals
April 11, 2016; A14A0724

{For prior opinion, see Counties and the Law 2014 Compilation Edition, p. 25.}

As a result of the Supreme Court decision in *Mitcham v. City of Atlanta,* the Court of Appeals in this case vacated its prior opinion and remanded the case back to the trial court to address the city's defense of sovereign immunity under O.C.G.A. 36-33-1.