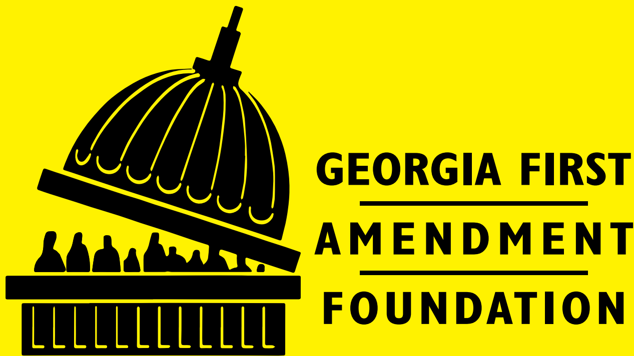
A Guide to Court Access in Georgia



The rights of Georgians to access court proceedings and records

Produced in cooperation with
the First Amendment Clinic at the
University of Georgia School of Law

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Open courtrooms are vital for public trust in our legal system. Both state and federal law have long guaranteed rights to open courts. And the Georgia Supreme Court has long been a protector of the various rights to open courts, whether arising from the state and federal constitutions, statutes, or court rules.

The COVID-19 pandemic was a stress-test for our commitment to open courts. While no institution handled the pandemic perfectly, Georgia courts worked hard to ensure public access even when public health didn't allow members of the public to be physically present in courtrooms. And the Chief Justice's statewide judicial emergency orders consistently emphasized the importance of ensuring public access.

As physical access to courtrooms returns, the public's and the media's understanding of the scope and nature of their rights to open courts becomes even more critical. The Georgia First Amendment Foundation has for years provided valuable guidance on open government laws and dealing with law enforcement agencies. Now, the Foundation has rightly recognized that the public and media would benefit from similar guidance regarding open courts.

I commend the Foundation and the UGA School of Law's First Amendment Clinic for their work on this book, *A Guide to Court Access in Georgia*. Of course, neither I nor my Court may endorse its legal conclusions. And the question of how the rights to open courts apply in a particular situation is often difficult and fact-specific; a truly comprehensive guide would require far too much length and complexity to be useful. But this Yellow Book is an important and helpful resource for the public and the media as we all work together to safeguard the rights to open courts.

Justice Nels S.D. Peterson
Supreme Court of Georgia

Our courts are arbiters of the laws that uphold our democracy, and it is essential that they are open. The public airing of facts in court filings and proceedings creates accountability and trust that benefits all parties, as well as the citizens whose lives will be shaped by court decisions.

Yet our courts can be perplexing, especially to members of the public who don't interact with them regularly. What's more, each type of court in Georgia is governed by its own rules for public access. This book is a plain-language guide for how to gain access to those state and federal court proceedings and records. It is a companion to other open government guides by the Georgia First - Amendment Foundation, available at gfaf.org/resources.

The Foundation is grateful to the University of Georgia School of Law's First Amendment Clinic for helping to create this important guide. A tremendous thanks, especially, to law students Meredith Bradshaw and Henry "Wess" Helton who devoted many hours during their second-year fall semester to researching and drafting the guide under the supervision of Clinic Director Clare Norins. Thank you to summer intern Nirali Vyas and legal fellow Samantha Hamilton for editing and research support, as well as to UGA journalism students Mennah Abdelwahab, Caitlyn Gegen, and Eleanor Ritter for editing support.

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For the public to trust that our courts are functional, just and fair, they must be able to see courts in action. This guide fosters such transparency.

Kathy Brister, President
Georgia First Amendment Foundation

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I. Introduction

A. How to Use this Guide

The goal of *A Guide to Court Access in Georgia*, referred to as the Yellow Book, is to provide the media, public officials, and citizens a reader-friendly, plain-language roadmap to accessing state and federal court proceedings and records in Georgia. Each type of court in the state has a set of rules that govern the public's rights of access. You will see some similarity in rules governing different courts. But to fully determine your right to access a particular court's records and proceedings, you *must consult the rules of that court.*

A Guide to Court Access in Georgia is organized by type of court and type of access, using primarily a question-and-answer format. The structure allows readers to quickly go to a section on a specific court, scan the bolded questions, and find relevant information. This Yellow Book is part of a series of color-coded guides to open government published by the Georgia First Amendment Foundation and available at gfaf.org/resources. This guide is not intended to be, and does not constitute, legal advice.

B. Brief Overview of the Georgia Court System

The Georgia state court system consists of two levels of courts: trial courts and appellate courts. A trial court is where a case is first filed and ruled on by a judge or decided by a jury trial. Georgia has six types of trial courts: Magistrate Court, Probate Court, Juvenile Court, State Court, Municipal Court, and Superior Court.

The first five of these trial courts can only hear specific types of cases, for example: minor traffic offenses, criminal misdemeanors, the administration of estates, and matters involving minors.[1] Therefore, these trial courts have limited jurisdiction.[2] The Superior Court, however, has general jurisdiction over some issues and hears cases involving more extensive criminal offenses and disputes over greater amounts of money.

Georgia has two levels of appellate courts: the intermediate level, called the Court of Appeals, and the Supreme Court which is the highest state court in Georgia. These appellate courts generally hear

cases in which one party is appealing the decision either of the trial court or of the intermediate appellate court.[3]

Georgia also has federal courts that primarily decide cases involving issues of United States law, both civil and criminal, rather than Georgia law. The Georgia federal courts, like the state courts, have two levels: trial courts and appellate courts. The Georgia federal trial courts are divided into three geographic districts within the state: the Southern District of Georgia, the Middle District of Georgia, and the Northern District of Georgia. Appeals of decisions made by these district courts are decided by the U.S. Court of Appeals for the 11th Circuit, which also hears appeals from federal trial courts in Florida and Alabama. Finally, the U.S. Supreme Court hears appeals, including those from the 11th Circuit and other circuit courts of appeals around the country, as well as appeals from the Georgia Supreme Court involving federal law, and is the highest court in our nation.

C. The Foundation of Public Access to Courts in Georgia

Georgia has long had a "strong public policy . . . in favor of open government."[4] The right of public access to judicial proceedings and records is based in the First Amendment of the U.S. Constitution.[5] The roots of this right can also be found in Art. 1, Sec. I, Para. IV of the Constitution of Georgia, which dictates: "No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press. Every person may speak, write, and publish sentiments on all subjects but shall be responsible for the abuse of that liberty."[6] In the words of late Georgia Supreme Court Chief Justice Charles L. Weltner:

> [O]ur court has breathed life into some old words that have lain dormant within our Constitution for most of their century-old existence. The words are: "Public officers are the trustees and servants of the people and are at all times amenable to them." We have established that this is no empty phrase, but an obligation that is enforceable in a court of law. Public men and women, above all others, must act in good faith. Neither facile excuse nor clever dissimulation can serve in the stead of duty-faithfully performed. Because public men and women are amenable "at all times" to the people, they must conduct the public's business out in the open.[7]

It has been frequently noted that "Georgia law . . . is more protective of the concept of open courtrooms than federal law."[8] Therefore, "[a] Georgia trial court judge … [has] less discretion than his federal counterpart because our constitution commands that open hearings are the nearly absolute rule and closed hearings are the rarest of exceptions."[9] Georgia places a strong emphasis on openness 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."[10]

In its final report, issued in 2014, the Next Generation Courts Commission, formed by the Georgia Supreme Court and State Bar of Georgia to consider the future of courts in the state, concluded that "[c]ourts at all levels in Georgia must promote long-term public confidence and support of the judicial system by demonstrating and practicing transparency, establishing as one of their core functions the effective provision of convenient and timely public access to court procedures, schedules, records, and proceedings."[11]

As with Georgia state courts, "[t]he operations of the [federal] courts . . . [are] of utmost public concern."[12] The U.S. Supreme Court has stated that "the right to attend trials is implicit in the First Amendment," and that the presence of the public and press "enhance the integrity and quality" of court proceedings.[13] The Court has also asserted that, by allowing access to court proceedings under the First Amendment, the public and press can contribute to public discourse that shapes our republican form of government.[14] Further, the 11th Circuit Court of Appeals, which has jurisdiction over federal cases in Georgia, has described the common-law right of access to judicial proceedings, as "an essential component of our system of justice, [and] instrumental in securing the integrity of the process."[15]

D. Electronic Court Access

The COVID-19 pandemic, by necessity, sped up electronic access to courts in Georgia. Many Georgia courts enacted new procedures for using technology during court proceedings. In many cases, individual judges or courts had the discretion to determine the extent of technology use in the courtroom, including whether to conduct remote court proceedings via telephone or video conferencing and whether to allow recordings of the proceedings. Additionally, some courts set limits for in-person proceedings, reducing the number of people allowed inside the courtroom to enable social distancing. In 2020,

the Georgia Supreme Court directed that proceedings during the pandemic be conducted in a manner that respects and protects the traditional right of public access.[16] The Judicial Conference of the United States, likewise, early on loosened its traditional prohibition against cameras in federal courts to specifically permit public video and audio access to virtual proceedings.[17] Hence, during the pandemic, virtual access via livestreaming substituted in many courts for in-person public access. It remains to be seen whether the increased technological access to courts will continue after the pandemic recedes.

II. Georgia State Courts

A. Access to Court Proceedings

1. Civil and Criminal Court Proceedings

Georgia has a longstanding tradition of affording the public and journalists access to civil and criminal court proceedings. The Georgia Supreme Court has emphasized that open judicial proceedings are integral to preserving democracy, stating, "Public access protects litigants both present and future. … Our system abhors star chamber proceedings with good reason. Like a candle, court records hidden under a bushel make scant contribution to their purpose."[18]

Georgia's access to criminal and civil court proceedings is governed by Rule 22 of the Georgia Uniform Superior Court Rules, which allows for electronic coverage of all judicial proceedings.[19]

Q: What criminal and civil proceedings are open to the public and press?

The following court proceedings are open to the public and the press:

- Pre-trial proceedings.[20]
- Civil and criminal trials.[21]
- Post-trial proceedings.[22]
- Appellate proceedings.[23]

Q: Can court proceedings ever be closed to the public or press?

<u>Criminal court proceedings</u>:

Georgia law favors open access to criminal proceedings because the Georgia Constitution "point-blankly states that criminal trials *shall* be public."[24] The Georgia Supreme Court in *R.W. Page Corp. v. Lumpkin*, 249 Ga. 578 (1982), established the following standard for when public access to criminal proceedings may be closed:

- **Clear and convincing proof:** The person moving to close the proceeding must demonstrate through "clear and convincing proof" that closure is the *only*

way by which the movant can avoid a "clear and present danger" to his or her right to a fair trial.[25]

What constitutes "clear and convincing proof"?

- Clear and convincing proof "involves concrete, tangible evidence that can be made part of and attached to the record."[26]
- Pre-trial publicity is *not* a sufficient reason to close a criminal proceeding.[27]

- **Alternate means**: If the right to a fair trial is in question, the court, on its own initiative, must consider reasonable alternatives to closure of court proceedings, even if no alternative means are raised or offered by the parties.[28]

What kinds of "alternate means" must judges consider?

- Jury sequestration;
- Change of venue;
- Postponement of the trial;
- Rigorous voir dire (i.e., questioning potential jurors to determine if they can be fair and impartial); and
- Clear and emphatic instructions to the jury.[29]

<u>Civil court proceedings</u>:

In Georgia, the public and press have long enjoyed presumptive access to civil as well as criminal proceedings. Georgia's Uniform Superior Court Rule 22(A) makes no distinction between public access to criminal and civil proceedings, stating:

> Open courtrooms are an indispensable element of an effective and respected judicial system. It is the policy of Georgia's courts to promote access to and understanding of court proceedings not only by the participants in them but also by the general public and by news media who report on the proceedings to the public.

Additionally, Georgia courts have long stressed the benefits of affording press and public access to judicial proceedings generally. As the Georgia Supreme Court declared in 1982, citing its own media access rules:

> 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.[30]

The Georgia Court of Appeals has similarly expressed that "[p]ublic access protects litigants both present and future, because justice faces its gravest threat when courts dispense it secretly. Our system abhors star chamber proceedings with good reason."[31] The Court of Appeals further recognizes that "[t]he function of a free press is just as important in civil cases as in criminal cases."[32]

2. Electronic Recordings of Judicial Proceedings

Rule 22 of the Georgia Uniform Superior Court Rules sets forth the standard for electronic recording of judicial proceedings in Georgia superior and state courts.

Q: Who may record court proceedings?

Parties and spectators may use recording devices to record proceedings only as specifically authorized by the court pursuant to Rule 22. All parties and spectators shall turn off any recording device while present in a courtroom, unless the judge authorizes, orally or in writing, the use of recording devices in the courtroom.[33]

Attorneys, employees of attorneys, and self-represented parties litigating a case may make audio recordings of the court proceedings in the case so long as done in a non-disruptive manner after they announce to the court and all parties that they are recording, and the court has not ordered otherwise.[34]

Q: What rules govern the media's ability to record court proceedings?

Submission of request: Parties and their lawyers aside, persons and organizations, including representatives of the news media, must submit an application to record, found in Exhibit A of Rule 22, to the judge (or his/her designee).[35] A sample request to record is included as Appendix C.

Time: The application must be submitted in advance of the court proceeding to be recorded – and at least 24 hours before, when practicable given the circumstances.[36]

Notice and hearing: The court will notify the parties of its receipt of a non-party request to record. Parties shall then notify their witnesses. The prosecutor of a criminal case shall notify alleged victims. The judge will promptly hold a hearing if the judge intends to deny the request or a portion of the request, or if a party, witness, or alleged victim objects to the request.[37]

Time for a party, witness, or alleged victim to object to a request: A properly notified party, witness, or alleged victim waives an objection to a media request to record a proceeding if the party, witness, or alleged victim does not object to the request in writing or on the record before or at the start of the proceeding to be recorded.[38]

Q: When can a judge deny or limit a request for recording?

A judge must abide by a three-step process to deny or limit a recording request.

First, the judge must make specific findings on the record that there is a substantial harm arising from one of the following factors:

- The nature of the particular proceeding at issue;
- The consent or objection of the parties, witnesses, or alleged victims whose testimony will be presented in the proceedings;
- Whether the proposed recording will promote increased public access to the courts and openness of judicial proceedings;
- The impact upon the integrity and dignity of the court;
- The impact upon the administration of the court;
- The impact upon due process and the truth-finding function of the judicial proceeding;
- Whether the proposed recording would contribute to the enhancement of or detract from the ends of justice;
- Any special circumstances of the parties, witnesses, alleged victims, or other participants such as the

need to protect children or factors involving the safety of participants in the judicial proceeding; and

- Any other factors affecting the administration of justice or which the court may determine to be important under the circumstances of the case.[39]

Second, the harm must outweigh the benefit of recording.[40]

Third, the judge must consider more narrow restrictions or limitations on recording than denial of the recording request in its entirety.[41]

Q: Who cannot record court proceedings?

Jurors (including grand jurors and prospective jurors) cannot record court proceedings or jury deliberations. Jurors must have their phones and other electronic devices turned off during both court proceedings and jury deliberations and may only use their devices during breaks authorized by the judge.[42]

Witnesses cannot record court proceedings. Witnesses must have their phones and other electronic devices turned off during court proceedings. They may use their devices while testifying only with the judge's permission.[43]

Q: When are recordings prohibited?

Recording of court proceedings are prohibited as follows:

- When the judge is outside of the courtroom.[44]
- During jurors' conversations or statements, with the exception of the jury foreperson's verdict announcement and questions to the judge.[45]
- During privileged or confidential conversations between attorneys and clients.[46]
- During bench conferences (i.e., where attorneys for the parties approach the judge at the bench and a conversation is held outside of the hearing of jurors or spectators).[47]

Q: Can electronic devices be brought into the courtroom for non-recording purposes?

Witnesses and Jurors: Georgia's Uniform Superior Court Rule 22 states that electronic devices such as cell phones, tablets,

and laptop computers are permitted inside the courtroom during judicial proceedings, but that witnesses and jurors shall turn off such devices while present in a courtroom and while present in a jury room during the jury's deliberations and discussions concerning a case.

Parties and Spectators: Rule 22 is more flexible with respect to parties and spectators, who may be "freely" allowed to use electronic devices for non-recording purposes while present in a courtroom so long as the judge "believes such use would not be disruptive or distracting and is not otherwise contrary to the administration of justice." When allowed, the devices must be silenced and may not be used to make or receive phone calls or for other audible functions without express permission from the judge.

Attorneys, Employees of Attorneys, and Self-Represented Parties: Rule 22 allows the most flexibility for individuals providing and assisting with legal representation. Attorneys and their employees, such as paralegals and investigators, may use electronic devices in the courtroom for word processing, storing or retrieving information, accessing the internet, and sending or receiving messages or information. Self-represented parties may do the same, but only in direct relation to their proceedings. Electronic devices must be silenced and may not be used to make or receive phone calls or for other audible functions without express permission from the judge.

3. Voir Dire, Jury, and Grand Jury Proceedings

Q: Does the public have access to voir dire proceedings?

"Voir dire" is the preliminary questioning of prospective jurors held at the beginning of a trial to determine their competency to serve on the case and to identify any biases that may preclude them from fairly and impartially considering all of the evidence and rendering a decision.[48]

The public and the press have a presumptive right of access to voir dire proceedings.[49] The Georgia Supreme Court in *Blevins v. State*, 220 Ga. 720 (1965) held that juries must be "drawn in open court" in order to protect against "secret or Star Chamber proceedings."[50] The Court further stated that open access to voir dire proceedings "is a procedure which enables the

public to observe the conduct of the judge in drawing juries and thus prevent any possible corruption or suspicion of corruption in this vital part of our jury system."[51] In general, trial courts should "take every reasonable measure to accommodate public attendance" during voir dire.[52]

Q: Are jury and grand jury deliberations open to the public?

The public and press do not have a presumptive right to access deliberations by a jury or grand jury.[53]

Q: Does the public have access to ancillary grand jury proceedings?

Yes, ancillary grand jury proceedings must remain open to the public, unless they meet the "exacting closure standard"[54] established in *R.W. Page Corp v. Lumpkin*, 249 Ga. 576 (1982).

Examples of ancillary grand jury proceedings:

- The return of grand jury indictments.[55]
- The grand jury may "prepare reports or issue presentments" when the grand jury is investigating a county office.[56] The grand jury may then "recommend to the court the publication of the whole or any part of their general presentments and to prescribe the manner of publication."[57] When the grand jury makes the recommendation, the judge must "order the publication as recommended."[58]

Q: Are there any rules about interviewing jurors?

In Georgia, members of the public and the news media are generally barred from communicating with jurors during a trial. There is not a state-level rule, however, prohibiting the press from interviewing jurors after a verdict has been announced.[59]

B. Access to Court Records

The public has a presumptive right of access to Georgia court records. The Georgia Supreme Court has justified public access because, as noted earlier in this guide, access "protects litigants both present and future … Our system abhors star chamber proceedings with good reason. Like a candle, court records hidden under a bushel make scant contribution to their purpose."[60]

Q: What rules govern access to court records?

Uniform Superior Court Rule 21[61] sets out stringent procedures that must be followed before documents are shielded from the public.[62]

Q: What court records are available?

"[A]ll court records are public and are to be available for public inspection unless public access is limited by law or the procedure set forth in Rule 21."[63] The "presumptive right of access begins when a judicial document is filed."[64] An electronically filed document is "presumed filed upon its receipt by the electronic filing service provider."[65]

In 2017, the Georgia Supreme Court established that under Rule 21 a court record, "includes those materials that set forth the cause of action (pleadings), reflect requests for the court to take action (motions and objections), are an adjudicative action (rulings, judgment, orders), or are central to such rulings (evidence, filed transcripts, and colloquies)."[66]

The right of the public to inspect court records applies in both civil and criminal cases to:

- Pre-trial motions and records,
- Trial records,
- Post-trial records, and
- Appellate records.[67]

Trial records that are subject to public inspection include: "photographic, or other exhibits" and "a trial record's printed text," meaning the trial transcript.[68] The public's right of access to trial records is bolstered by the Georgia Open Records Act, which specifically provides that the custodian of "an exhibit tendered to the court as evidence in a criminal or civil trial . . . shall, upon request" make a copy of such exhibit available to the public.[69] However, physical evidence used as an exhibit in a

criminal or civil trial to show or support an offense related to a minor shall not be open to public inspection except by court order.[70]

Audio records (e.g., 911 tapes, video depositions) are often filed with the court and are subject to public inspection. A court reporter's audio recording of a proceeding is generally not filed with the court and is therefore not subject to public inspection; a transcript of the audio recording serves as the record.[71]

Discovery materials, once filed with the court, are also subject to public inspection.[72]

Court dockets are also open to the public, but Georgia does not have a statewide system for electronically accessing court dockets. Some Georgia courts' dockets, including those of the Supreme Court[73] and the Court of Appeals[74] are accessible through the court-specific websites. Increasingly, many Georgia state trial courts are adopting electronic access.[75]

Settlement agreements filed with the court are generally public documents that are available for inspection in accordance with Rule 21, unless the harm of public access clearly outweighs the public interest.[76] However, most settlement agreements are not filed with the court. Public records of settlements by public agencies often may also be obtained from those agencies under the Open Records Act. As an example, the Georgia Supreme Court found that settlement records of a police chief's lawsuit against the city were public records under the Georgia Open Records Act, despite a confidentiality provision in the settlement agreement.[77]

Q: Can members of the public and the press copy court records?

Yes, the right to inspect records under Rule 21 includes the right to copy.[78]

Q: Does Rule 21 apply to criminal cases?

Yes, Rule 21 has been held to apply to both civil and criminal cases.[79] Once a criminal prosecution is concluded, records from criminal court cases may also be available directly from law enforcement under the Open Records Act.[80]

Q: When can courts restrict access to court records by sealing them?

Superior courts can restrict or prohibit access to court records — a process referred to as "sealing" — "in cases of clear necessity"[81] and in compliance with the procedures in Uniform Superior Court Rule 21.[82]

Sealing court records is a method of limiting public disclosure of court records and involves court personnel placing certain restricted documents or information into a sealed envelope that is not available to the public. The public may not access those documents or any restricted information until the superior court unseals the court records or the restriction expires according to the terms of the order.

Additionally, an *ex parte* temporary motion for temporary limitation of access (i.e., a temporary sealing motion) may be granted, "under compelling circumstances."[83] This temporary limitation cannot exceed 30 days.

Rule 21 states that public access to court records may be limited by law.[84] For instance, adoption law generally requires that certain court records pertaining to adoption proceedings be sealed and not available for public inspection.[85]

Q: What is the process that courts must follow to seal court records?

Under Rule 21, the sealing of court records requires the submission of a motion setting forth the legal and evidentiary grounds for the sealing. This motion can be made by the parties or the court itself.[86]

Rule 21 also requires the court to conduct a public hearing on the motion where the parties or third parties who have established an interest in the sealing issue may be heard.[87]

The court's order limiting access must specify:

- The court files or parts of court files to which access is limited;
- The nature and duration of the limitation; and
- The justification for the limitation.[88]

For the limitation to be justified, the court must "weigh the harm to the privacy interest of [the moving] party from not sealing … against the harm to the public interest from sealing the documents" and find the harm to the movant's privacy *clearly*

outweighs the public interest in disclosure.[89] The party moving to seal court records has the burden to prove this.[90]

Q: What factors must courts consider when undertaking the balancing test for sealing court records?

Allegations and information in court records are often embarrassing to the parties and others but that kind of harm is usually not sufficient to justify closure.[91] To seal a document, the moving party must show a prospect of harm that "differs in degree or kind from that of parties in other civil suits."[92]

A court is more likely to find that the privacy interest clearly outweighs the public interest in disclosure when the records have previously been acknowledged by the court as confidential.[93]

On the other hand, courts are more likely to reverse a sealing of documents when the documents have "high evidentiary value," meaning the documents are particularly relevant to the legal issues being adjudicated in the case.[94]

Q: What happens if a court fails to comply with Rule 21 when sealing court records?

A court's order limiting access can be appealed[95] and is reviewed on an abuse of discretion standard.[96]

Some failures to comply with Rule 21, such as failing to specify the duration of the limitation, will not result in a reversal when the duration can be inferred from the court's order.[97]

However, a sealing order must be reversed when the trial court fails to make a finding of fact that the harm to the privacy interest was outweighed by the public's right of access.[98] Additionally, a court's failure to hold a meaningful hearing before entering an order to seal may require the order to be reversed.[99]

Q: Does the public have access to jury or grand jury records?

No. Because the public does not have a right to access jury or grand jury proceedings, the public similarly does not have access to jury or grand jury records. To keep grand jury deliberations secret, grand jury members must take an oath required by statute.[100] Court reporters attending grand jury

proceedings are also required by statute to take an oath to preserve the secrecy of the proceedings.[101] Furthermore, admissions and communications between grand jury members cannot be used as evidence as a matter of public policy.[102]

C. Access to Records and Proceedings Involving Minors

1. Juvenile Court

Juvenile courts often handle cases that involve children under 18 who have been abused and/or neglected, accused of delinquent and unruly offenses, and/or accused of traffic violations. Beginning with the Georgia Supreme Court's landmark decision in *Florida Publishing Co. v. Morgan* (1984), Georgia has been a national leader in affording public access to juvenile proceedings,[103] the rules for which are now governed by Georgia's juvenile code.

Q: Are juvenile court proceedings open to the public?

Georgia's Juvenile Code, GA. CODE ANN. § 15-11-700, excludes the general public from attending proceedings in juvenile court unless "such hearing has been specified [by the Georgia Code] as one in which the general public shall be admitted."[104]

The Georgia Code at sections 15-11-700(b)(1) – (6) allows general public admission to juvenile proceedings in the following situations:

- Adjudicatory hearings when the allegation is a class A or B felony.[105]
- Adjudicatory hearings brought in the interest of any child who has previously been adjudicated for commission of a delinquent act."[106] Except that courts are instructed to close any delinquency hearing:
    - Concerning an allegation of sexual assault; or
    - When a party expects to introduce substantial evidence related to matters of dependency.[107]
- Child support hearings and hearings on petitions to legitimatize a child.[108]

- At the court's discretion, any dispositional hearing involving any proceeding under Article 9 (Juvenile Code: Access to Hearing and Records).[109]
- Any hearing in a dependency proceeding except as otherwise provided by GA. CODE ANN. § 15-11-700(c).[110] Section 15-17-700(c), in turn, states that courts may close dependency hearings only by making a finding on the record and issuing an order stating the reasons for closure in situations where:
    - The proceeding involves an allegation of an act that would constitute a sexual offense if done by an adult; or
    - Closure is in the best interests of the child based on:
        - The age of the child alleged or adjudicated as a dependent child;
        - The nature of the allegations;
        - The effect that an open court proceeding will have on the court's ability to reunite and rehabilitate the family unit; and
        - Whether the closure is necessary to protect the privacy of a child, of a foster parent or other caretaker of a child, or of a victim of domestic violence.[111]

Q. Can the media take pictures, recordings, or video in juvenile court?

Yes, Georgia courts may permit electronic recordings, transmission, videotapes, or pictures of a proceeding involving a minor, provided:

- A request is made to the court at least two days before the hearing.
- The request passes the standards in GA. CODE ANN. § 15-1-10.1.[112]

The factors in § 15-1-10.1 are the same as those in Uniform Superior Court Rule 21 and are reflected in Juvenile Court Rule 13. They are as follows:

- The nature of the particular proceeding at issue;

- The consent or objection of the parties or witnesses whose testimony will be presented in the proceedings;
- Whether the proposed coverage will promote increased public access to the courts and openness of judicial proceedings;
- The impact upon the integrity and dignity of the court;
- The impact upon the administration of the court;
- The impact upon due process and the truth-finding function of the judicial proceeding;
- Whether the proposed coverage would contribute to the enhancement of or detract from the ends of justice;
- Any special circumstances of the parties, victims, witnesses, or other participants such as the need to protect children or factors involving the safety of participants in the judicial proceeding; and
- Any other factors which the court may determine to be important under the circumstances of the case.[113]

However, judges also "may order the media not to release identifying information concerning any child or family members or foster parent or other caretaker of a child involved in hearings open to the public."[114]

Q: What rules govern public access to juvenile court records?

All files and records of juvenile court proceedings are open to inspection only upon the order of the court, except that records from juvenile proceedings that were open to the public under GA. CODE ANN. 15-11-700(b)(1)-(5) shall also be open to the public.[115] Those proceedings include:

- Adjudicatory hearings involving an allegation of a class A or B felony.[116]
- Adjudicatory hearings "involving an allegation of delinquency brought in the interest of any child who has previously been adjudicated for committing a delinquent act; provided, however, the court shall close any delinquency hearing on an allegation of sexual assault or any delinquency hearing at which

any party expects to introduce substantial evidence related to matters of dependency."[117]

- Child support hearings and hearings on petitions to legitimize a child.[118]
- At the court's discretion, any dispositional hearing involving any proceeding under Article 9 (Access to Hearings and Records) of the Juvenile Code.[119]

Q: When are juvenile records sealed?

Courts are instructed to seal files and records of a juvenile case:

- "[U]pon dismissal of a petition or complaint alleging delinquency" or the completion of a case handled in a non-adjudicatory procedure.[120]
- If the person who was adjudicated for a delinquent act asks the court and the court holds a hearing, finding that:
  - Two years have elapsed since the final discharge of the person;
  - Since discharge, the person has not been convicted of a felony or a misdemeanor "involving moral turpitude," and no proceeding is pending against that person; and
  - The person has been rehabilitated.[121]

D. Special State Courts

1. Probate Court

Q: What rules govern public access to probate court records?

Georgia Uniform Probate Court Rule 4 governs public access to probate court documents.[122] Rule 4 provides: "[a]ll court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth [in Rule 4]."[123]

Rule 4 also provides that the public can obtain copies of probate court records "for a reasonable cost."[124]

Q: Can the probate court limit public access to its records?

On a motion by any party, the probate court may limit access by filing an order of limitation that specifies the:

- Part of the file to which access is limited,
- Nature and duration of the limitation; and
- Reason for limitation.[125]

The probate court order must find that "the harm … to the privacy of a person in interest clearly outweighs the public interest."[126] The order may be appealed.[127]

Q: What rules govern use of electronic or photographic equipment in probate proceedings?

Uniform Probate Court Rule 10.10 covers electronic and photographic news coverage of proceedings.[128] Unless ordered otherwise by the judge, the media may be present at and "unobtrusively make written notes and sketches pertaining to any judicial proceedings in the courts."[129]

However, prior to the hearing, members of the media must file a written request to use electronic or photographic equipment. This request must specify the:

- Particular case or proceedings for which such coverage is intended;
- Type of equipment to be used in the courtroom;
- Trial, hearing or proceeding to be covered; and
- Person responsible for installation and operation of such equipment.[130]

A sample request for use of electronic or photographic equipment during a probate proceeding is included as Appendix D.[131]

In probate court, all television cameras, still cameras, and tape recorders are assigned to a specific portion of the courtroom and "will not be permitted to be removed or relocated during the court proceedings."[132]

Media members must get permission from the judge to conduct interviews in the courtroom.[133]

Media members who do not follow these rules are subject to removal and being held in contempt.

2. Magistrate Court

Q: What rules govern electronic media coverage in Georgia magistrate courts?

Georgia's Uniform Magistrate Court Rule 11 governs electronic media coverage in Georgia magistrate courts. Rule 11 specifies the same requirements as those set forth in Rule 4 for probate courts.[134] See above.

Q: What rules govern access to records in Georgia magistrate courts?

In civil magistrate court cases, copies of documents may be obtained after paying costs to the clerk.[135]

In criminal magistrate court cases, copies may also be obtained after paying costs to the clerk, but the court may remove certain information, such as phone numbers, that would violate the Victim's Protection Act.[136]

The magistrate court may limit access to its court records but is subject to the same restrictions and procedures outlined in Uniform Superior Court Rule 21.[137]

Uniform Magistrate Court Rule 6 governing documents in magistrate court provides as follows regarding limiting access to court files:

- After a hearing, if good cause is shown, a court may limit access with an order that specifies "the part of the file to which access is limited, the nature and duration of the limitation, and the reason for the limitation."
- The court must find that the "harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest."
- Under compelling circumstances, an *ex parte* motion for temporary limitation of access, which does not exceed 30 days, may be granted.[138]

3. Municipal Court

Q: What rules govern access to Georgia municipal court records?

Georgia Uniform Municipal Court Rule 6 provides that "[a]ll court records are public and are to be available for inspection in accordance with and as limited by the Georgia Open Records Act."[139]

Q: What are the rules governing use of electronic devices and recording of proceedings in Georgia municipal courts?

Media members desiring to use electronic and recording devices in municipal courts must abide by Rule 11 and submit a request at least 24 hours in advance.[140] A sample request to record in municipal court is included as Appendix E.

If a party objects to the media's request before the start of a proceeding, the judge is required to hold a hearing on the matter.[141] However, requests to record in municipal court "should generally be approved"[142] and may be denied only if:

- The judge makes "specific findings on the record that there is a substantial likelihood of harm" arising from the factors listed below,
- The harm outweighs the public benefit of recording; and
- The judge considered more narrow restrictions on recording.[143]

The factors that a municipal judge must consider when ruling on a recording request are:

- The nature of the particular proceeding at issue;
- The consent or objection of the parties, witnesses, or alleged victims whose testimony will be presented in the proceedings
- Whether the proposed recording will promote increased public access to the courts and openness of judicial proceedings;
- The impact upon the integrity and dignity of the court;
- The impact upon the administration of the court;
- The impact upon due process and the truth-finding function of the judicial proceeding;

- Whether the proposed recording would contribute to the enhancement of or detract from the ends of justice;
- Any special circumstances of the parties, witnesses, alleged victims, or other participants such as the need to protect children or factors involving the safety of participants in the judicial proceeding; and
- Any other factors affecting the administration of justice or which the court may determine to be important under the circumstances of the case.[144]

4. Business Court

Q: What rules govern access to Georgia Business Court records?

Georgia Business Court Rule 15 provides that "all Court filings are public and shall be made available for public inspection unless public access is limited by law or by the procedures set forth in this article."[145]

Q: When can documents be filed under seal in Georgia Business Court?

Documents cannot be filed under seal in the business court without a court order, even if both parties agree to the sealing.[146] Upon a motion by a party or upon the court's own motion, and after a hearing on the motion, the court may order filing under seal.[147] The order must specify the part of the file to be sealed; the duration of the sealing, and the reason for the sealing.[148] Such an order can only be entered if the court finds that the harm that would result to the privacy of a person in interest "clearly outweighs" the public interest in access.[149]

Q: Are electronic devices permitted to be used in Georgia Business Court?

Business Court Rule 16 governs the use of electronic devices in business court.

As a matter of course, and without specific permission from the judge, electronic devices, including mobile phones and computers, may be used in business court for non-recording purposes by all persons – including spectators and representatives of the news media – other than jurors and witnesses.[150] Such devices shall be silenced and may not be used to make or receive telephone calls or for other audible functions.[151]

However, these devices may generally not be used to record absent special circumstances or permission.[152] Witnesses and jurors may not record proceedings in business court.[153] Attorneys representing a party in a business court proceeding, the lawyer's employees, and self-represented litigants may audio record court proceedings in a non-disruptive manner if they have announced to the court and all parties that they are doing so.[154]

Representatives of the media and other spectators may record only with special permission from the court, which can be procured through an application form (available on the court's website and at the clerk's office) submitted at least 24 hours in advance.[155]

If a judge denies a request to record or if any party objects to it, a hearing must be held as part of the official record of the proceeding.[156] The objective of the hearing is to determine whether the harm arising from the recording outweighs its benefit to the public.[157] The judge must consider the following factors:

- The nature of the particular proceeding at issue;
- The consent or objection of the parties or witnesses whose testimony will be presented in the proceedings;
- Whether the proposed recording will promote increased public access to the courts and openness of judicial proceedings;
- The impact upon the integrity and dignity of the Court;

- The impact upon the administration of the Court;
- The impact upon due process and the truth-finding function of the judicial proceeding;
- Whether the proposed recording would contribute to the enhancement of or detract from the ends of justice;
- Any special circumstances of the parties, witnesses, or other participants, such as factors involving the safety of participants in the judicial proceeding; and
- Any other factors affecting the administration of justice or which the Court may determine to be important under the circumstances of the case.[158]

Recording is not permitted in the judge's chambers, when the judge is out of the courtroom, of jurors (except for announcement of a verdict or questions to the judge), of bench conferences, of confidential/privileged communications, or of interviews about court proceedings.[159]

Any allowed use of an electronic device under Rule 16 is subject to the authority of the judge to terminate activity that is disruptive, distracting, or otherwise contrary to the administration of justice.[160]

The business court currently archives videos recordings of many of its oral arguments on its website.[161]

III. Federal Courts

A. Tradition of Public Access

As is true with Georgia state courts, "[t]he operations of the [federal] courts . . . [are] of utmost public concern."[162] The 11th Circuit Court of Appeals has described the common-law right of access to judicial proceedings as "an essential component of our system of justice, [and] instrumental in securing the integrity of the process."[163] The 11th Circuit also recognizes the public's presumptive, *qualified*, First Amendment right of access to judicial proceedings.[164] This includes the right to inspect and copy public or judicial records and documents.[165] In criminal cases, civil cases, and even in some immigration cases, the right of public access to court records applies to "judicial documents."[166]

Whether a document is subject to public access "depend[s] on the type of filing it accompanie[s]."[167] Regardless of whether a particular document has been filed with the court, materials submitted by litigants that are "integral to the 'judicial resolution of the merits' in any action taken by that court are subject to the common-law right of access and the necessary balancing of interests that the right entails."[168] While a complaint and its exhibits "are surely 'subject to the common-law right,'" the 11th Circuit acknowledges a "bright-line rule exempting discovery materials from the common-law right of access."[169] The presumptive right of access only applies to discovery materials that have been filed with the court in connection with a substantive pre-trial motion unrelated to discovery.[170] The reasoning is that discovery is "'essentially a private process' meant to 'assist trial preparation.'"[171]

For example, in 2019, the 11th Circuit affirmed that Alabama's lethal injection protocol was a "judicial document," reasoning that the protocol was "submitted to the court in connection with a litigated dispute … and relied upon by the court to dispose of substantive motions."[172] The court further explained that "[j]udicial records provide grounds upon which a court relies in deciding cases, and thus the public has a valid interest in accessing these records to ensure the continued integrity and transparency of our governmental and judicial offices."[173]

The presumptive right of access to records and documents in federal court may be overcome by a showing of good cause, which requires "balanc[ing] the asserted right of access against the other party's interest in keeping the information confidential."[174] Federal courts must consider, among other factors:

- Whether allowing access would impair court functions or harm legitimate privacy interests;
- The degree of and likelihood of injury if made public;
- The reliability of the information;
- Whether there will be an opportunity to respond to the information;
- Whether the information concerns public officials or public concerns; and
- The availability of a less onerous alternative to sealing the documents.[175]

Regarding access to proceedings, the U.S. Supreme Court has on several occasions recognized that the First Amendment protects the right of the press and public to attend court proceedings.[176] When determining whether the public has a First Amendment right of access to a governmental proceeding, 11th Circuit courts must apply the *Press-Enterprise II* test which addresses two complementary considerations: (1) "whether the place and process have historically been open to the press and general public" and (2) "whether public access plays a significant positive role in the functioning of the particular process in question."[177]

The Supreme Court recognizes the public's right of access in criminal cases to voir dire proceedings, preliminary hearings, suppression hearings, and trials.[178] The 11th Circuit also recognizes a constitutional right of access to criminal trial proceedings.[179] The constitutional right of access has a more limited application in the civil context.[180]

The Sixth Amendment guarantees criminal defendants in federal courts a right to a public trial.[181] The purposes of this public-trial guarantee include:

- Allowing the public to see that a defendant is tried fairly;
- Ensuring that judges, lawyers, witnesses, and jurors perform their functions responsibly;
- Encouraging witnesses to come forward; and
- Discouraging perjury.[182]

This right to a public trial, however, is "not absolute and must, on occasion, give way to other rights and interests."[183] Like the balancing test applied under the First Amendment right of access, under the Sixth Amendment right to a public trial, "a

party seeking … closure of a criminal proceeding would have to show that the measures taken were necessary to serve an overriding interest, and the court would have to consider other alternatives and make findings adequate to support the closure."[184]

B. General Rules Governing Access in Federal Court

Q: What rules govern access to civil proceedings?

The 11th Circuit recognizes a common-law right for the public and the press to access judicial proceedings.[185] Any denial of openness to civil proceedings must be narrowly tailored to serve a compelling government interest.

Pre-trial proceedings: The 11th Circuit has recognized a limited constitutional right of access to at least some pre-trial proceedings.[186]

Trials: The 11th Circuit has held that, other than in exceptional circumstances, trials in civil cases are public proceedings.[187]

Post-trial proceedings: *Newman v. Graddick*, 696 F.2d 796, 801 (11th Cir. 1983), acknowledged a limited constitutional right of access to at least some post-trial proceedings in a civil matter about prisoners.[188]

Appellate proceedings: The 11th Circuit has not held that a First Amendment right of access extends to appellate proceedings.

Q: Does the media have standing to intervene in a case, even when not a party to the case?

Yes, in the 11th Circuit, the media has standing to intervene to "petition for access to court proceedings and records."[189]

Q: What interests are cited in opposing a presumption of access?

Trade secrets and protected information: The 11th Circuit has held that information disclosed during discovery that qualifies as a trade secret may be exempt from the common-law right of access if the information is filed in connection with a discovery motion.[190] Under Federal Rule of Civil Procedure 26(c), courts may enter protective orders requiring that confidential information not be revealed or revealed only in a designated way.[191] For a protective order to be granted on these grounds, the party seeking protection must make a showing of "good cause," which the court will analyze by balancing the interests in question.[192]

Privacy interests of participants or involved third parties: The 11th Circuit has set a four-part test to determine whether the public can be excluded from a court proceeding that involves sensitive privacy issues, such as sexual assault of a minor.[193] The four factors are:

- The party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced;
- The closure must be no broader than necessary to protect that interest;
- The trial court must consider reasonable alternatives to closing the proceeding; and
- It must make findings adequate to support the closure.[194]

Partial closures: Partial closures are "situations in which the public retains some (though not complete) access to a particular proceeding."[195] Where access to the proceeding is retained by some spectators, the 11th Circuit Court of Appeals found the impact of closure is less concerning than complete closure and requires only a "substantial" reason to justify the closure of the courtroom.[196] "Substantial" refers to something less than the "overriding" or "compelling" interest that must be prejudiced in order for there to be a complete closure.[197] The 11th Circuit, whose jurisdiction includes Georgia, found that preventing injury to the dignity of a witness constituted a "substantial" reason for partial closure.[198] This contrasts with situations where the court is totally

closed for parts of the proceeding, in which case the four-factor test detailed above must be satisfied.[199]

Q: How do I access documents filed in federal court?

Most documents in federal courts are filed electronically, using a system called Case Management/Electronic Case Files (CM/ECF). Members of the public and the media can view filings found in this system through the Public Access to Court Electronic Records service (PACER).[200] Reporters who cover courts should consider establishing a PACER account.

The public does not have remote electronic access to filings in federal Social Security appeals or to filings in immigration cases relating to removal from the country.[201] In these two types of cases, non-parties may have electronic access to the full record at the courthouse, but may have remote electronic access only to:

- The docket maintained by the court; and
- An opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.[202]

Q: If discovery materials subject to a protective order are filed in connection with a substantive motion, do they then become publicly accessible?

Yes, unless the court orders otherwise upon a showing of good cause by the movant for closure, which is determined by balancing the factors in Federal Rule of Civil Procedure 26(c). Under Federal Rule of Civil Procedure 26(c), the court may protect the moving party from "annoyance, embarrassment, oppression, or undue burden or expense," by limiting the scope of the requested discovery or by restricting with whom the discovery may be shared.[203]

Q: When is closure of federal court proceedings justified?

In federal courts, a closure of proceedings is only justified where a "compelling" justification exists considering the following four factors:

- The party seeking to close the trial advances an overriding interest that is likely to be prejudiced;

- The closure is no broader than necessary to protect that interest;
- The trial court has considered reasonable alternatives to closure; and
- The court makes findings adequate to support the closure.[204]

Q: When is the closure of federal court records justified?

Federal courts apply a test similar to the one used for proceedings when the entire record of a case is closed.[205] When the trial court conceals the record of an entire case, making no distinction between sensitive and privileged documents, it must be shown that "the denial [of access] is necessitated by a compelling governmental interest, and is narrowly tailored to that interest."[206]

Even if the right of access exists, it can be rebutted if the requesting party establishes that sealing records "is essential to preserve higher values and is narrowly tailored to serve that interest."[207] Further, the presumption of access may be overcome "if a party establishes that his rights are undermined by publicity."[208]

Q: What is the availability of grand jury records and proceedings?

The right of the public and the press to access judicial proceedings does not extend to grand jury proceedings.[209] The public also has no right to a statement of reasons or a hearing on the closure of grand jury proceedings.[210] However, the 11th Circuit has held that a statute banning grand jury witnesses from disclosing their own testimony after termination of the investigation violated the First Amendment.[211]

C. Rules Governing Access in Criminal Cases

Q: Can you record criminal trials in federal court?

No. Rule 53 of the Federal Rules of Criminal Procedure prohibits photographing in and broadcasting from the courtroom during judicial proceedings.[212] In 2002, the Advisory Committee added a note to Rule 53, stating, "[A]lthough the revised rule does not explicitly recognize exceptions within the rules

themselves, the restyled rule recognizes that other rules might permit, for example, video teleconferencing, which clearly involves 'broadcasting' of the proceedings, even if only for limited purposes."[213]

Q: What rules govern access to criminal proceedings?

The 11th Circuit recognizes that the public and press have a presumptive First Amendment right of access to judicial proceedings in criminal cases[214] based on two "complementary considerations": first, "whether the place and process have historically been open to the press and general public," and second, "whether public access plays a significant positive role in the functioning of the particular process in question."[215]

Pre-trial proceedings: The 11th Circuit has recognized that some pre-trial proceedings are entitled to First Amendment protection, including voir dire proceedings and preliminary hearings.[216]

Criminal trials: The 11th Circuit recognizes a right of access,[217] but in criminal trials that include the testimony of a minor victim, courts may use their discretion to conduct an *in camera* review (in which a judge reviews evidence or conducts a hearing in chambers, away from the jury or public) to determine the extent to which the details of the victims' identities can be revealed.[218]

Post-trial proceedings: The right of the public and the press to access criminal trials extends to post-trial proceedings.[219] The 11th Circuit applies a "compelling interest" standard to determine whether a party can access the transcript, court papers, and docket related to a post-trial settlement.[220]

Appellate proceedings: The 11th Circuit has not held that a First Amendment right of access extends to appellate proceedings.

Q: How may public access to criminal records in federal court be restricted?

Federal courts may order that a filing be made under seal without redaction and may later unseal the filing or order a redacted version for the public record.[221] When a party seeks to seal particular documents, as opposed to an entire record, the court's "task is only 'to balance the competing interests of the parties.'"[222] The court must consider "whether the records are

sought for such illegitimate purposes as to promote public scandal or gain unfair commercial advantage, [and] whether access is likely to promote public understanding of historically significant events."[223]

For "good cause," federal courts may also order the redaction of additional information or "limit or prohibit a nonparty's remote electronic access to a document filed with the court."[224]

Q: Is there a public right of access to dockets in federal criminal cases?

Yes, in *United States v. Valenti*, the 11th Circuit held that a dual-docketing system or secret dockets are "inconsistent with affording the various interests of the public and the press meaningful access to criminal proceedings" and therefore were "an unconstitutional infringement on the public and press's qualified right of access to criminal proceedings."[225]

Q: Does the right of access to criminal records apply after a trial is over?

Yes, in some contexts. In *United States v. Ignasiak*, the 11th Circuit vacated a district court's sealing order and extended the public's access rights to a post-trial notice of an *in camera* proceeding because of concerns about the government's rationale for keeping the document sealed.[226]

D. Rules Specific to the 11th Circuit Court of Appeals

Q: What restrictions do the 11th Circuit's local rules impose on public access to court records?

The 11th Circuit can order a document filed with a court, or a portion thereof, to be sealed or removed from electronic remote access when it contains:

- Ad hominem or defamatory language; or
- Information the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or
- Information the public disclosure of which would violate legally protected interests.[227]

Q: Can members of the media record 11th Circuit court proceedings?

In the 11th Circuit, recordings of court proceedings by anyone other than the court is prohibited.[228] However, copies of the court's audio recordings of oral arguments, held after Aug. 1, 2012, are available for purchase on CD for a fee.[229] Additionally, recordings of oral arguments held after April 1, 2017, are available on the court's website. The recordings are posted "as soon as practicable after the date of argument."[230]

E. Northern District of Georgia Local Rules

Q: Can members of the public and media record judicial proceedings?

No. Photographing, recording, and broadcasting judicial proceedings in the Northern District of Georgia are prohibited, unless specifically allowed by the judge as follows:

- During the presentation of evidence;
- To help make the record;
- During ceremonial, investiture, or naturalization proceedings;
- For security purposes; or
- For other purposes of judicial administration.[231]

Q: Which devices are prohibited from federal courthouses in the Northern District of Georgia?

The following devices are prohibited unless admitted by court order:

- Still cameras
- Video cameras
- Smartphones
- Tablets
- Laptops
- Devices that connect wirelessly to transmit data
- Any other device with a camera.[232]

A judicial officer may allow use of photographic or electronic equipment for: the presentation of evidence; the perpetuation of the record; ceremonial, investiture, or

naturalization proceedings; security purposes; and other purposes of judicial administration.[233]

All electronic broadcasting and recording equipment brought into federal courthouses is subject to inspection by the U.S. Marshals Service.[234]

Q: Who may bring personal electronic devices into federal courthouses in the Northern District of Georgia?

Electronic devices may be brought into the courthouse by:

- Attorneys with court-issued identification cards;
- Authorized federally certified contract interpreters; and
- Court employees.[235]

They are bound by the same recording and broadcasting restrictions as the public.

Q: What defines a "filing" in the Northern District of Georgia?

A "filing" includes a single main document or a main document with one or more additional documents attached.[236] Docket entries typically identify the nature of a filing.[237] Docket entries for provisionally sealed civil filings remain visible to the public.

Q: Who may inspect court files and exhibits in the Northern District of Georgia?

While a case is open, only attorneys for the parties may inspect exhibits, pursuant to the following restrictions and requirements:

Sensitive Exhibits: Sensitive and special criminal evidence may not be inspected or copied without specific leave of the court. Such evidence includes, without limitation, narcotics, weapons, currency, exhibits of a pornographic nature, articles of high monetary value, exhibits depicting or describing a particularly brutal crime, exhibits in a highly publicized case, and any other evidence designated by the court as being sensitive.[238]

Sealed Exhibits: Exhibits ordered sealed or impounded by the court may not be inspected or copied by anyone, including attorneys for the parties, except upon leave of the court.[239]

Other Exhibits: Attorneys of record for any party may inspect or copy without specific leave of Court all exhibits, other than sensitive and sealed exhibits, which have been admitted into evidence or rejected.[240]

Presence of Clerk Required: All inspections of exhibits must be conducted in the presence of the clerk or an authorized deputy clerk of this Court. Inspections by attorneys for the parties are not excepted from this rule nor is application of this rule affected by whether the inspection is being made with or without leave of Court.[241]

Once a case is closed, a member of the public or press may submit a request form to the clerk of court, pay a fee and examine the case file in the clerk's office.[242] Alternatively, the clerk may provide an accession number for the file, and the requestor may request copies directly from the Federal Records Center.[243]

Q: How are trial exhibits retained in the Northern District of Georgia?

The clerk must retain all documentary exhibits, audio and video files and substitute exhibits received or offered into evidence until the time for appeal has expired or, in appealed cases, until entry of the appellate court's mandate, unless otherwise ordered by the Court.[244] Exhibits that are rejected,[245] withdrawn, or not tendered[246] during court proceedings must be identified on an exhibit list. Oversized and non-documentary original exhibits must be photographed or otherwise reproduced, and the reproductions must be filed with the court. Each reproduction must indicate whether the exhibit was admitted or rejected in court.[247] Sensitive documentary exhibits in the custody of the clerk may be sealed by the Court.[248]

Q: May the public or media obtain exhibits for inspection or appeal after the exhibits have been returned to the filing party?

Yes, the filing party or the party's attorney must grant a reasonable request of any party to examine an exhibit returned to the filing party's custody. Any exhibit in the custody of the filing party or the party's attorney must, upon request, be returned immediately to the clerk.[249] Exhibits under this rule include documentary exhibits, audio files, video files, and non-sensitive,

non-documentary exhibits.[250] This rule also applies to pleadings[251] and appeal records.[252]

Q: How may the public gain access to transcripts of court proceedings?

The original transcripts of testimony and any record of proceedings filed with the clerk by an official court reporter must not be removed from the clerk's office by the parties or anyone acting on their behalf.[253]

Transcripts of court proceedings filed with the clerk of court in electronic format become available 90 days after being filed. These transcripts may be inspected and copied in the clerk's office or downloaded from the court's CM/ECF system though the judiciary's PACER system.[254]

Q: What rules govern filing under seal?

In general, a party may file documents under seal provisionally (i.e., temporarily) but must ask the court to make the sealing permanent. The party that files documents under provisional seal must make advance arrangements with the Court in order to restrict another attorney's ability to view provisionally sealed filings.[255]

If the court denies the motion permanent seal, the documents must be refiled publicly within three (3) days of the court's decision. A provisionally sealed filing will not be considered by the Court for any substantive purpose unless and until the Court gives it permanently sealed status.

Motions and settlement agreements may not be filed under seal provisionally without a Court order.

The complete rules governing electronic filing under seal in civil cases in the Northern District of Georgia can be found in Section II(J) of Appendix H to the Local Rules for the Northern District of Georgia:

- http://www.gand.uscourts.gov/sites/default/files/NDGARulesAppH.pdf

The procedures for specific types of electronic filings under seal in the Northern District of Georgia are explained in the following links:

- Non-Motion Filings with Partially Sealed Content: http://www.gand.uscourts.gov/non-motion-seal-instructions
- Motion with Sealed or Partially Sealed Supporting Documents: http://www.gand.uscourts.gov/motion-seal-instructions
- Filing That Is Sealed In Its Entirety: http://www.gand.uscourts.gov/entire-filing-sealed-instructions
- Re-Filing of Provisionally Sealed Document(s) with Court Order: http://www.gand.uscourts.gov/re-filing-sealed-instructions

F. Middle District of Georgia Local Rules

Q: What are the limits on accessing records?

Trial participants in the Middle District must electronically file a Motion to Seal to request any document be filed with the Court under seal.[256] The Court may order a document sealed without redaction and later unseal the filing, or order the filing party to file a redacted version for the public record.[257]

Additionally, the court may, for good cause, order the redaction of additional information from a court-filed document or "limit or prohibit a nonparty's remote electronic access to a document filed with the court."[258]

Q: Can the media access jury questionnaires?

No, these questionnaires "shall only be used for purposes of jury selection" and attorneys are ordered to destroy all copies immediately after trial.[259]

Q: Can members of the press bring electronic devices in the courtroom?

Yes, provided they present credentials showing that they are employees of a news gathering organization, media members may bring:

- Cellular telephones;
- Wireless email devices, such as iPads, iPhones, or Blackberry devices; and/or

- Laptop computers or other personal digital assistants (PDAs).[260]

Further, the court requires all electronic devices to be on "silent" mode so that no audible sounds are detectable from the device, and users must ensure the device is not "otherwise disruptive to the proceedings."[261]

Finally, judges may prohibit the use of electronic devices depending on the nature of the proceeding.[262]

Q: Can the media photograph or record proceedings?

No, "under no circumstances shall" electronic devices be used, inside the courtroom, to photograph, record, or broadcast.[263] However, a reporter may electronically transmit the reporter's description of the proceedings via e-mail, "instant messaging," "Twitter," or some other similar electronic message system.[264]

G. Southern District of Georgia Local Rules

Q: Can members of the public and press record judicial proceedings?

No. Photographing, recording, and broadcasting judicial proceedings are prohibited in the Southern District of Georgia.[265] The stated purpose of this rule is "to preserve and protect the dignity and solemnity of court proceedings, to promote public safety, and to facilitate access to court functions by the public and court officers."[266]

Q: Where besides the courtroom is recording prohibited in the Southern District?

The Southern District of Georgia's prohibition on recording encompasses proceedings taking place in the courtroom, as well as proceedings in the "environs" of the courtroom, including:

- Any portion of any U.S. courthouse building;
- The exterior courthouse steps;
- Parking areas adjacent to courthouses (if the parking area is owned by the government); and

- Wherever a U.S. marshal may extend the environs of the courtroom in the interest of public health and safety, such as curbs or edges or public streets.[267]

Local Rule 83.24 is not designed to restrict the constitutional rights of the public and press.[268] Accordingly, recordings may be made in office areas and agencies located within courthouses in matters unrelated to court proceedings.[269]

Q: What courts in the Southern District are included under the prohibition on recording?

The prohibitions on recording in the Southern District of Georgia apply to the following courts in that district:

- District Courts;
- U.S. Magistrate Courts;
- Bankruptcy Courts; and
- Administrative Courts.[270]

Q: When may a judge permit recording in the Southern District?

A judge may authorize use of electronics or photography for the purposes of presenting evidence for the record;[271] and the broadcasting, televising, recording, or photographing of investiture, ceremonial, or naturalization proceedings.[272]

Q: What other rules limit public access to information in the Southern District?

Courthouse personnel are prohibited from disclosing information that is not part of the public record.[273] Courthouse personnel include the following:

- U.S. marshals and deputies;
- The clerk and deputies;
- Probation officers and probation clerks;
- Bailiffs;
- Court reporters; and
- Any employees or subcontractors retained by the official court reporters.[274]

Proceedings that are included under this rule include:

- Grand jury proceedings;
- Criminal cases; and

- Civil cases.[275]

The "public record" is defined as "materials which are contained in the court's official file as maintained by the clerk except such parts thereto as may be sealed, secret, impounded or specially set aside for in camera inspection."[276]

Q: What rules govern a motion to seal?

Except as required or allowed by statute or rule, no matter may be placed under seal without permission of the court.[277]

Any person who wants to place a matter under seal must present a motion establishing why the matter should not be available for public inspection.[278]

When a clerk receives this motion, he or she must:

- Docket the motion as a motion to seal;
- Refrain from labeling the filing as "sealed" or identifying the person seeking the sealing order unless the person consents;
- Designate any accompanying materials as "sealed matter"; and
- Maintain the motion and accompanying materials in a secure file pending a ruling on the motion to seal.[279]

If the motion to seal is denied, any materials submitted to the clerk with the motion shall be returned to the requestor, who then has the option to file the materials in the normal course.[280]

Q: What is covered by a motion to seal?

Motions to seal may extend to:

- The name of the movant;
- The title of the filing sought to be sealed; and
- The contents of the filing itself.[281]

Usually, only the contents of the filing itself will warrant sealing, not the title of the filing.[282] For example, the data included in a motion *in limine* (request that certain testimony be excluded) might warrant sealing, but neither the title "Motion in Limine" nor the identity of the movant would warrant sealing.[283]

Unless the court specifies otherwise, the clerk shall construe all sealing orders to extend only to the contents of the underlying filing.[284]

The burden rests upon the moving party to justify all three sealing levels.[285]

The party seeking to have any matter placed under seal must rebut the presumption of the openness derived from the First Amendment by showing that closure is essential to preserve some higher interest and is narrowly tailored to serve that interest.[286]

IV. Gag Orders in State and Federal Courts

A "gag order" in the context of state court access in Georgia refers to a judicial ruling barring public disclosure or discussion of information related to a case.[287] The Georgia Supreme Court states "a gag order is, by definition, a prior restraint of those to whom it applies,"[288] meaning that it is government action that prohibits or censors speech before the speech occurs. The Georgia Supreme Court has further recognized that prior restraints are among "the most serious and least tolerable infringement on First Amendment rights" and are presumptively unconstitutional.[289] Therefore, proponents of a gag order bear "a heavy burden of showing justification."[290]

A. Gag Orders Applied to the Media

Gag orders that apply to the media are disfavored by Georgia state and federal courts in both civil and criminal court proceedings.

In *Ga. Gazette Publishing Co. v. Ramsey,* 248 Ga. 528 (1981), a civil case, the Georgia Supreme Court struck down a protective order from the superior court. The order had prohibited a newspaper from disclosing any information obtained through discovery in an invasion-of-privacy case brought by a dentist against the newspaper for publishing articles indicating that the dentist was a suspect in a murder case.[291] The Georgia Supreme Court relied on the state Constitution's provision similar to the First Amendment which states: "No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that liberty."[292] The court held that "the protections of our own Constitution must remain paramount. … Under its plain language, the newspaper is empowered to write and speak and publish on all subjects."[293] The court therefore declared the protective order to be "an unwarranted restraint upon the newspaper's liberty of speech and of the press."[294]

In criminal cases involving gag orders, there is a tension between "[a] free press versus [a] fair trial" for the accused.[295] However, it is generally understood that, even in the criminal context, "a prior restraint [on the media] is permissible only if narrowly tailored to avoid a clear and present danger or serious and imminent threat to a competing,

protected interest and only to the extent that no alternatives less restrictive than a prior restraint are reasonably available."[296] This analysis is consistent with *Nebraska Press Association v. Stuart*, 427 U.S. 539 (1976), the leading U.S. Supreme Court case on prior restraints against the media in criminal cases.[297] The *Nebraska Press* standard requires consideration of:

- The probable extent and nature of pre-trial media coverage;
- The likely impact of that coverage on potential jurors;
- Whether alternative measures would as effectively mitigate the prejudicial impact of pre-trial coverage; and
- The probable efficacy of prior restraint of publication as a workable method of protecting the accused's right to a fair trial.[298]

Regarding freedom of the press surrounding a criminal trial, the Georgia Supreme Court has emphasized that the issue a trial court must consider is not the amount of publicity a case receives, but whether there is actually resulting prejudice to the accused or to the case's outcome.[299] As such, "[a] conclusory representation that publicity might hamper a defendant's right to a fair trial is insufficient to overcome the protections of the First Amendment."[300]

B. Third-Party Media Challenges to a Gag Order

Third-party challenges to a gag order, where the challenging party is not subject to the gag, are not categorized as a "prior restraint," but are instead treated as a less severe speech restriction.[301] In Georgia, the media have the ability to challenge a court-issued gag order that does not apply to the media themselves where "a willing speaker exists"[302] who wants to speak to the media about the court case at issue but is prevented from doing so because of the gag order. In such a circumstance, the media have standing to challenge the gag order because it is interfering with the media's "ability to effectively engage in newsgathering,"[303] which infringes on the First Amendment "right to receive information and ideas."[304]

For example, in WXIA-TV v. State, 303 Ga. 428 (2018), the Georgia Supreme Court found that a willing speaker existed. The criminal case at issue was the subject of extensive media coverage; law

enforcement sources had spoken to the media about the case before the issuance of a gag order; law enforcement sources then declined to comment further, citing the gag order; and no party disputed that even though the court had modified the gag order to make it more narrow, sources who were willing to speak to the media were prevented from doing so by the modified gag order.[305]

C. Gag Orders Applied to Trial Participants

Neither the U.S. Supreme Court nor the Georgia courts have decided what test applies to gag orders directed at trial participants (i.e., lawyers, parties, and witnesses).[306] Courts in other jurisdictions have used varying tests.[307] Some apply strict scrutiny along the lines of the analysis in the *Nebraska Press* case discussed above.[308] Others apply an intermediate standard that looks at whether the gag order protects against a "substantial likelihood of material prejudice."[309] When a gag order is challenged by a third party (such as the media) not themselves subject to the gag order, courts have used an even further deferential standard that asks whether the speech restriction is justified by a "reasonable likelihood of prejudice."[310]

The Georgia Supreme Court applied this third, most deferential standard of "reasonable likelihood" in the case of *WXIA-TV v. State*, 303 Ga. 428 (2018), where the court struck down a gag order, challenged by members of the media, that restricted extrajudicial statements about numerous aspects of the case by the parties, counsel, court staff, and any current or past members of law enforcement who participated in the investigation of the crime or had knowledge of facts the investigation uncovered.[311] The court found "no reports attributing inflammatory statements or prejudicial information to sources covered by the modified gag order."[312] It therefore concluded that the record failed to show "a reasonable likelihood of prejudice sufficient to sustain a gag order."[313] However, the court was explicit that "[t]o decide this case . . . we need not definitively determine the standard to be applied" to gag orders "directed to trial participants and potential trial participants."[314]

D. Gag Orders in Family Law Cases

The Georgia Supreme Court has held that a trial court may require the parties in a divorce proceeding "to refrain from making derogatory remarks about the other before [i.e., in front of] the children," but that an order enjoining any party from discussing the other party with

the children except under vaguely defined circumstances was "unreasonable and void."[315]

In 2013, the Georgia Court of Appeals upheld a trial court's order in a divorce and child custody case that "restrained and enjoined [the parties] from posting matters about each other or their current litigation on Facebook or other social networking sites" where there was evidence that both parties had made derogatory and disparaging comments on Facebook.[316]

However, a 2016 Court of Appeals decision vacated a gag order imposed during a child custody case that, among other things, prohibited the parties from "putting, placing[,] or causing to be placed any information concerning this custody case upon or in any social media, website, or other public medium" until the divorced parties' second son reached the age of 18, and also prohibited the parties from publicly alleging that the court reporter's transcript of a hearing in the case was flawed or had been altered.[317] The gag order was issued in the form of a permanent injunction following "derogatory" comments on social media that the court found to be "detrimental to the parties' minor children … and intimidating to the parties."[318] The Court of Appeals vacated the injunction "[g]iven the absence of any evidence of imminent danger to a compelling interest of such magnitude that the restraint on the parties' [and lawyers'] speech would be warranted," as well as the superior court's failure to properly conduct the balancing test and narrowly tailor the restrictions.[319] Additionally, in striking down the prohibition on speech about the custody proceeding itself, the Court of Appeals observed that "[t]he operations of the courts and the judicial conduct of judges are matters of utmost public concern" under the First Amendment.[320] It therefore held "we cannot condone the superior court's attempt in this case to restrict the parties' and lawyers' right to publicly criticize the court and the litigation for the next ten years."[321]

E. Gag Orders in Georgia Federal Courts

The 11th Circuit Court of Appeals, whose jurisdiction includes Georgia, recognizes a heavy presumption against the constitutionality of prior restraints *directed to the press*.[322] In such situations, the *Nebraska Press* test discussed in Subsection A above applies.

The 11th Circuit has not adopted a standard for entering orders restricting the speech of trial participants.[323] However, the local rules for the United States District Courts for both the Northern and Southern Districts of Georgia allow a court, in a "widely publicized or sensational" civil case, to issue orders governing:

- Extrajudicial statements by parties and witnesses that are likely to interfere with the rights of a party to a fair trial;
- The seating and conduct of courtroom media members;
- The management of jurors and witnesses; and
- Any other matters that the Court deems appropriate.[324]

These local rules do not specify whether there must be a "reasonable likelihood" or "substantial likelihood" of prejudice to a fair trial interest before the court can restrict extrajudicial statements by trial participants.[325]

V. Appendices

A. Georgia Uniform Superior Court Rule 21: Limitation to Access of Court Files

All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below.

- Rule 21.1. *Motions and Orders*
  Upon motion by any party to any civil or criminal action, or upon the court's own motion, after hearing, the court may limit access to court files respecting that action. The order of limitation shall specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for limitation.
- Rule 21.2. *Finding of Harm*
  An order limiting access shall not be granted except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest.
- Rule 21.3. *Ex Parte Orders*
  Under compelling circumstances, a motion for temporary limitation of access, not to exceed 30 days, may be granted, ex parte, upon motion accompanied by supporting affidavit.
- Rule 21.4. *Review*
  An order limiting access may be reviewed by interlocutory application to the appellate court that has jurisdiction to hear the appeal.
- Rule 21.5. *Amendments*
  Upon notice to all parties of record and after hearing, an order limiting access may be reviewed and amended by the court entering such order or by the appropriate appellate court at any time on its own motion or upon the motion of any person for good cause.
- Rule 21.6. *Redaction of Protected Identifiers and Filings Under Seal*
  (A) *Protected Identifiers*

Protected identifiers are items of identifying information subject to protection from placement on the public record as described in OCGA § 9-11-7.1.

(B) *Protected Identifiers in Family Violence and Stalking Protective Orders.*
Protected identifiers that must be included to qualify a protective order for entry into the Georgia Protective Order Registry or the National Crime Information Center Registry shall be placed on a separate page to follow the other pages of the order. The clerk of court shall utilize the protected identifiers as necessary to process the protective order and then seal the protected identifiers page in the case file without further order of the court. The protected identifiers page shall not be unsealed except upon order of the court or as required by law.

(C) *Sealing of Filings With Unredacted Protected Identifiers.*
Any party seeking to make a filing under seal without redaction shall first file a redacted version of the filing with the clerk of court 38 for the public record and then submit the request for filing under seal directly to the court, along with a copy of the filing without redaction and a proposed order to file under seal.

(D) *Sealing of Filings Containing Personal and Confidential Information.*
Any party seeking to make a filing under seal which contains additional personal or confidential information other than protected identifiers shall first file a redacted version with the clerk of court for the public record and then submit a request for filing under seal directly to the court, along with a copy of the filing without redaction and a proposed order to file under seal.

B. Georgia Uniform Superior Court Rule 22: Use of Electronic Devices in Courtrooms and Recording of Judicial Proceedings

(A) **Overview**. Open courtrooms are an indispensable element of an effective and respected judicial system. It is the policy of Georgia's courts to promote access to and understanding of court proceedings not only by the participants in them but also by the general public and by news media who will report on the proceedings to the public. This must be done, however, while protecting the legal rights of the participants in the proceedings and ensuring appropriate security and decorum. Except as otherwise required by law, this rule governs the use of devices to record sounds or images in a courtroom and comports with the standards provided in OCGA § 15-1-10.1 regarding the use of devices to record judicial proceedings. This rule similarly governs the use of electronic devices, including mobile phones and computers, in a courtroom for purposes other than recording sounds and images. Such use is generally allowed by lawyers, by employees of lawyers, and by self-represented parties, but to ensure decorum and avoid distraction, such use is generally prohibited by jurors, witnesses, parties, and spectators, including representatives of the news media. Such persons may, however, use their devices by stepping outside the courtroom, and nothing in this rule prevents a judge from permitting parties and spectators to use their devices for non-recording purposes as the judge may allow in his or her discretion. A court must use reasonable means to advise courtroom visitors of the provisions of this rule and must make the form in Exhibit A available in its clerk's office and on the court's website.

(B) **Definitions.** The following definitions apply in this rule:

1) "Recording device" means a device capable of electronically or mechanically storing, accessing, or transmitting sounds or images. The term encompasses, among other things, a computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone or other wireless phone; a camera and other audio or video recording devices; a

personal digital assistant (PDA); and any similar devices.

2) “Recording” means electronically or mechanically storing, accessing, or transmitting sounds or images. “Record” means to electronically or mechanically store, access, or transmit sounds or images, including by photographing, making an audio or video recording, or broadcasting. Nothing in this rule prohibits making written notes and sketches pertaining to any judicial proceedings.

3) “Courtroom” means the room in which a judge will conduct a court proceeding and the areas immediately outside the courtroom entrances or any areas providing visibility into the courtroom.

(C) **Jurors, witnesses, parties, and spectators, including representatives of the news media.** The following restrictions apply to use of recording devices by jurors, including grand jurors and prospective jurors, by witnesses, by parties, and by spectators, including representatives of the news media.

1) Jurors: Jurors shall turn the power off to any recording device while present in a courtroom and while present in a jury room during the jury’s deliberations and discussions concerning a case. Jurors may use their devices during breaks as authorized by the judge. Jurors shall not record proceedings.

2) Witnesses: Witnesses shall turn the power off to any recording device while present in a courtroom, and may use a device while testifying only with permission of the judge. Witnesses shall not record proceedings.

3) Parties and spectators: Parties and spectators may use recording devices to record proceedings only as specifically authorized by the court pursuant to this rule. All parties and spectators shall turn the power off to any recording device while present in a courtroom, unless the judge allows orally or in writing the use of recording devices in the courtroom for purposes other than recording sounds and images, which the judge may freely do when he or she believes such use would not be disruptive or

distracting and is not otherwise contrary to the administration of justice. When such use is allowed, recording devices must be silenced and may not be used to make or receive telephone calls or for other audible functions without express permission from the judge.

(D) **Attorneys, employees of attorneys such as paralegals and investigators, and self-represented parties (pro se litigants)**.

1) Use of recording devices to record: Unless otherwise ordered by the court, attorneys representing parties in a proceeding and self-represented parties may make audio recordings of the proceeding in a nondisruptive manner after announcing to the court and all parties that they are doing so. Recordings made pursuant to this paragraph may be used only in litigating the case or as otherwise allowed by the court or provided by law. Attorneys and self-represented parties may also seek authorization to record proceedings pursuant to paragraph (E) of this rule.
2) Use of recording devices for non-recording purposes: Attorneys and their employees such as paralegals and investigators may use recording devices in a courtroom for purposes other than recording sounds and images, including word processing, storing or retrieving information, accessing the internet, and sending or receiving messages or information. Self-represented parties may do the same but only in direct relation to their proceedings. Recording devices must be silenced and may not be used to make or receive telephone calls or for other audible functions without express permission from the judge.
3) Limitation: Any allowed use of a recording device under paragraph (D) is subject to the authority of the judge to terminate activity that is disruptive or distracting or is otherwise contrary to the administration of justice.

(E) **Celebratory or ceremonial proceedings, or when the court is not in session.** Notwithstanding other provisions of this rule, a person may request orally or in writing, and a

judge or judge’s designee may approve orally or in writing, use of a recording device in a courtroom to record a celebratory or ceremonial proceeding or use of a recording device in a courtroom when the court is not in session.

(F) **Other persons or organizations desiring to record.** Any other persons or organizations, including representatives of the news media, desiring to record a court proceeding shall make application to the judge on the form in Exhibit A following this rule.

1) Submission of a request: The person or organization must submit the request to the judge or to an officer of the court designated to receive requests under this rule. The request should address any logistical issues that are expected to arise.
2) Time limit for submitting a request: The person or organization must submit the request sufficiently in advance of the proceeding — at least 24 hours where practicable under the circumstances — to allow the judge to consider it in a timely manner.
3) Notice and hearing: The court will notify the parties of its receipt of a request for recording. Parties shall then notify their witnesses. The prosecutor of a criminal case shall notify alleged victims. The judge will promptly hold a hearing if the judge intends to deny the request or a portion of the request, or if a party, witness, or alleged victim objects to a request. The hearing under this paragraph shall be part of the official record of the proceeding.
4) Time for a party, witness, or alleged victim to object to a request: A properly notified party, witness, or alleged victim waives an objection to a request for recording of a proceeding if the party, witness, or alleged victim does not object to the request in writing or on the record before or at the start of the proceeding.

(G) **Denial or limitation of recording**. A properly submitted request for recording should generally be approved, but a judge may deny or limit the request as provided in this paragraph. A judge’s decision on a request, or on an objection to a request, is reviewable as provided by law.

(1) Denial of recording: A judge may deny a request for recording only after making specific findings on the

record that there is a substantial likelihood of harm arising from one or more of the following factors, that the harm outweighs the benefit of recording to the public, and that the judge has considered more narrow restrictions on recording than a complete denial of the request:

a) The nature of the particular proceeding at issue;
b) The consent or objection of the parties, witnesses, or alleged victims whose testimony will be presented in the proceedings;
c) Whether the proposed recording will promote increased public access to the courts and openness of judicial proceedings;
d) The impact upon the integrity and dignity of the court;
e) The impact upon the administration of the court;
f) The impact upon due process and the truth finding function of the judicial proceeding;
g) Whether the proposed recording would contribute to the enhancement of or detract from the ends of justice;
h) Any special circumstances of the parties, witnesses, alleged victims, or other participants such as the need to protect children or factors involving the safety of participants in the judicial proceeding; and
i) Any other factors affecting the administration of justice or which the court may determine to be important under the circumstances of the case.

(2) Limitation of recording: Upon his or her own motion or upon the request of a party, witness, or alleged victim, a judge may allow recording as requested or may, only after making specific findings on the record based on the factors in the preceding paragraph, impose the least restrictive possible limitations such as an order that no recording may be made of a particular criminal defendant, civil party, witness, alleged victim, law enforcement officer, or other person, or that such person's identity must be effectively obscured in any image or video recording, or that only an audio recording may be made of such person.

(H) **Manner of recording**. The judge should preserve the dignity of the proceeding by designating the placement of

equipment and personnel for recording the proceeding. All persons and affiliated individuals engaged in recording must avoid conduct or appearance that may disrupt or detract from the dignity of the proceeding. No person shall use any recording device in a manner that disrupts a proceeding.

(I) **Pooling of recording devices.** The judge may require pooling of recording devices if appropriate. The persons or organizations authorized to record have the responsibility to implement proper pooling procedures that meet the approval of the judge.

(J) **Prohibitions.** The following uses of recording devices are prohibited:

1) No use of recording devices while the judge is outside the courtroom: Except as provided in paragraph (E) of this rule, a person may use a recording device in a courtroom only when the judge is in the courtroom, and use of a recording device must terminate when the judge leaves the courtroom.
2) Recording of jurors: Recording devices must be placed to avoid recording images of jurors or prospective jurors in any manner. Audio recordings of jurors' or prospective jurors' statements or conversations are also prohibited, except that the jury foreperson's announcement of the verdict or questions to the judge may be audio recorded.
3) No recording of privileged or confidential communications: In order to preserve the attorney-client privilege and client confidentiality as set forth in the Georgia Rules of Professional Conduct and statutory or decisional law, no person shall make a recording of any communication subject to the attorney-client privilege or client confidentiality.
4) No recording of bench conferences: No person other than the court reporter may record a bench conference, unless prior express permission is granted by the judge.

(K) **Recording not official court record.** No recording of a judicial proceeding made pursuant to this rule may be used to modify or supplement the official court record of that proceeding without express permission of the judge pursuant to OCGA § 5-6-41(f).

(L) **Disciplinary authorities.** This rule does not apply to disciplinary authorities acting in the course of their official duties.

(M) **Enforcement.** Persons who violate this rule may be removed or excluded from the courtroom. A willful violation of this rule may be punishable as contempt of court.

C. Sample Rule 22 Request to Use Recording Device in Superior Court

IN THE SUPERIOR COURT OF _______________ COUNTY
STATE OF GEORGIA

(STYLE OF CASE/CALENDAR) CASE NO. _____________

REQUEST TO USE A RECORDING DEVICE PURSUANT TO RULE 22 ON RECORDING OF JUDICIAL PROCEEDINGS.

Pursuant to Rule 22 of the Uniform Rules for Superior Court regarding Use of Electronic Devices in Courtrooms and Recording of Judicial Proceedings, the undersigned hereby requests permission to use a recording device in Courtroom ____ in order to record images and/or sound during (all) (the following portions) of the proceedings in the above captioned case/calendar.

Consistent with the provisions of the rule, the undersigned desires to use the following described recording device(s): _________. The proceedings that the undersigned desires to record commence on (date). Subject to direction from the court regarding possible pooled coverage, the undersigned wishes to use this device in the courtroom on (date). The personnel who will be responsible for the use of this recording device are: (identify appropriate personnel).

The undersigned hereby certifies that the device to be used and the locations and operation of such device will be in conformity with Rule 22 and any guidelines issued by the court.

The undersigned understands and acknowledges that a violation of Rule 22 and any guidelines issued by the court may be grounds for removal or exclusion from the courtroom and a willful violation may subject the undersigned to penalties for contempt of court.

This ______ day of ______, 20__.
____________________________ (Individual Signature)
____________________________ (Representing/Firm)
____________________________ (Position)
APPROVED: _______________
____________________________ Judge, Superior Court
__________ Judicial Circuit

D. Sample Rule 10.10 Probate Court Media Request to Record or Photograph

IN THE PROBATE COURT OF __________ COUNTY
STATE OF GEORGIA

(STYLE OF CASE) ESTATE OR FILE NO. ___

REQUEST TO INSTALL RECORDING AND/OR PHOTOGRAPHING EQUIPMENT PURSUANT TO RULES AND GUIDELINES FOR ELECTRONIC AND PHOTOGRAPHIC NEWS COVERAGE OF JUDICIAL PROCEEDINGS.

Pursuant to Rule 10.10 of the Uniform Probate Court Rules, the undersigned hereby requests permission to install equipment in courtroom ___ in order to record, photograph or televise all or portions of the proceedings in the above-captioned case.

Consistent with the provisions of the rules and guidelines, the undersigned desires to install the following described equipment: __________ in the following locations: __________. The proceedings that the undersigned desires to record, photograph or televise commence on (DATE) . Subject to direction from the court regarding possible pooled coverage, the undersigned wishes to install this equipment in the courtroom on (DATE) . The personnel who will be responsible for the installation and operation of this equipment during its use are: (IDENTIFY APPROPRIATE PERSONNEL) .

The undersigned hereby certifies that the equipment to be installed and the locations and operation of such equipment will be in conformity with the rules and guidelines issued by the court.

This ___ day of __________, 20 ___.

____
(Individual Signature)

____
(Representing/Firm)

____
(Position)

____
(Address)

____
(Telephone Number)
APPROVED:

____
Judge, Probate Court
__________ County

E. Sample Municipal Court Request to Use a Recording Device

THE MUNICIPAL/RECORDER'S COURT OF____________
STATE OF GEORGIA

_________________________,
Petitioner,
v. Civil Action File: _____________

_________________________,
Respondent.

REQUEST TO USE A RECORDING DEVICE PURSUANT TO RULE 11 ON RECORDING OF JUDICIAL PROCEEDINGS

Pursuant to Rule 11 of the Uniform Rules for Municipal Court regarding Use of Electronic Devices in Courtrooms and Recording of Judicial Proceedings, the undersigned hereby requests permission to use a recording device in Courtroom ___ in order to record images and/or sound during (all) (the following portions) of the proceedings in the above captioned case/calendar.

Consistent with the provisions of the rule, the undersigned desires to use the following described recording device(s): __________. The proceedings that the undersigned desires to record commence on (date). Subject to direction from the court regarding possible pooled coverage, the undersigned wishes to use this device in the courtroom on (date). The personnel who will be responsible for the use of this recording device are: (identify appropriate personnel).

The undersigned hereby certifies that the device to be used and the locations and operation of such device will be in conformity with Rule 11 and any guidelines issued by the court.
The undersigned understands and acknowledges that a violation of Rule 11 and any guidelines issued by the court may be grounds for removal or exclusion from the courtroom and a willful violation may subject the undersigned to penalties for contempt of court.

This ____day of _____ , 20__ .

____
(Individual Signature)

____
(Representing/Firm)

____
(Position)
APPROVED: ___________

____
Judge, Municipal/Recorder's Court

Footnotes and Citations

[1] Your Guide to the Georgia Courts, Administrative Office of the Courts (2017), available at https://georgiacourts.gov/wp-content/uploads/2019/09/Your-Guide-2017_final.pdf. *See generally* Georgia Code Annotated §§ 15-6-1 through 15-11A-9 (2021).

[2] Your Guide to the Georgia Courts.

[3] *Id.*

[4] Richmond Cnty. Hosp. Auth. v. Se. Newspapers Corp., 252 Ga. 19, 20 (1984).

[5] Georgia Gazette Pub. Co. v. Ramsey, 248 Ga. 528, 529 (1981). *See also* Rockdale Citizen Publ'g Co. v. State, 266 Ga. 579, 581 (1996) (Sears, J., concurring) ("We must do our very best to hold fast to the values embodied by the First Amendment even in extreme and painful cases, because we cannot suspend it and remain all that we strive to be.").

[6] CONSTITUTION OF THE STATE OF GEORGIA, Art. 1, Sec. 1, Para. IV.

[7] Davis v. City of Macon, 262 Ga. 407, 407–08, 421 S.E.2d 278 (1992) (citing GA. CONST. Art. 1, Sec. 2, Para. I (1983)).

[8] R.W. Page Corp. v. Lumpkin, 249 Ga. 576, 578 (1982).

[9] R.W. Page. Corp. v. Lumpkin, 249 Ga. 576, 579 (1982).

[10] *Id*. at 576, n.1.

[11] Embracing the Courts of the Future: Final Report of the Next Generation Courts Commission (Mar. 2014), pp. 21, available at https://www.gabar.org/upload/NGCC_finalreport.pdf.

[12] Romero v. Drummond Co., 480 F.3d 1234, 1245 (11th Cir. 2007) (citing Landmark Commc'ns, Inc. v. Virginia, 435 U.S. 829, 839 (1978)).

[13] Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 556 (1980).

[14] Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 604 (1982).

[15] Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1311 (11th Cir. 2001).

[16] *See, e.g.,* Georgia Supreme Court's Ninth Order Extending Declaration of Statewide Judicial Emergency (December 9, 2020), pp. 3 & 8, available at https://www.gasupreme.us/wp-content/uploads/2020/12/Ninth-Order-Extending-Declaration-of-Statewide-Judicial-Emergency-Order_As-Issued.pdf.

[17] *See, e.g.,* UNITED STATES COURTS, *Judiciary Provides Public, Media Access to Electronic Court Proceedings* (Apr. 3, 2020), available at https://www.uscourts.gov/news/2020/04/03/judiciary-provides-public-media-access-electronic-court-proceedings#:~:text=Judiciary%20Provides%20Public%2C%20Media%20Access%20to%20Electronic%20Court%20Proceedings,-Published%20onApril&text=Media%20organizations%20and%20the%20public,guidance%20provided%20to%20federal%20courts.

[18] Atlanta Journal v. Long, 258 Ga. 410, 411 (1988).

[19] Rule 22 is cited in Appendix B.

[20] R.W. Page Corp. v. Lumpkin, 249 Ga. 578, 579 (1982) ("[I]n Georgia, the criminal trial itself, and all its consequent hearings on motions (pre-trial, mid-trial and post-trial) shall be open to the press and public on equal terms.").

[21] R.W. Page Corp. v. Lumpkin, 249 Ga. 578, 579 (1982).

[22] *Id.*

[23] Order, COURT OF APPEALS OF THE STATE OF GEORGIA (Sept. 11, 2013), available at https://www.gaappeals.us/forms/sep2013order.pdf.

[24] R.W. Page Corp. v. Lumpkin, 249 Ga. 578, 578 (1982).

[25] *Id.* at 579.

[26] Rockdale Citizen Publ'g Co. v. State, 266 Ga. 579, 580 (1996).

[27] *Id.* at 581.

[28] Presley v. Georgia, 558 U.S. 209, 214 (2010); R.W. Page Corp. v. Lumpkin, 249 Ga. 578, 580 (1982).

[29] Peter Canfield, *Georgia: Open Courts Compendium,* Reporter's Committee for Freedom of the Press (last updated Nov. 30, 2020), available at https://www.rcfp.org/open-courts-compendium/georgia/.

[30] R. W. Page Corp. v. Lumpkin, 249 Ga. 576, 576 n.1 (1982).

[31] Atlanta Journal v. Long, 258 Ga. 410, 411 (1988).

[32] Munoz v. Am. Law. Media, L.P., 236 Ga. App. 462, 464 (1999).

[33] Georgia Uniform Rules for the Superior Court 22(C)(3).

[34] Ga. Unif. R. Super. Ct. 22(D).

[35] Ga. Unif. R. Super. Ct. 22(F)(1).

[36] Ga. Unif. R. Super. Ct. 22(F)(2).

[37] Ga. Unif. R. Super. Ct. 22(F)(3).

[38] Ga. Unif. R. Super. Ct. 22(F)(4).

[39] Ga. Unif. R. Super. Ct. 22(G)(1); *see also* GA. CODE ANN. § 15-1-10.1(b).

[40] Ga. Unif. R. Super. Ct. 22(G)(1).

[41] Ga. Unif. R. Super. Ct. 22(G)(1).

[42] Ga. Unif. R. Super. Ct. 22(C)(1).

[43] Ga. Unif. R. Super. Ct. 22(C)(2).

[44] Ga. Unif. R. Super. Ct. 22(J)(1).

[45] Ga. Unif. R. Super. Ct. 22(J)(2).

[46] Ga. Unif. R. Super. Ct. 22(J)(3).

[47] Ga. Unif. R. Super. Ct. 22(J)(4).

[48] TheLaw.com Dictionary, available at: https://dictionary.thelaw.com/voir-dire/.

[49] Blevins v. State, 220 Ga. 720, 724 (1965).

[50] *Id*.

[51] *Id*.

[52] Presley v. Georgia, 558 U.S. 209, 215 (2010).

[53] Ga. Unif. R. Super. Ct. 22(C)(1).

[54] Peter Canfield, *Georgia: Open Courts Compendium,* Reporter's Committee for Freedom of the Press (last updated Nov. 30, 2020), available at https://www.rcfp.org/open-courts-compendium/georgia/.

[55] Zugar v. State, 194 Ga. 285 (1942).

[56] GA. CODE ANN. § 15-12-71(b)(3).

[57] GA. CODE ANN. § 15-12-80.

[58] *In re* Gwinnett Cnty. Grand Jury, 284 Ga. 510, 511 (2008).

[59] Sears v. State, 268 Ga. 759, 766 (1997).

[60] Atlanta Journal v. Long, 258 Ga. 410, 411 (1988).

[61] Ga. Unif. R. Super. Ct. 21-21.6; *see also* Appendix A.

[62] *In re* Motion of the Atlanta Journal-Constitution, 271 Ga. 436, 437 (1999) ("Superior courts may restrict or prohibit access to court records only if they do so in compliance with the requirements of Rule 21.").

[63] Ga. Unif. R. Super. Ct. 21.

[64] Atlanta Journal v. Long, 258 Ga. 410, 413-14 (1988); *see, e.g.,* GA. CODE. ANN. § 5–6–41(e) (only upon filing does the transcript become part of the record).

[65] Ga. Unif. R. Super. Ct. 36.16(d).

[66] Undisclosed LLC v. State, 302 Ga. 418, 430–31 (2017).

[67] R.W. Page Corp. v. Lumpkin, 249 Ga. 576, 578-79 (1982) (reversing the trial court's exclusion of the press from pre-trial hearings).

[68] Munoz v. Am. Lawyer Media, L.P., 236 Ga. App. 462, 464 (1999).

[69] GA. CODE ANN § 50-18-72(c)(1) & (2).

[70] GA. CODE ANN § 50-18-72(d).

[71] Undisclosed LLC v. State, 302 Ga. 418, 432–34 (2017).

[72] Ga. Gazette Pub'g Co. v. Ramsey 248 Ga 528, 529 (1981) ("[T]he restraining order . . . pertains only to discovery materials, which are not matters of public record until filed with the court, in cases of interrogatories and requests for admissions . . ."); *see also* Atlanta Journal v. Long, 258 Ga. 410, 412-14 (1988) (reversing trial court's order to seal records, which included certain discovery records).

[73] SUPREME COURT OF GEORGIA, https://scweb.gasupreme.org:8088/ (last visited Jun. 17, 2020).

[74] COURT OF APPEALS OF THE STATE OF GEORGIA, https://www.gaappeals.us/docket/index.php (last visited Jun. 17, 2020).

[75] See georgiacourts.gov/eaccess-court-records.

[76] Atlanta Journal v. Long, 258 Ga. 410, 415 (1988).

[77] City of Helen v. White Cnty. News, No. 96-CV-409, 1996 WL 787416, at *3-4 (White County Super. Ct. Oct. 7, 1996).

[78] Undisclosed LLC v. State, 302 Ga. 418, 424 (2017); Ga. Unif. Super. Ct. R. 21.

[79] Merch. Law Firm, P.C. v. Emerson, 301 Ga. 609, 611 (2017) ("In arriving at this conclusion, we conclude that Rule 21 and its procedures apply to records in criminal cases (not merely civil), and a member of the public who has requested and been denied access to records need not take any affirmative action to become a party to the case before appealing the court's order denying that request.").

[81] Atlanta Journal v. Long, 258 Ga. 410, 413 (1988).

[82] *In re* Atlanta Journal-Constitution, 271 Ga. 436, 437 (1999).

[83] Ga. Unif. R. Super. Ct. 21.3.

[84] Ga. Unif. R. Super. Ct. 21.

[85] GA. CODE ANN. § 19-8-23.

[86] Ga. Unif. R. Super. Ct. 21.1.

[87] *In re* Atlanta Journal-Constitution, 271 Ga. 436, 438 (1999) ("The requirement of a hearing held upon reasonable notice is indispensable to the integrity of the process mandated for limiting access to court records….").

[88] Ga. Unif. R. Super. Ct. 21.1.

[89] Ga. Unif. R. Super. Ct. 21.2; Atlanta Journal v. Long, 258 Ga. 410, 412-14 (1988).

[90] Atlanta Journal v. Long, 258 Ga. 410, 414 (1988).

[91] *Id.*

[92] *Id.*

[93] Savannah Coll. of Art & Design v. Sch. of Visual Arts, Inc., 270 Ga. 791, 793 (1999) ("[T]he records SCAD sought to protect were minimal and consisted of only twenty-two pages of private settlement documents. . .. Further, these specific documents had previously been acknowledged as confidential by the trial court in an [ ] order approving the settlement."). *But see* Savannah Coll. of Art & Design v. Sch. of Visual Arts, Inc., 270 Ga. 791, 794-98 (1999) (Fletcher, J., dissenting) ("Even if the private interest in a confidential agreement were equal to the public's right of access, SCAD's privacy interest in this case should not trump the public's right to court records since SCAD failed to follow the proper procedure for limiting access to its confidential agreement. Because the majority opinion allows an undefined privacy interest to overcome the presumption that court records should be open to the public, I dissent.").

[94] Sharpton v. Hall, 296 Ga. App. 251, 253 (2009).

[95] Ga. Unif. R. Super. Ct. 21.4.

[96] Savannah Coll. of Art & Design v. Sch. of Visual Arts, Inc., 270 Ga. 791, 791 (1999).

[97] Atlanta Journal v. Long, 258 Ga. 410, 413 (1988).

[98] Wall v. Thurman, 283 Ga. 533, 535 (2008); *In re* Atlanta Journal-Constitution, 271 Ga. at 436-38; BankWest, Inc. v. Oxendine, 266 Ga. App. 771, 779 (2004).

[99] *In re* Atlanta Journal-Constitution, 271 Ga. 436, 438 (1999).

[100] GA. CODE ANN. § 15-12-67(b).

[101] GA. CODE ANN. § 15-12-83.

[102] GA. CODE ANN. § 15-12-73.

[103] Florida Publ'g Co. v. Morgan, 253 Ga. 467, 472 (1984), limited by O.C.G.A. §§ 15-11-700 – 15-11-710.

[104] GA. CODE ANN. § 15-11-700(j).

[105] GA. CODE ANN. § 15-11-700(b)(1).

[106] GA. CODE ANN. § 15-11-700(b)(2).

[107] GA. CODE ANN. § 15-11-700(b)(2).

[108] GA. CODE ANN. § 15-11-700(b)(3)-(4).

[109] GA. CODE ANN. § 15-11-700(b)(5).

[110] GA. CODE ANN. § 15-11-700(b)(6). "Dependency proceeding" means a court proceeding stemming from a petition alleging that a child is a dependent child. GA. CODE ANN. § 15-11-700(a).

[111] GA. CODE ANN. § 15-11-700(c).

[112] GA. CODE ANN. § 15-11-700(h).

[113] GA. CODE ANN. § 15-1-10.1; *see also* Ga. Unif. R. Super. Ct. 22(G)(1).

[114] GA. CODE ANN. § 15-11-700(i).

[115] GA. CODE ANN. § 15-11-704(b).

[116] GA. CODE ANN. § 15-11-700(b)(1).

[117] GA. CODE ANN. § 15-11-700(b)(2).

[118] GA. CODE ANN. § 15-11-700(b)(3)-(4).

[119] GA. CODE ANN. § 15-11-700(b)(5).

[120] GA. CODE ANN. § 15-11-701(a).

[121] GA. CODE ANN. § 15-11-701(b).

[122] Georgia Uniform Rules for the Probate Court 4.

[123] Ga. Unif. R. Prob. Ct. 4.1.

[124] Ga. Unif. R. Prob. Ct. 4.2-.3

[125] Ga. Unif. R. Prob. Ct. 4.4.

[126] Ga. Unif. R. Prob. Ct. 4.5.

[127] Ga. Unif. R. Prob. Ct. 4.6.

[128] Ga. Unif. R. Prob. Ct. 10.10.

[129] Ga. Unif. R. Prob. Ct. 10.10.

[130] Ga. Unif. R. Prob. Ct. 10.10.

[131] *See* Appendix C; *see also* Ga. Unif. R. Prob. Ct. 10.10.

[132] Ga. Unif. R. Prob. Ct. 10.10.

[133] Ga. Unif. R. Prob. Ct. 10.10.

[134] Georgia Uniform Rules for the Magistrate Court 11, available at https://www.gasupreme.us/wp-content/uploads/2020/05/UNIFORM-MAGISTRATE-COURT-RULES-2020_05_04.pdf.

[135] Ga. Unif. R. Mag. Ct. 6(b).

[136] Ga. Unif. R. Mag. Ct. 6(c); *see also* GA. CODE ANN. § 17-17-10.

[137] Ga. Unif. R. Mag. Ct. 6(d).

[138] Ga. Unif. R. Mag. Ct. 6(d).

[139] Georgia Uniform Rules for the Municipal Court 6.

[140] Ga. Unif. R. Munic. Ct. 11.6(b).

[141] Ga. Unif. R. Munic. Ct. 11.6(d).

[142] Ga. Unif. R. Munic. Ct. 11.7.

[143] Ga. Unif. R. Munic. Ct. 11.7(a).

[144] Ga. Unif. R. Munic. Ct. 11.7(a).

[145] Georgia State-Wide Business Court Rule (Ga. BCR) 15-1.

[146] Ga. BCR 15-1.

[147] Ga. BCR 15-2.

[148] Ga. BCR 15-2.

[149] Ga. BCR 15-3.

[150] Ga. BCR 16-1(c).

[151] Ga. BCR 16-3(a)(3).

[152] *See*, *e.g.*, Ga. BCR 16-3(a)(3).

[153] Ga. BCR 16-3(a)(1) & (2).

[154] Such a recording may only be used in litigating the case, unless otherwise allowed by the court or some other provision of the law. Ga. BCR 16-3(a)(4)(A).

[155] Ga. BCR 16-3(a)(3); Ga. BCR 16-5(a)-(c).

[156] Ga. BCR 16-5(d)-(f).

[157] Ga. BCR 16-5(f).

[158] Ga. BCR 16-5(f)(1)(A)-(I).

[159] Ga. BCR 16-5(i)(1)-(5).

[160] Ga. BCR 16-3(b).

[161] Georgia State-wide Business Court, Oral Arguments, available at: https://www.georgiabusinesscourt.com/oral-arguments/.

[162] Romero v. Drummond Co., 480 F.3d 1234, 1245 (11th Cir. 2007) (citing Landmark Commc'ns, Inc. v. Virginia, 435 U.S. 829, 839 (1978)).

[163] Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1311 (11th Cir. 2001).

[164] Simmons v. Conger, 86 F.3d 1080, 1087 (11th Cir. 1996) (Barkett, J., concurring).

[165] Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1311 (11th Cir. 2001).

[166] Perez-Guerrero v. U.S. Atty. Gen., 717 F.3d 1224, 1236 (11th Cir. 2013).

[167] F.T.C. v. AbbVie Prods. LLC, 713 F.3d 54, 64 (11th Cir. 2013).

[168] Comm'r, Alabama Dep't of Corr. v. Advance Local Media LLC, 918 F.3d 1161, 1167 (11th Cir. 2019) (citing F.T.C. v. AbbVie Prods. LLC, 713 F.3d 54, 64 (11th Cir. 2013)).

[169] F.T.C. v. AbbVie Prods., 713 F.3d 54, 64 (11th Cir. 2013) (citing Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1312 (11th Cir. 2001)).

[170] Romero v. Drummond Co., 480 F.3d 1234, 1245-46 (11th Cir. 2007).

[171] Comm'r, Alabama Dep't of Corr. v. Advance Local Media, LLC, 918 F.3d 1161, 1167 (11th Cir. 2019) (quoting United States v. Anderson, 799 F.2d 1438, 1441 (11th Cir. 1986)).

[172] Comm'r, Alabama Dep't of Corr. v. Advance Local Media, LLC, 918 F.3d 1161, 1173 (11th Cir. 2019).

[173] *Id.*

[174] Romero v. Drummond Co., 480 F.3d 1234, 1246 (11th Cir. 2007).

[175] *Id.*

[176] *See generally* Richmond Newspapers, Inc. v. Virginia, Inc., 448 U.S. 555 (1980); Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982); Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986).

[177] Wellons v. Comm'r, Ga. Dep't of Corr., 754 F.3d 1260, 1266 (11th Cir. 2014) (quoting Press–Enterprise Co. v. Superior Court, 478 U.S. 1, 8–9 (1986)).

[178] *See generally* Presley v. Georgia, 558 U.S. 209, 214 (2010) (voir dire); Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986) (preliminary hearings); Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984); Waller v. Georgia, 467 U.S. 39, 46 (1984) (suppression hearings); Nebraska Press Ass’n v. Stuart,

427 U.S. 539 (1976); Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1310 (11th Cir. 2001) (citing Richmond Newspapers, Inc. v. Virginia*,* 448 U.S. 555 (1980) (criminal trials)).

[179] Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1310 (11th Cir. 2001).

[180] *Id.* (citing Newman v. Graddick*,* 696 F.2d 796, 800–01 (11th Cir.1983)). But see Scott v. State, 306 Ga. 507, 514-515 (2019) (Peterson, J., concurring) (noting that "there appears to be a circuit split among even those circuits [treating partial closures as subject to a lesser standard than full closures] as to whether a court excluding only some persons from a proceeding still must consider the other Waller factors – narrow tailoring and reasonable alternatives – and make adequate findings to support the closure").

[181] U.S. CONSTITUTION, amendment VI.

[182] Waller v. Georgia*,* 467 U.S. 39, 46 (1984).

[183] United States v. Brazel, 102 F.3d 1120, 1155 (11th Cir. 1997) (citing Waller v. Georgia, 467 U.S. 39, 45 (1984)).

[184] *Id.*

[185] Wilson v. Am. Motors Corp., 759 F.2d 1568, 1570 (11th Cir. 1985).

[186] Newman v. Graddick, 696 F.2d 796 (11th Cir. 1983).

[187] Wilson v. American Motors Corp., 759 F.2d 1568, 1570 (11th Cir. 1985).

[188] Newman v. Graddick, 696 F.2d 796, 801 (11th Cir. 1983).

[189] Comm'r, Alabama Dep't of Corr. v. Advance Local Media, LLC, 918 F.3d 1161, 1170 (11th Cir. 2019) (quoting *In re* Petition of Tribune Co., 784 F.2d 1518, 1521 (11th Cir. 1986)).

[190] Chi. Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1312-1314 (11th Cir. 2001).

[191] FEDERAL RULES OF CIVIL PROCEDURE 26(c).

[192] Chi. Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1313 (11th Cir. 2001).

[193] LaPlante v. Crosby, 133 F. App'x. 723, 724-726 (11th Cir. 2005) (citing Waller v. Georgia, 467 U.S. 39 (1984).

[194] *Id*. Meanwhile, sealing a court record after the proceeding has taken place to prohibit the public or the press from accessing it requires showing that the denial of access that "is necessitated by a compelling governmental interest, and is narrowly tailored to that interest." Wilson v. American Motors Corp., 759 F.2d 1568, 1570 (11th Cir. 1985).

[195] Judd v. Haley, 250 F.3d 1308, 1315–16 (11th Cir. 2001) (citing Douglas v. Wainwright, 739 F.2d 531, 532 (11th Cir. 1984)) ("The most important distinguishing factor is that *Waller* involved a total closure ... the press and the public having been specifically excluded, whereas *Douglas* entailed only a partial closure, as the press and family members of the defendant, witness, and decedent were all allowed to remain.").

[196] Judd v. Haley, 250 F.3d 1308, 1315–16 (11th Cir. 2001) (citing Douglas v. Wainwright, 739 F.2d 531, 532 (11th Cir. 1984)); *see also* Enriquez v. Sec'y, Dep't of Corr., 662 F. App'x 650, 656 (11th Cir. 2016).

[197] Douglas v. Wainwright, 739 F.2d 531, 533 (11th Cir. 1984).

[198] *Id*.

[199] Judd v. Haley, 250 F.3d 1308, 1316 (11th Cir. 2001) ("Total closure of a criminal trial during the presentation of evidence even for a temporary period, such as during the testimony of a particular witness, must be analyzed as a 'total closure.'").

[200] PUBLIC ACCESS TO COURT ELECTRONIC RECORDS (PACER), https://pacer.uscourts.gov/.

[201] FED. R. CIV. P. 5.2; FEDERAL RULES OF APPELLATE PROCEDURE 25(A)(5).

[202] FED. R. CIV. P. 5.2(c).

[203] FED. R. CIV. P. 26(c)(1); Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1310 (11th Cir. 2001).

[204] Waller v. Georgia, 467 U.S. 39, 48 (1984).

[205] Chicago Tribune Co.. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1311 (11th Cir. 2001).

[206] *Id.*

[207] United States v. Miller, 775 F. App'x 974, 977 (11th Cir. 2019), *cert. denied*, 140 S.Ct. 2631 (2020).

[208] United States v. Sajous, 749 F. App'x 943, 944 (11th Cir. 2018).

[209] Douglas Oil Co. v. Petrol Stops Nw., 441 U.S. 211 (1979); *see also* Pitch v. United States, 953 F.3d 1226, 1241 (11th Cir. 2020) (courts do not possess the inherent supervisory power to order the release of grand jury records in instances outside of the Federal Rule of Criminal Procedure 6(e)(3)(E)'s enumerated exceptions for when such records can be ordered released), *cert. denied*, No. 20-224, 2020 WL 6121591 (U.S. Oct. 19, 2020).

[210] *In re* Subpoena, 864 F. 2d 1559 (11th Cir. 1989).

[211] Smith v. Butterworth, 866 F.2d 1318, 1320–21 (11th Cir. 1989), *aff'd*, 494 U.S. 624 (1990).

[212] FEDERAL RULES OF CRIMINAL PROCEDURE 53.

[213] *Id.*

[214] United States v. Ochoa-Vasquez, 428 F.3d 1015, 1028 (11th Cir. 2005).

[215] Wellons v. Comm'r, Ga. Dep't of Corr., 754 F.3d 1260, 1266 (11th Cir. 2014) (citing Press-Enter. Co. v. Superior Ct., 478 U.S. 1, 8–9 (1986)).

[216] United States v. Ochoa-Vasquez, 428 F.3d 1015, n.14 (11th Cir. 2005) (citing Press-Enter. Co. v. Superior Ct., 464 U.S. 501, 501 (1984)).

[217] Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 573 (1980) (plurality opinion).

[218] Globe Newspaper Co. v. Superior Ct., 457 U.S. 596, 609-10 (1982).

[219] United States v. Ellis, 90 F.3d 447, 450 (11th Cir. 1996).

[220] Wilson v. Am. Motors Corp., 759 F.2d 1568, 1570-72 (11th Cir. 1985).

[221] FED. R. CRIM. P. 49.1(d).

[222] Perez-Guerrero v. U.S. Atty. Gen., 717 F.3d 1224, 1235 (11th Cir. 2013) (quoting Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1312 (11th Cir. 2001)).

[223] *Id*. at 1235-36 (alteration in original) (quoting F.T.C. v. AbbVie Prods. LLC, 713 F.3d 54, 62 (11th Cir.2013)).

[224] FED. R. CRIM. P. 49.1(e).

[225] United States v. Valenti, 987 F.2d 708, 715 (11th Cir. 1993).

[226] United States v. Ignasiak 667 F.3d 1217, 1237 (11th Cir. 2012).

[227] RULES OF THE UNITED STATES COURT OF APPEALS FOR THE 11TH CIRCUIT 25-6 (Court Action with Respect to Impermissible Language or Information in Filings), available at https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/Rules_Bookmark_AUG20.pdf.

[228] 11TH CIR. R. 34-4(i).

[229] 11TH CIR. R. 34-4, Internal Operating Procedures 16, available at https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/Rules_Bookmark_AUG20.pdf.

[230] 11TH CIR. R. 34-4, I.O.P. 17.

[231] Local Civil Rules of Practice for the United States District Court for the Northern District of Georgia (NDGa) 83.4, available at http://www.gand.uscourts.gov/sites/default/files/NDGARulesCV.pdf; *see also* Local Criminal Rules of Practice for the United States District Court for the Northern District of Georgia 53.1, available at http://www.gand.uscourts.gov/sites/default/files/NDGARulesCR.pdf.

[232] LR 83.4(A), NDGa; *see also* LCrR 53.1, NDGa.

[233] LR 83.4(A), NDGa; *see also* LCrR 53.1, NDGa.

[234] LR 83.4(A), NDGa; *see also* LCrR 53.1, NDGa.

[235] LR 83.4(A), NDGa; *see also* LCrR 53.1, NDGa.

[236] LR 83.4(A), NDGa; *see also* LCrR 53.1, NDGa.

[237] LR 83.4(A), NDGa; *see also* LCrR 53.1, NDGa.

[238] LR 79.1(C)(1), NDGa.

[239] LR 79.1(C)(2), NDGa.

[240] LR 79.1(C)(3), NDGa.

[241] LR 79.1(C)(4), NDGa.

[242] LR 79.1(H), NDGa.

[243] LR 79.1(H), NDGa.

[244] LR 79.1(B)(6), NDGa.

[245] LR 79.1 (B)(2), NDGa.

[246] LR 79.1 (B)(3), NDGa.

[247] LR 79.1(B)(5), NDGa.

[248] LR 79.1(B)(4), NDGa.

[249] LR 79.1(E), NDGa; *see also* LR 55.1, NDGa.

[250] LR. 79,1(B)(1), NDGa.

[251] LR 79.1(E), NDGa; *see also* LR 55.1, NDGa.

[252] LR 79.1, NDGa; s*ee also* LR 39.1, NDGa.

[253] LR 79.1(G), NDGa.

[254] U.S. COURTS, https://www.uscourts.gov/services-forms/federal-court-reporting-program (last visited June 17, 2021).

[255] *Id.*

[256] CM/EF Administrative Procedures, Middle District of Georgia (May 2019), pp. 16, available at https://www.gamd.uscourts.gov/sites/gamd/files/AdministrativeProceduresElectronicFiling.pdf.

[257] Local Rules of Practice for the United States District Court for the Middle District of Georgia (MDGa) 5.4(c), https://www.gamd.uscourts.gov/sites/gamd/files/GAMD_local_rules.pdf.

[258] LR 5.4(d), MDGa.

[259] LR. 48.2, MDGa.

[260] Electronic Device Policy for Members of the Press, Middle District of Georgia (Oct. 2013), available at https://www.gamd.uscourts.gov/sites/gamd/files/ElectronicDevicePolicyPress.pdf.

[261] *Id*.

[262] *Id*.

[263] *Id*.

[264] *Id*.

[265] Local Rules of Practice for the United States District Court for the Southern District of Georgia (SDGa) 83.23, https://www.gasd.uscourts.gov/sites/gasd/files/LocalRules-printable.pdf.

[266] LR 83.26, SDGa.

[267] LR 83.24, SDGa.

[268] LR. 83.26, SDGa.

[269] LR. 83.26, SDGa.

[270] LR 83.23, SDGa.

[271] LR 83.23, SDGa.

[272] LR 83.23, SDGa.

[273] LR 83.28, SDGa.

[274] LR 83.28, SDGa.

[275] LR 83.28, SDGa.

[276] LR 83.28, SDGa.

[277] LR 79.7(a), SDGa.

[278] LR 79.7(b), SDGa.

[279] LR 79.7(b), SDGa.

[280] LR 79.7(c), SDGa.

[281] LR 79.7(d), SDGa.

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[286] LR 79.7(d), SDGa.

[287] Merriam-Webster Dictionary, available at https://www.merriam-webster.com/dictionary/gag%20order.

[288] WXIA-TV v. State, 303 Ga. 428, 434 n.7 (2018).

[289] WXIA-TV v. State, 303 Ga. 428, 434 (2018) (quoting Neb. Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976)).

[290] WXIA-TV v. State, 303 Ga. 428, 434 (2018) (quoting Org. for a Better Austin v. Keefe, 402 U.S. 415, 419 (1981)); *see, e.g.,* Smith v. Butterworth, 866 F.2d 1318, 1320-21 (11th Cir. 1989) (statute banning grand jury witnesses from disclosing their own testimony after termination of the investigation violated the First Amendment), *aff'd*, 494 U.S. 624 (1990).

[291] Ga. Gazette Publ'g Co. v. Ramsey, 248 Ga. 528, 528-29 (1981).

[292] *Id*. at 529.

[293] *Id*.

[294] *Id*.

[295] *Id.*

[296] WXIA-TV v. State, 303 Ga. 428, 435 (2018) (citing Levine v. U.S. Dist. Ct. for Cent. Dist. of Cal., 764 F.2d 590, 595 (9th Cir. 1985)).

[297] *Id.*

[298] Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 562-63 (1976).

[299] Miller v. State, 275 Ga. 730, 735 (2002) ("Even in cases of widespread pre-trial publicity, situations where such publicity has rendered a trial setting inherently prejudicial are extremely rare.").

[300] Atlanta Journal-Constitution v. State, 266 Ga. App. 168, 170–71 (2004) (quoting United States v. Noriega, 917 F.2d 1543, 1549 (11th Cir. 1990)).

[301] The News-Journal Corp. v. Foxman, 939 F.2d 1499, 1512 (11th Cir. 1991) ("There is a fundamental difference between a gag order challenged by the individual gagged and one challenged by a third party; an order objected to by the former is properly characterized as a prior restraint, one opposed solely by the latter is not.") (quoting *In re* Dow Jones & Co., Inc., 842 F.2d 603, 609 (2d Cir. 1988)).

[302] WXIA-TV v. State, 303 Ga. 428, 433 (2018); *see also* Atlanta Journal-Constitution, 266 Ga. App. at 170 (holding that the Atlanta Journal-Constitution and WSB-TV had standing to challenge a gag order entered against trial participants and witnesses).

[303] WXIA-TV v. State, 303 Ga. 428, 433 (2018).

[304] Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 757 (1976). See Branzburg v. Hayes, 408 U.S. 665, 681 (II) (1972) ("[W]ithout some protection for seeking out the news, freedom of the press could be eviscerated.").

[305] WXIA-TV v. State, 303 Ga. 428, 433 (2018).

[306] *Id*. at 438-39.

[307] *Id*. at 438.

[308] *Id*.

[309] *Id*. at 438-39.

[310] *Id*. at 439.

[311] *Id.* at 430-31, 439-41.

[312] *Id*.

[313] *Id.* at 440.

[314] *Id.* at 438-39.

[315] Maloof v. Maloof*,* 231 Ga. 811, 811 (1974).

[316] Lacy v. Lacy, 320 Ga. App. 739, 752 (2013).

[317] Baskin v. Hale, 337 Ga. App. 420, 422 (2016).

[318] *Id.* at 421–22.

[319] *Id.* at 428.

[320] *Id.* at 427-28.

[321] *Id*. at 428.

[322] The News-Journal Corp. v. Foxman, 939 F.2d 1499, 1512 (11th Cir. 1991)

[323] Cardinale v. City of Atlanta, No. 1:20-CV-01077-AT, 2020 WL 3046396, at *6 (N.D. Ga. June 8, 2020).

[324] LR 83.4(b), NDGa; LR 83.29, SDGa.

[325] Cardinale v. City of Atlanta, No. 1:20-CV-01077-AT, 2020 WL 3046396, at *6 (N.D. Ga. June 8, 2020).

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