AN EVALUATION
OF A PROPOSED MERGER
OF THE TRIAL COURTS
IN
COBB COUNTY, GEORGIA

TECHNICAL ASSISTANCE REPORT

Bureau of Justice Assistance
CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
A Joint Program of the Bureau of Justice Assistance, U.S. Department of Justice, and American University School of Public Affairs
TECHNICAL ASSISTANCE REPORT NO. 045

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OF THE TRIAL COURTS
IN
COBB COUNTY, GEORGIA

February 1987

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This report was prepared in conjunction with the EMT Adjudication Technical Assistance Project, under a Cooperative Agreement with the Bureau of Justice Assistance of the U.S. Department of Justice.

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I. Introduction

This report was prepared in response to a technical assistance request by Judge Michael Stoddard, State Court of Cobb County, Georgia, on January 8, 1987. The report was prepared under the auspices of the Adjudication Technical Assistance Project, which is managed by the EMT Group, Inc., under a cooperative agreement with the Bureau of Justice Assistance, United States Department of Justice. The technical assistance and the report were provided by Robert W. Tobin, an employee of the National Center for State Courts, whose services were made available under the terms of a cooperative agreement between the EMT Group and the National Center for State Courts. Mr. Tobin spent the days of January 19 and January 23 in Marietta, Georgia, interviewing the principal figures in the Cobb County judicial system and its support agencies and collecting relevant data. A few officials who could not be interviewed on these dates were contacted by phone. A phone conversation was also held with Robert Doss, Director, Georgia Administrative Office of Courts. This report is based on these phone and in-person interviews and on analysis of the information gathered in the site visits.

A. Nature of the Requested Assistance

A fairly broad consensus has developed in Cobb County in support of a merger between the Superior Court and State Court within the county (Cobb County constitutes a single judicial circuit). The rationale for the merger is that it will lead to a more efficient use of resources, particularly judicial resources, and that it may obviate the need for
creating a new judgeship on the Superior Court\(^1\) and adding new court facilities. Judge Stoddard, acting on behalf of the Cobb County judiciary, requested assistance on evaluation of the proposed merger and, if deemed necessary, suggestions on modification of the proposal or alternative means of increasing efficiency.

This report is, as requested, an evaluation of the proposed merger. It is organized in three major sections:

- the existing judicial system in Cobb County;
- the proposed court merger and its ramifications; and
- evaluation of the merger proposal.

B. **Existing Judicial System**

1. **Setting.** Cobb County is one of the fastest growing areas in the Atlanta metropolis and in the State of Georgia. The county has also been numbered among the fastest growing counties in the United States.

   The Atlanta Regional Commission (ARC) estimated Cobb County's 1986 population to be 392,000, a 31.7 percent increase from 1980. The ARC estimated that 78.1 percent of this growth was from immigration, much of it experienced in the I-75 corridor in the eastern end of the county. This growth has been accompanied by increased affluence, as indicated by the fact that Cobb County has led the metropolitan Atlanta region in per capita income through the 1980s.

   The county has a diversified economic base and a high level of business activity. What was once a relatively stable, agrarian county

\(^1\)Based on the weighted caseload system used by the Judicial Council, Cobb County is short one Superior Court judge. Creation of a new judgeship may be requested in the 1987 legislative session.
has become an urbanized area, characterized by a faster pace of life, by a more intense rate of social and economic interaction, and by more transiency and domestic turmoil. These factors, in addition to the increased population and greater affluence of the county, have quite naturally led to a higher rate of litigation, particularly in the area of domestic relations.

The county has also experienced political change with the rise of a strong two-party system and lively competition for elective office. The judicial system and its support agencies have many elected officials: the six Superior Court judges, the five State Court judges, the two Associates Judges, the Probate Judge, the Chief Magistrate, the District Attorney, the Solicitor, the Superior Court Clerk, and the State Court Clerk. Even though judges are elected on a non-partisan basis, the emergence of a strong Republican party has heightened the level of political competition and the level of office-holder insecurity. This has undoubtedly heightened sensitivity to voter views on increases in the size of the judicial system and on its efficiency in handling its caseload.

Cobb County is digesting a lot of change and adapting to a more complex social, economic, and political system. There is a widespread perception that more modern managerial techniques and greater organizational efficiencies must be introduced into the public domain. It is against this backdrop of heightened concern over efficiency that this report must be considered.

2. **Cobb County Courts.**

   a. **Court Organization and Jurisdiction.** The trial court system of Cobb County consists of:
the Superior Court (six judges) exercising general
subject matter jurisdiction and exclusive jurisdiction
over felonies and cases of divorce, title to land, and
equity;

the State Court (five judges, two associate judges)
exercising civil jurisdiction over all cases except those
within the exclusive jurisdiction of the Superior Court,
jurisdiction over misdemeanors, and traffic cases;²

the Juvenile Court (one judge) exercising jurisdiction of
cases involving deprived, unruly, and delinquent
juveniles;

the Probate Court (one judge) exercising jurisdiction
over wills, administration of estates, appointment of
guardians, mentally ill, and involuntary hospitalizations;

the Magistrate Court (one chief magistrate and nine
part-time magistrates) with jurisdiction over warrant
issuance, preliminary criminal proceedings, small civil
non-jury cases ($2,500 limit), and county ordinance cases.

There are a total of 25 judicial officers diffused over five
courts. This does not include City Recorder Courts. The foregoing
listing of courts is notable for three things: (1) jurisdictional
overlap in most civil matters and in minor criminal matters; (2) the high
number of organizationally separate courts; and (3) a three-tier
hierarchy of trial courts.

Jurisdictional overlap generally invites forum-shopping and
creates confusion for litigants and out-of-county attorneys. In Cobb
County, it has had the effect of overloading the Superior Court with
domestic relations cases and making the State Court the principal forum
for trial of major civil cases. This is somewhat ironic since the State
Court was created to relieve the Superior Court of minor cases. In

²Non-jury traffic cases are primarily heard by Division II (i.e., the
two associate judges).
actual practice, State Court judges not only hear the more complex civil damage cases but may also try felonies and domestic relations cases on transfer from the Superior Court. For all intents and purposes, the State Court is a trial court of general jurisdiction without the salary scale and status of such a court.

The present trial court hierarchy places Superior Court judges at the top, magistrates in the bottom tier, and State Court judges somewhere in between. The State Court judges have concurrent jurisdiction with the lower-tier judges in most matters and may, for example, hear non-jury traffic cases, as they did in 1986. Yet, under normal circumstances, State Court judges do not handle felony preliminaries, warrant issuance or non-jury traffic cases, nor do State Court judges handle a high number of Superior Court cases under the Judicial Assistance Act. Clearly, the State Court has an anomalous position, elevated above the limited jurisdiction court it once was, but not able to exercise general jurisdiction. There is no practical rationale for maintaining the State Court as sort of an intermediate trial court in a three-tier system.

Finally, the number of separate courts in Cobb County is excessive. There are at least five separate courts, not counting City Recorder's Courts. The Georgia Constitution proclaims the state court system unified, but the local court structure is very fragmented.

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3 The associate judges, who are by statute within the State Court, have been assigned to hear traffic cases and have not as yet integrated into the State Court.

b. **Court Support Systems.** The various courts of Cobb County have their own sub-systems of court-related agencies. The Superior Court of Cobb County has the largest sub-system, including: The Superior Court Clerk, the Superior Court Administrator, the District Attorney, and the Cobb County Probation Office of the Georgia Department of Corrections. The Superior Court chooses the Juvenile Court judge and has some supervisory powers over the Magistrate Court, so that in a general sense, these courts fall under the aegis of the Superior Court. In actual practice, however, these two courts are quite independent and have their own support systems— that of Juvenile Court numbering 43 persons and that of the Magistrate numbering 10 full-time employees and 14 part-time employees.

The Probate Court is quite autonomous and has a staff of 13 supporting the single judge. Unlike rural counties where Probate Courts hear traffic cases, the Cobb County Probate Court is primarily engaged in matters relating to the estates of decedents.

The State Court has its own sub-system, which roughly approximates the Superior Court sub-system: the State Court clerk, the Solicitor, a Director of Court Services, and a county-funded probation office. Figure 1 portrays the existing network of courts and court-related agencies in Cobb County.
The striking aspect of Figure 1 is the duplication of Superior Court and State Court support agencies. Each court has a separate office of administration, prosecution, clerical support and probation. The State Court support agencies have 107 employees, as compared to a total of 172 in the Superior Court.

<table>
<thead>
<tr>
<th>Support Agency</th>
<th>Superior Court</th>
<th>State Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court Administration</td>
<td>20*</td>
<td>3</td>
</tr>
<tr>
<td>Prosecution</td>
<td>47 (2 pt)</td>
<td>35</td>
</tr>
<tr>
<td>Clerk</td>
<td>65</td>
<td>47</td>
</tr>
<tr>
<td>Probation</td>
<td>38</td>
<td>22</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>170</strong></td>
<td><strong>107</strong></td>
</tr>
</tbody>
</table>

Source: 1986 salary survey for Cobb County legislative delegation. Also data supplied by the support agencies for this study.

*Most of these employees are engaged in support services for all trial courts.

Not included in the above figures are bailiffs in the State Court and the Superior Court. In its roughly 22 years of existence, the State Court has developed a very large supportive system, in addition to those personnel who are direct personal employees of the judges (three per judge in State Court). When the latter employees are included, the State Court has 122 employees, not counting bailiffs.

There are some strange overlaps between the Superior Court and State Court support systems. For example, both court administrators are involved in jury calls, the natural tendency being to ensure that judges in their court are not idle. Two separate jury calls greatly
increases the likelihood of over-call and poor juror utilization. The amount of money involved is substantial. The State Court empaneled 2,101 jurors in 1985 at a cost of $101,997 and 2,168 jurors in 1986 at a cost of $149,765. The Superior Court called 4,481 jurors in 1985 at a cost of $358,620 and 4,558 jurors in 1986 at a cost of $367,375.

The clerical support offices have very similar internal organizational structures and many common functions. It is not possible in a quick overview to state whether these offices are overstuffed or understaffed. If, however, employees of both offices are categorized by function, it is likely that there can be improvement in allocation, if not some savings in highly redundant areas (e.g., management and supervisory cost should decline). However, the major areas of efficiency may not occur in the personnel area, but in the following areas:

- space management (both offices apparently have space problems);
- reconciliation in recordkeeping procedures which differ in many details;
- common microfilming procedures (the Superior Court clerk has a microfilm unit which films documents as they are filed, while the State Court does historical microfilming); and
- computer software and coding compatibility (the Superior Court Clerk has a computer system independent of the county system which serves the State Court Clerk).

It literally makes no sense for two clerical offices in the same trial court milieu to be diverging on so many different aspects of recordkeeping.

The prosecutorial offices could merge with relative ease, although there are some legal problems—the elective status of the Solicitor and the necessity that all prosecutors become Assistant
District Attorneys. Managerially, the merger should be quite beneficial. Among the possibilities are:

- a much better career path for prosecutors, moving them in at the misdemeanor level and then increasing their responsibilities;
- a single intake process with enhanced screening of cases and more efficient plea bargaining;
- an end to cases being transferred between the offices because of jurisdictional questions; and
- probable benefits in the data processing area (particularly input) and in investigation.

Shortly after the inception of the State Court in 1965, the first State Court judge sought and obtained a county-funded probation officer. Over the years, a 22-person probation office has evolved. In general, judges prefer probation offices under direct court control, but the Cobb County pattern is unique in Georgia where probation is a state executive branch function. Recently, Fulton and DeKalb Counties have ended the practice of using county-paid probation offices. There appears to be no reason why Cobb County should provide this service.

c. Financing of Cobb County Judicial System. The Cobb County judicial system has a 1987 expenditure budget of $11,610,819. Adjusted for indirect costs, the expenditure budget totals $14,062,206. The judicial system covers 57.2 percent of its expenditures through revenues it collects, as indicated in Table 2.

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5Not all this money goes into the County General Fund. For example, the State Court Clerk reported collections of $4,437,534 in 1985-86, of which $3,708,213 went into the County General Fund. The rest went into various local special funds; only $11,150 went to the Department of Transportation. The state gets little revenue from trial courts.
Table 2. F.Y. 87 Judicial Budget Comparison  
Revenues vs. Expenditures

<table>
<thead>
<tr>
<th>Department</th>
<th>Revenue Budget</th>
<th>Expenditure Budget</th>
<th>Indirect* Cost</th>
<th>Total Cost</th>
<th>Coverage Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pretrial</td>
<td>-0-</td>
<td>134,362</td>
<td>19,534</td>
<td>153,896</td>
<td>0.00%</td>
</tr>
<tr>
<td>Clerk State Court</td>
<td>4,001,000</td>
<td>1,292,044</td>
<td>222,808</td>
<td>1,514,852</td>
<td>264.80%</td>
</tr>
<tr>
<td>Clerk Superior Court</td>
<td>3,229,000</td>
<td>1,627,943</td>
<td>309,548</td>
<td>1,937,491</td>
<td>166.70%</td>
</tr>
<tr>
<td>District Attorney</td>
<td>181,517</td>
<td>1,329,459</td>
<td>231,936</td>
<td>1,561,395</td>
<td>11.60%</td>
</tr>
<tr>
<td>Victim Witness</td>
<td>-0-</td>
<td>33,103</td>
<td>2,239</td>
<td>35,342</td>
<td></td>
</tr>
<tr>
<td>Magistrate Court</td>
<td>287,000</td>
<td>518,669</td>
<td>81,094</td>
<td>599,763</td>
<td>47.90%</td>
</tr>
<tr>
<td>Juvenile Court</td>
<td>3,000</td>
<td>1,168,202</td>
<td>208,597</td>
<td>1,376,799</td>
<td>0.20%</td>
</tr>
<tr>
<td>Probate Court</td>
<td>126,000</td>
<td>398,459</td>
<td>233,163</td>
<td>631,622</td>
<td>19.90%</td>
</tr>
<tr>
<td>Solicitor</td>
<td>94,000</td>
<td>916,096</td>
<td>162,334</td>
<td>1,078,430</td>
<td>8.70%</td>
</tr>
<tr>
<td>State Court Probation</td>
<td>-0-</td>
<td>428,848</td>
<td>136,822</td>
<td>565,670</td>
<td></td>
</tr>
<tr>
<td>State Court</td>
<td>-0-</td>
<td>1,582,702</td>
<td>471,187</td>
<td>2,053,889</td>
<td>0.00%</td>
</tr>
<tr>
<td>Associate Judges</td>
<td>-0-</td>
<td>192,439</td>
<td>12,733</td>
<td>205,172</td>
<td></td>
</tr>
<tr>
<td>Superior Court</td>
<td>112,246</td>
<td>1,488,438</td>
<td>331,279</td>
<td>1,819,717</td>
<td>6.20%</td>
</tr>
<tr>
<td>Indigent Defense</td>
<td>12,000</td>
<td>500,055</td>
<td>28,113</td>
<td>528,168</td>
<td>2.30%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>8,045,763</strong></td>
<td><strong>11,610,819</strong></td>
<td><strong>2,451,387</strong></td>
<td><strong>14,062,206</strong></td>
<td><strong>57.20%</strong></td>
</tr>
</tbody>
</table>

F.Y. 87 Budgeted Revenues $ 8,045,763  
F.Y. 87 Costs $14,062,206  
Total Costs Over Revenues $ 6,016,443

Source: Cobb County Finance Department, omitting the data on the Sheriff since the only court function of the Sheriff is provision of bailiffs.

*Indirect Costs are those costs allocated to the judicial system for administrative and other support services per the David M. Griffin study. This study is updated annually.
The Cobb County judicial system had 394 employees in 1985-86, excluding a considerable number of part-time employees (see Table 3). Roughly one-third of these employees were in the State Court.
<table>
<thead>
<tr>
<th>Court</th>
<th>Agency</th>
<th>Judges</th>
<th>Staff</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Superior</td>
<td>Court</td>
<td>6</td>
<td>18¹</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>Administrator</td>
<td>20</td>
<td></td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Clerk</td>
<td>65</td>
<td></td>
<td>65</td>
</tr>
<tr>
<td></td>
<td>District Attorney</td>
<td>47²</td>
<td></td>
<td>47</td>
</tr>
<tr>
<td></td>
<td>Probation</td>
<td>38</td>
<td></td>
<td>38</td>
</tr>
<tr>
<td></td>
<td><strong>Subtotal</strong></td>
<td></td>
<td></td>
<td><strong>194</strong></td>
</tr>
<tr>
<td>State</td>
<td>Court (Div. I)</td>
<td>5</td>
<td>15³</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>(Div. II)</td>
<td>2</td>
<td>2</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>Administrator</td>
<td>3</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Clerk</td>
<td>47</td>
<td></td>
<td>47</td>
</tr>
<tr>
<td></td>
<td>Solicitor</td>
<td>35</td>
<td></td>
<td>35</td>
</tr>
<tr>
<td></td>
<td>Probation</td>
<td>22</td>
<td></td>
<td>22</td>
</tr>
<tr>
<td></td>
<td><strong>Subtotal</strong></td>
<td></td>
<td></td>
<td><strong>131</strong></td>
</tr>
<tr>
<td></td>
<td>Juvenile</td>
<td>1</td>
<td>43</td>
<td>44</td>
</tr>
<tr>
<td></td>
<td>Probate</td>
<td>1</td>
<td>13</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>Magistrate</td>
<td>14</td>
<td>105</td>
<td>111</td>
</tr>
<tr>
<td></td>
<td><strong>Subtotal</strong></td>
<td></td>
<td></td>
<td><strong>69</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>394</strong></td>
</tr>
</tbody>
</table>

Source: 1986 salary survey for Cobb County legislative delegation; agency reports in connection with this study.

¹Excludes bailiffs.
²Excludes two part-time employees.
³Excludes bailiffs.
⁴Excludes nine part-time magistrates.
⁵Excludes five part-time clerks.
⁶Excludes six bailiffs.
Most of the judicial system employees are state-funded. Some receive a state check and a county check; others receive only a county check, and the state reimburses the county. The state support amounts to roughly $1,555,000 (see Table 4).
Table 4. State Funding of Cobb County Courts

<table>
<thead>
<tr>
<th>Direct State Salary Payment</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Superior Court Judges</td>
<td>$363,924</td>
</tr>
<tr>
<td>District Attorney</td>
<td>53,412</td>
</tr>
<tr>
<td>Superior Court Probation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>600,000(^1) (est.)</td>
</tr>
<tr>
<td>Subtotal</td>
<td>1,017,336</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reimbursement or Direct Salary(^2)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Administrative Assistants</td>
<td></td>
</tr>
<tr>
<td>6 with Judges</td>
<td>120,198</td>
</tr>
<tr>
<td>2 with District Attorney</td>
<td>42,190</td>
</tr>
<tr>
<td>Assistant District Attorneys</td>
<td>219,936</td>
</tr>
<tr>
<td>Clerk, Chief Judge, Superior Court</td>
<td>21,438</td>
</tr>
<tr>
<td>Child Support Staff, District Attorney(^3)</td>
<td>135,000 (est.)</td>
</tr>
<tr>
<td></td>
<td>538,762</td>
</tr>
</tbody>
</table>

Source: Superior Court Administrator; District Attorney’s Office.

\(^1\)Estimated from 1985-86 expenditures of State Court Probation, which is roughly 60 percent of the size of the Superior Court Probation Office. The state probation budget is hard to break down by county, necessitating the estimates.

\(^2\)Some state-funded employees receive a combined check and the county receives state reimbursement. Some state-funded employees are on the state payroll and receive a state check plus a county-paid supplement.

\(^3\)These salaries are reimbursed by the state, but the ultimate source is federal funding under the IV-D program.

If a court merger goes through, some other expenditures will become a state responsibility. It is estimated that the additional costs will amount to roughly $895,000 per year.
Table 5. Estimated Transfer of Costs From County to State Under Proposed Merger

<table>
<thead>
<tr>
<th>Transfer Item</th>
<th>Estimated Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net County Payment to Five State Court Judges$^1$</td>
<td>$217,000</td>
</tr>
<tr>
<td>5 Legal Administrative Assistants$^2$</td>
<td>100,000</td>
</tr>
<tr>
<td>5 Assistant District Attorneys$^3$</td>
<td>150,000</td>
</tr>
<tr>
<td>County Probation</td>
<td>428,000</td>
</tr>
<tr>
<td>Total</td>
<td>$895,000</td>
</tr>
</tbody>
</table>

Source: Consultant estimate.

$^1$Current county salary minus county supplement for Superior Court judges (roughly $43,500 per judge).

$^2$Assumes that current assistants will be state-funded pursuant to state law.

$^3$Assumes that some existing assistant district attorneys will become state-funded pursuant to state law.

d. Caseload and Calendaring.

(1) Caseload. The Superior Court of Cobb County is, by all major statistical indicia, an overloaded court. Data from the Georgia Judicial Council for the 1985 reporting year indicates that:

- each Superior Court judge in Cobb County had a weighted caseload of 891 cases, as opposed to a statewide average of 783 cases per judge;\(^6\)

- based on a Delphi weighted caseload system, the appropriate judicial staffing for the Cobb County Superior Court should be 7.56 as opposed to 5;

\(^6\)Nine hundred cases is considered a threshold figure, meaning that a court has moved into an overload situation.
the number of active open cases for each Superior Court judge in Cobb County was 934, ranking Cobb 24th of 45 circuits;

Cobb County felt compelled to use 103 days of senior judge-time, well above the statewide average of 48.6 per circuit; and

perhaps most significantly for future reference, it has been projected that in 1990, Cobb County will have the highest judge-to-population ratio in the state (1:72,829) and the fourth highest judge-to-active-attorney ratio in the state (1:122).

A further indication of overload is the fact that the Superior Court in 1986 used 194 days of judge-time provided by the Juvenile Court judge (96 days), the Probate judge (28 days), and the Chief Magistrate (60 days). In 1986, State Court judges were not available, but in 1985 State Court judges expended 327.9 hours conducting trials in Superior Court cases and also assisted the Superior Court in some non-jury matters for an estimated total of 500 hours--roughly 60-70 days. The State Court judges are more likely to take jury trials than the other judges used by the Superior Court.

The consistent trend in Superior Court caseload (as indicated in Table 6) has been upward, so that the overload will not abate by itself.

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7These requests are made pursuant to a statute which enables the Chief Judge of the Superior Court to request help from the Chief Judge of another court.
### Table 6. Superior Court Filings 1983-86

<table>
<thead>
<tr>
<th>Year</th>
<th>Domestic Relations/Divorce*</th>
<th>Other Civil</th>
<th>Criminal**</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>5,349</td>
<td>2,360</td>
<td>1,510</td>
<td>9,219</td>
</tr>
<tr>
<td>1984</td>
<td>5,218</td>
<td>2,216</td>
<td>1,813</td>
<td>9,247</td>
</tr>
<tr>
<td>1985</td>
<td>6,076</td>
<td>2,505</td>
<td>1,845</td>
<td>10,426</td>
</tr>
<tr>
<td>1986</td>
<td>5,979</td>
<td>2,539</td>
<td>2,173</td>
<td>10,691</td>
</tr>
</tbody>
</table>

Source: Superior Court Administrator

*Note that about 70 percent of civil cases are in the domestic relations area.

**These figures cannot be equated with indictments (i.e., prosecutor's caseload) which run much higher in number.

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In contrast to the Superior Court, the State Court does not appear to be an overloaded court. In 1986, during a legal dispute over the position of associate judges, State Court judges heard non-jury traffic cases and did so without significant loss of efficiency in handling their normal caseload (roughly 60 percent of State Court filings are traffic cases). During this period, the State Court was not able to accept transfer from the Superior Court, indicating the fragility of the transfer mechanism as an answer to Superior Court overload.

The basic caseload of the State Court is composed of misdemeanors and civil cases, but the court also handles a variety of other matters, such as landlord-tenant actions. The 1985 report of the Judicial Council of Georgia indicated the filings in the State Court to

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8However, the court often had to remain in session late in the day, causing some inconvenience. Moreover, to prevent judge-shopping, continuances were set ahead five weeks (the five judges took weekly assignments).
be: 5,798 misdemeanors; 39,527 traffic cases; 7,414 general civil cases; and 11,068 independent actions. These figures show a total caseload of 63,807, the bulk of which are minor cases, many of which do not reach the point of adjudication. The State Court has recognized this fact by accepting Superior Court cases before and since its brief stint in handling non-jury traffic cases.

The State Court judges are respected, as indicated by the way they are utilized by the Superior Court and by attorneys litigating civil cases. They would be used even more frequently were it not for the structural and jurisdictional barriers which currently exist.

(2) **Calendaring.** Both the State Court and Superior Court assign cases randomly to judges who then make their own calendars or call on the clerk to calendar their cases.⁹ There are, therefore, 11 separate calendars prepared without reference to the attorneys involved or other judges. This has obvious defects in terms of avoiding conflicts. It has the added drawback of discouraging transfer of cases between judges of the same court when individual calendars break down or when one judge draws an unusual number of complex cases.

Case management is not perceived as a role for the court as an entity, a perception which reflects itself in the limited power of chief judges and court administrators. While individual judge calendaring has many merits, it normally exists within some administrative framework. Such a framework is lacking in Cobb County.

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⁹Georgia's Rules of Court specify this type of system in multi-judge courts, but permit courts to use other systems.
e. Facilities. The present State Court building once housed both the Superior Court and the State Court and most of their support staff and agencies. It is symbolic of the court growth in Cobb County that each court now has its own building containing the various staff offices which have evolved over the years (probation offices are located elsewhere).

The State Court building is in many respects better than the Superior Court building—another irony of the strange relationship between these two courts. The courtrooms of the State Court judges are located on four floors of this building: two associate judges on the first floor, two courtrooms on the second floor, one on the third floor, and two on the fourth floor. Each judge in the upper floors has a commodious courtroom and adjacent chambers. The courtrooms are also flanked by various auxiliary rooms for witnesses, court reporters, clerks, etc. Architecturally, the State Court building is well laid out.

The Superior Court building is by comparison constricted. The courtrooms are less spacious, and there are five courtrooms for the six judges—all of them located on one floor. These courtrooms are used more fully than those in the State Court building, even though the latter facilities are clearly better for the conduct of jury trials. To rectify this space problem, the Cobb County electorate was asked to approve a bond issue for Superior Court facilities. The voters rejected the proposal, sending a message which elected officials have interpreted as a mandate to make better use of existing facilities and judges. The addition of a seventh Superior Court judge would exacerbate the space problem by requiring new facilities for a judge and a support staff, not to mention salaries (the county estimates that it takes $500,000 to launch a new judge).
One solution is, of course, the more flexible use of existing facilities and abandonment of the idea that every judge requires a personal courtroom. However, the organizational barriers between the courts render this difficult. In a way, the two separate buildings symbolize the structural barriers impeding the efficient use of court resources in Cobb County.
II. Proposed Changes

During the course of the study, a variety of Cobb County officials were consulted on the issue of improving the efficiency of the judicial system through merger of the Superior Court and State Court. These officials are all key figures in determining the future course of the Cobb County court system; most of them spoke not only for themselves, but for the court, agency, or group which they represented. The persons consulted in person or by phone were:

Roy Barnes, State Senator
Earl Smith, Chairman, Board of Commissioners
Watson White, Chief Judge, Superior Court
Grant Brantley, Judge, Superior Court
Michael Stoddard, Chief Judge, State Court
Skip Chessire, Superior Court Administrator
Tom Charron, District Attorney
Pat Head, Solicitor
Martha Watson, Chief Deputy Clerk, State Court
Jay Stevenson, Clerk, Superior Court
Robert Poindexter, Director of Court Services, State Court
Terry Nunn, Chief Probation Officer, State Court
Russell Carlisle, Judge, Division II, State Court

A. Nature of the Proposed Merger

Although the merger proposal has not been reduced to writing, there appears to be a general, if somewhat imprecise, understanding of its scope. The merger package is perceived to consist of the following:

- elimination of the State Court and enlargement of the Superior Court to 11 judges;
- full integration of State Court judges into the Superior Court with no distinctions in compensation or case assignments;

10Judge Carlisle was not consulted in the original interviews, but did comment, by phone and in writing, on a draft copy which was circulated.
transfer of pending State Court cases to the Superior Court and
enforcement of outstanding State Court orders and judgments by
the Superior Court;

use of courtrooms and chambers as dictated by efficiency of the
court;

creation of one Office of Court Administration;

creation of one clerical office under the direction of the Clerk
of the Superior Court;

creation of one prosecutorial office under direction of the
District Attorney;

creation of one probation office by transfer of county-paid
probation officers to the state agency serving the Superior
Court; and

by implication, elimination of the separate juror calls now made
by the Superior Court and State Court.

Some aspects of the merger are a little unclear and remain to be
worked out. It appears that at least initially the Juvenile Court and
Probate Court will be left as they are. It is also unclear what
accommodations would be made for the Solicitor and State Court clerk, who
are elected officers whose prerogatives of office would have to be
considered in any merger of their offices with Superior Court offices.
Presumably, magistrates will operate as they do now, but the associate
judges raise special problems since they are elected officers within the
general framework of the State Court and could be included in the merger
as a traffic division of the Superior Court or associated with the
Magistrate Court.\[11\] The latter alternative has merit, but departs from
the normal pattern elsewhere in the state.

\[11\]It is the position of the associate judges that the Supreme Court
decision in [Cobb County v. Campbell](https://www.supremecourt.sc.gov) makes them an integral part of the
State Court and thus automatically included in any merger.
Also a bit unclear are the financial ramifications of the merger. It would appear that the state would assume:

- the base salaries of five new Superior Court judges;
- salaries of secretaries and assistant district attorneys allocated for each new Superior Court judge; and
- the costs of probation formerly borne by the county.

This additional assumption could amount to almost $900,000, suggesting that the state could legitimately request some allocation of court-produced revenues to the State General Fund or a court cost earmarked for the State General Fund.

B. Support for the Proposed Merger

There is broad support for the proposed merger, not necessarily in the sense of wild enthusiasm, but as a sober conclusion based on the realities of the existing situation. The merger proposal falls hardest on support agencies of the State Court, since these agencies will be merged into their Superior Court counterparts with consequent loss of status and some concern over job security of agency personnel. Understandably, there are some reservations on the part of the Solicitor and State Court Clerk,¹² with the former official on record as being opposed to the merger. However, there is an expressed willingness to make the merger work if it is deemed to be in the best interest of the court system. There has been a striking degree of quiet consultation among officials which has calmed fears and led to a surprisingly broad consensus, characterized by bi-partisan agreement and a remarkable willingness to forego some prerogatives of office. The Superior Court

¹²The State Court Probation Office is in a different status. It is a civil service agency and would probably benefit financially and professionally if a merger occurred.
judges have, for example, not insisted on preserving status distinctions between themselves and State Court judges, who in turn have accepted the possibility that they may be transferred from what are superior facilities. The two elected prosecutors and two elected clerks have had amicable discussions of the merger and its implications.

These various accommodations would mean little if the Board of Commissioners were cool to the idea of merger. In fact, the Commission is strongly supportive, not simply because some costs will pass to the state, but because efficiencies in staffing, facility use, and computer usage are anticipated. It is surprising to find such unanimity in a highly competitive political environment.
III. Evaluation of the Proposed Merger

The merger has been evaluated by five criteria:

- Is the proposed merger consistent with national norms of court organization and judicial administration?
- Is the proposed merger consistent with and likely to promote the long-term goals of the Georgia court system?
- Is there a problem in Cobb County which warrants a major change in the judicial system?
- If a problem exists, are there solutions less drastic than a structural merger of courts?
- If a merger is the best solution, is it likely to produce the economies and efficiencies claimed for it by supporters?

A. National Norms

There has been a continuing national trend toward structural unification of trial courts—the ultimate goal being a one-tier trial court, as in Illinois and Iowa. The American Bar Association Standards of Court Organization support the concept of a one-tier trial court, and there has been a general acceptance of the idea that a fragmented trial court system is inherently inefficient.

Most states have found it difficult to establish a one-tier trial court system and have chosen to construct a two-tier system with one court of uniform general jurisdiction and one court of uniform limited jurisdiction (e.g., Alabama and North Carolina). The proposal in Cobb County follows this approach.

It must be emphasized that the Cobb County proposal is limited to one county and that it does not conform to national norms unless it is viewed as a prototype for Georgia. If so viewed, the merger is a long step toward the type of court structure being advocated nationally.
B. Goals of the Georgia Court System

In 1985, the Governor's Judicial Process Review Commission produced a report entitled Justice 2000, setting forth proposed goals for the Georgia courts. The Commission recommended that the State and Juvenile Court be merged with Superior Courts and that in counties with a population of 100,000 or more, that Probate Courts be included in the merger. This proposal was controversial, many dissenters feeling that a unified Superior Court would give low priority to misdemeanors and small civil cases and that it would not produce any efficiencies.

The Cobb County proposal enhances the essential element of the organizational recommendations in Justice 2000. Cobb County could serve as a demonstration of whether court merger works. The issue of court unification is one that can't be resolved by abstract debate and is best settled by a one-county experiment. This places a special burden on the Cobb County courts, but they apparently are willing to accept the responsibility of serving as a prototype system.

C. Reality of Problem

The signs of a major efficiency problem in Cobb County are unmistakable. Among them are:

- an overloaded court and an underutilized court existing side by side;
- each court creating comparable support agencies, so that the county has two of everything;
- under-utilization of the excellent courtroom facilities in the State Court building and straining of the poorer facilities of the Superior Court building;
two inefficient case scheduling systems and two jury systems which are not coordinated;

- use of different computer systems by the two clerical support agencies; and

- problems of coordination between the two prosecutorial offices.

There are also problems which are of a more general nature:

- forum-shopping by attorneys;

- problems in handling subsequent proceedings in cases where Probate, Juvenile, or State Court judges have handled the trial of a Superior Court case; and

- problems in criminal prosecution when one defendant has matters pending with both prosecutors, particularly the problem of double jeopardy attaching on a misdemeanor when a felony is pending and the problem of plea bargaining being inhibited or confused.

There is no question that there are some serious problems in Cobb County as the result of the trial court structure.

D. Merger as a Solution to the Existing Problems in Cobb County

There are three basic means to address the problems of Cobb County:

- to simply increase the Superior Court judiciary and its support staff (in fact, a request for a seventh judgeship is pending);

- to increase the free movement of judges and cases between the State Court and Superior Court without an actual merger; and

- to merge the State Court with the Superior Court.

The first alternative is quite possible and has been the primary means employed in recent years. The addition of Superior Court judges and staff does certainly, over the short-term, address the problems of caseload disposition, but it does not address the problems of efficiency relating to under-utilization of the State Court and its facilities. It makes no sense to add a seventh Superior Court judgeship until it is demonstrated that the existing complement of State Court and Superior Court judges is being efficiently used.
The second alternative would be to increase the power of the Chief Judge of the Superior Court to use State Court judges, their facilities, and their staff making this entirely discretionary with the Chief Judge. In order to work, this alternative would require a level of compulsion inconsistent with the judicial ethos in Georgia, but perhaps more importantly, it would involve a cumbersome mechanism of transfer, a device already tried and found wanting under the existing statute permitting the Superior Court to request help from the State Court. Moreover, the exercise of such authority might be disruptive of State Court operations, not to mention the dignity of the Court. A more far-reaching alternative is required.

The proposed merger offers the best hope of solving Cobb County's problems. It permits flexible use of judges, facilities, and support staff by eliminating the structural barriers which have impeded the best use of resources. It opens the door to personnel savings in areas where support staffs are redundant and eliminates some of the legal problems associated with transfer of cases between courts and split prosecution responsibilities.

E. Effects of the Merger on Efficiency

The merger will shift some financial burdens from the county to the state. This does not constitute efficiency. The test of the merger will not be the net savings to Cobb County, but whether the Cobb County courts make maximum use of the total resources allocated to them and their support agencies, particularly productive use of judges and facilities. The problem is that the merger is being described as a guarantee of efficiencies when what it does is create the framework within which
efficiencies can be achieved. The merger, to achieve the results being claimed for it, will have to be accompanied by stronger management systems and by a well-conceived implementation scheme.

The key to success lies in the Superior Court and how it organizes itself. It would be chaotic if the current individualistic mode of operation were employed in an 11-judge court. A much tighter administrative system is required—one built around specialty divisions through which judges are rotated periodically. At least three divisions suggest themselves: domestic relations, civil, and criminal.\textsuperscript{13} As is done now in the Superior Court, one judge would also have to be designated to hear the various \textit{ad hoc} and emergency matters which arise.

The criminal division probably should contain a misdemeanor part to ensure adequate allocation of judges to those cases and to ease the transition of the prosecutorial, probation, and clerical staffs which have supported the State Court in its criminal cases. The District Attorney has used the equivalent of two and one-half to three years of judge-time for felony cases, suggesting the need for at least four judges in the criminal division.

The establishment of these divisions would determine how support staffs are organized and located and which facilities would be used by the divisions. It would seem, for example, that the criminal division could make the best use of the large courtrooms in the State Court building. This might determine how the Superior Court Clerk and the District Attorney would locate their personnel. The District Attorney,

\begin{footnotesize}
\begin{enumerate}
\item The Solicitor suggests creation of a State Court Division, in effect, preserving the existing division of responsibilities within the framework of a unified court.
\end{enumerate}
\end{footnotesize}
who has an Assistant District Attorney assigned to each Superior Court judge, could assign two attorneys to each felony judge, permitting one assistant to be preparing cases while the other tried cases.

It would not be sufficient to create court divisions without strengthening the case management function of the Superior Court. Of necessity, cases would be assigned within specialty divisions and would not follow judges when they rotated elsewhere. This would require a more sophisticated and centralized coordination of case scheduling and a stronger management authority for the Chief Judge and whomever handles the case scheduling role (in most court systems, this is the court administrator). In short, the Superior Court would function as an administrative entity rather than as a loose coalition of autonomous judges.

Similarly, support agencies will not effect efficiencies without a major management effort. The support agencies would have to analyze their functions and allocate Superior Court and State Court personnel in the most efficient way. In the earlier stages, it might make sense to keep employees in familiar roles (for example, Assistant Solicitors in Traffic Court), but the merger means little unless the employees are ultimately assigned as needed. It is not likely that there will be any immediate staff savings, and this is probably prudent since there has to be some guarantee of job security. In the first phase, State Court employees would simply be absorbed and roughly integrated. In a second budget year, a more permanent personnel organization should be in place—one which may include staff reduction based on attrition. Merger of support agencies will require more detailed planning than merger of the judges because more people and more procedures are involved.
A variety of non-personnel issues will arise particularly with relation to record system compatibility, computer usage, and microfilming practices. These are areas where efficiencies can be obtained, but only with careful planning. As in the case of the court merger, efficiency is not an automatic by-product but a result of good management.

The merger legislation should take into account the importance of the implementation steps and the necessary lead time, and the Superior Court should create a transition committee to coordinate the management planning necessary for success.

F. Conclusion

Ultimately, a major decision is best judged by common sense. Cobb County's present system does not make sense; the proposed merger should be a great improvement in Cobb County as well as a possible model for other Georgia counties. However, the improvements will not occur automatically. They will be the result of the merger and a skillful management implementation.