

COUNTIES & THE LAW

This edition of *Counties & the Law* includes decisions of interest to county attorneys published in the Daily Report Opinions Weekly between February 13, 2016, and February 12, 2016.

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

IMMUNITY

Olvera v. University System of GA Board of Regents

Supreme Court of Georgia
February 8, 2016; S15G1130

A group of students who were not US citizens but were grant beneficiaries of the Deferred Action for Childhood Arrivals program filed a declaratory judgment action against the board of regents seeking in-state tuition at member institutions of the university system. The students argued that sovereign immunity had been waived under O.C.G.A. 50-13-10(a) which specifically authorizes declaratory judgment actions against state agencies to determine the validity of agency rules. The trial court and the Court of Appeals held that the statute did not violate waive sovereign immunity in actions concerning “interpretive rules”. The Supreme Court affirmed. The board of regents has never issued any rule under the administrative procedures law and its policy regarding residency requirements was merely its interpretation of an internal manual and not an independently promulgated agency rule. Citing its decision in the *Sustainable Coast* case, the Court noted that the relief could still be sought against the board members in their individual capacities, although qualified immunity may limit the availability of that relief.

JUDICIAL RECUSAL

Georgia Carry.Org Inc. v. James

Supreme Court of Georgia
February 8, 2016; S15A1901

This case involves the question of whether a superior court judge of a county should be recused in a case where a probate judge of that same county was a named defendant. The Supreme Court affirmed the trial court that the motion to recuse was properly denied. Here, the plaintiff knew or should have known as soon as they chose the forum that the defendant judge presided in a court which sat in the same circuit as

the superior court hearing the case. However, they still waited two months after filing the complaint to seek recusal. This delay clearly violates Uniform Superior Court Rule 25.3 requiring a recusal motion within five days of learning the ground of alleged disqualification.