

Submitted to the Rules Committee of the Council of Superior Court Judges by The Georgia First Amendment Foundation, June 6, 2017

From: Peter Canfield on behalf of the Georgia First Amendment Foundation
To: Shannon Weathers, General Counsel, Council of Superior Court Judges
cc: Shawn McIntosh, President, Georgia First Amendment Foundation
Date: 06/06/2017 09:34 AM
Subject: Proposed Amendment to Uniform Superior Court Rule 22

Dear Shannon:

Thank you for the opportunity to comment on behalf of the Georgia First Amendment Foundation to the proposed amendment to Uniform Superior Court Rule 22, governing "Electronic and Photographic News Coverage of Judicial Proceedings," that was approved by the Council of Superior Court Judges for first reading on January 19, 2017.

Since Rule 22 was last revised, over twenty years ago, there have been enormous advances in cameras and other recording technologies and devices as well as a sea change in their availability and ubiquity. These developments, coupled with changes in the news industry, more than justify a reexamination of the procedures for public recording of court proceedings. See, e.g., *McLaurin v. Ott*, 327 Ga. App. 488 (2014).

The Foundation appreciates the Council's efforts to revise the rule in light of these developments. The Foundation also appreciates the Council's desire to expand the subject matter of the rule so as to attempt to address not just photographic and electronic recording of judicial proceedings but courtroom use of electronic devices generally.

The Foundation is concerned, however, that the amendments now proposed, as well as the trajectory of these and other Rule 22 amendments that have been considered by the Council over the last few years, are not on the right track. Ideally, court rules should be short, simple and easy to understand and administer. The proposed amendments to Rule 22, however, have become anything but.

The Foundation believes that the Council could significantly improve Rule 22 and at the same time eliminate unnecessary complexity and prolixity by doing two things: (1) create two rules -- one to govern recording of court proceedings (an amended Rule 22) and another to govern use of electronic devices in courthouses (a new Rule 22.1); and (2) unlike the January 19, 2017 proposed amendment, begin and imbue in each rule the presumption that recording and use is permitted, albeit subject to certain qualifications and restrictions.

The Foundation respectfully submits that not only would such an approach result in clearer and simpler rules, it would make the rules serve, rather than conflict with, the State's strong public policy in favor of open government and its oft-stated corollary that the State's courts must always strive to be more accessible to the public. See, e.g., *R. W. Page Corp. v. Lumpkin*, 249 Ga. 576, 576 n.1 (1982) ("This court has sought to open the doors of

Georgia's courtrooms to the public and to attract public interest in all courtroom proceedings because it is believed that open courtrooms are a sine qua non of an effective and respected judicial system which, in turn, is one of the principal cornerstones of a free society.”) *See generally Embracing the Courts of the Future: Final Report of the Next Generation Courts Commission* (March 2014) at 19-23 (recommending that courts “practice and promote transparency”; "As a result of security concerns and budget cuts, the news services and citizens that do make the trip to the courthouse often find not a welcoming place that reflects the courts' fundamentally public nature but a cold and inhospitable fortress") available at http://www.georgiacourts.org/sites/default/files/Next%20Generation%20Courts/next%20gen%20report_0.pdf

For these reasons and in this spirit, the Foundation proposes that the Council reconsider its present approach and revise the rules along the lines of the proposed rule amendments attached. For your convenience a redline showing changes from the existing rule is also attached. Should the Council retain the present approach, the Foundation reiterates its previous comments and adopts those submitted earlier this year by the Southern Center for Human Rights.

The Foundation is pleased to have been given the opportunity to be involved in this process and hopes that you will continue to involve us in the future.

Thank you very much for your consideration.

Sincerely,

Peter Canfield

PROPOSED AMENDMENTS TO RULE 22 AND PROPOSED NEW RULE 22.1 OF THE UNIFORM RULES FOR SUPERIOR COURT

UNIFORM SUPERIOR COURT RULE 22. ELECTRONIC AND PHOTOGRAPHIC RECORDING OF JUDICIAL PROCEEDINGS

Electronic and photographic recording of judicial proceedings shall be permitted subject to the following restrictions and conditions:

(A) Unless otherwise excused by the court, a person desiring to photograph or otherwise electronically record images or sound of judicial proceedings must timely file a written request (form attached as Exhibit “A”) with the judge involved prior to the hearing or trial, specifying the particular calendar/case or proceedings for which such recording is desired; the type equipment or recording device to be used in the courtroom; the trial, hearing or proceeding to be covered; and the person responsible for installation and operation of such equipment or device.

(B) A request to photograph or otherwise electronically record images or sound of any judicial proceeding shall be evaluated pursuant to the standards set forth in O.C.G.A. § 15-1-10.1. In exercising discretion with respect to such requests, the judge shall bear in mind the State’s longstanding policy favoring open judicial proceedings.* In accordance with the policy, the judge shall presume that a request by a person, company, or other entity engaged in the gathering and dissemination of news for the public should be approved.†

(C) The judge may require pooled recording.

(D) Any positioning and removal of cameras and other electronic recording devices shall be done quietly and, if possible, before or after the court session or during recesses; in no event shall such disturb the proceedings of the court. In every such case, equipment should be in place and ready to operate before the time court is scheduled to be called to order.

(E) Overhead lights in the courtroom shall be switched on and off only by court personnel. No other lights, flashbulbs, flashes or sudden light changes may be used unless the judge approves beforehand.

(F) No adjustment of the court’s central audio system shall be made except by persons authorized by the judge. Audio recordings of the court proceedings will be from one source, normally by connection to the court’s central audio system. Upon prior approval of the court, microphones may be added in an unobtrusive manner.

(G) Unless excused by the court, cameras and other electronic devices used to record a judicial proceeding shall be assigned to a specific portion of the public area of the courtroom or specially designed access areas, and such equipment will not be permitted to be removed or relocated during the court proceedings.

(H) All cameras and other electronic devices used to record a judicial proceeding must be quiet running.

(I) Photographs of the jury shall not be taken except where the jury happens to be in the background of other topics being photographed. Audio recordings of the jury foreperson’s announcement of the verdict, statements or questions to the judge may be made. Photographs and recording of the public and the courtroom are allowed, if done without disruption to the court proceedings.

(J) Persons operating cameras and other electronic devices to record must have and produce upon request of court officials appropriate identification.

* See *Morris Communications v. Griffin*, 279 Ga. 735, 736 (2005); *Georgia Television Co. v. Napper*, 258 Ga. 68 (1988).

† Georgia law affords a special qualified privilege to “[a]ny person, company or other entity engaged in the gathering and dissemination of news for the public through any newspaper, book, magazine, radio or television broadcast, or electronic means.” O.C.G.A. § 24-5-508.

(K) Persons operating cameras and other electronic devices to record a judicial proceeding should do everything possible to avoid attracting attention to themselves and shall not interrupt a proceeding to seek to correct an equipment or other technical problem.

(L) No interviews pertaining to a particular judicial proceeding may be electronically recorded in the courtroom except with the permission of the judge.

EXHIBIT "A"

IN THE SUPERIOR COURT OF _____

(STYLE OF CASE/CALENDAR)

REQUEST FOR ELECTRONIC OR PHOTOGRAPHIC RECORDING OF JUDICIAL PROCEEDINGS.

Pursuant to Uniform Superior Court Rule 22 governing Electronic and Photographic Recording of Judicial Proceedings, the undersigned hereby requests permission to photograph or electronically record images and/or sound in courtroom _____ of all or portions of the proceedings in the above-captioned case/calendar.

The undersigned ____ (is/is not) a person engaged in the gathering and dissemination of news for the public or is the representative of a company or other entity that is so engaged.

The undersigned desires to photograph or electronically record using the following described equipment or device: _____.

The proceedings that the undersigned desires to photograph or electronically record commence on _____ (date).

The undersigned wishes to install equipment in the courtroom on _____ (date).

The person(s) who will be responsible for the photographing or electronic recording are: _____ (identify appropriate personnel).

The undersigned hereby certifies that the photographic or electronic recording equipment will be operated and, if applicable, installed in conformity with Rule 22 and any other appropriate rules and guidelines issued by the court.

This _____ day of _____, 20__.

(Individual Signature)

(Representing Firm, if Any)

UNIFORM SUPERIOR COURT RULE 22.1. USE OF PORTABLE ELECTRONIC DEVICES.

Portable electronic devices “are now such a pervasive part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy.” *Riley v. California*, ___ U.S. ___ (2014). Use of such devices shall be permitted subject to the following restrictions and conditions:

(A) As used in this rule, “portable electronic device” means any device that can record or transmit data, images or sounds, or access the internet, including without limitation a pager, laptop/notebook/tablet or other handheld personal computer, personal digital assistant, audio or video recorder, wireless device, cellular telephone or electronic calendar.

(B) *Use of portable electronic devices in courthouses.* A person may use a portable electronic device while in common areas of the courthouse, such as lobbies and corridors, subject to further restrictions on the time, place and manner of such use that are appropriate to maintain safety, decorum and order.

(C) *Use of portable electronic devices in courtrooms.*

(1) A person may silently use a portable electronic device inside a courtroom.

(2) A person may not use a portable electronic device to record or transmit images or sound of a court proceeding except in accordance with Rule 22.

(3) A judge may further restrict use of portable electronic devices in the courtroom by the public or in connection with a particular proceeding by jurors, attorneys or witnesses as appropriate to maintain safety, decorum and order, and protect the integrity of the proceedings. In exercising discretion with respect to such restrictions, the judge shall bear in mind the State’s longstanding policy favoring open judicial proceedings and anticipate that reporters and other public observers seated in the courtroom may properly use such devices to prepare and post online accounts and commentary during the proceedings.[‡]

(D) *Use of portable electronic devices in court chambers.* A person may not use a portable electronic device in chambers without prior approval from the judge.

[‡] See, e.g., *R. W. Page Corp. v. Lumpkin*, 249 Ga. 576, 576 n.1 (1982) (“Most judicial proceedings, even some of considerable importance to the general populace, remain unattended by the public and unreported by the news media. This court has sought to open the doors of Georgia’s courtrooms to the public and to attract public interest in all courtroom proceedings because it is believed that open courtrooms are a *sine qua non* of an effective and respected judicial system which, in turn, is one of the principal cornerstones of a free society.”)