**Rule 22 Podcast**

**Wade: Hello folks, and welcome to another edition of “The Good Judge-ment Podcast. I’m your host, Wade Padgett**

*Tain: And I’m Tain Kell. Tody’s topic concerns something that comes up with a bit more regularity these days: Requests for recording of proceedings in your courtroom.*

**Wade: That’s right. We’re going to talk about the requirements of Uniform Superior Court Rule 22 and the larger issue of media and our relationship with the media.**

*Tain: Let’s dive in, Wade. First, let’s talk about the Uniform Superior Court Rule that governs use of electronic media in the courtroom.*

**Wade: So Tain, is rule 22 only concerned with recording by traditional media outlets from the courtroom?**

*Tain: No, Wade, definitely not. Back in 2019…*

**Wade: You mean “BC”- before COVID?**

*Tain: That’s right, back in the dark ages… So in 2019 the Rules Committee of the Council of Superior Court Judges- an organization near and dear to both our hearts- began working with the Supreme Court to create a modern rule regarding use of all types of electronic equipment in the courtroom.*

**Wade: You mean like computers ad stuff?**

*Tain: Computers, cell phones, cameras, recording devices, as well as the concepts of things like live Tweeting and livestreaming.*

**That’s interesting, because as I recall, the prior rule didn’t involve anything like that.**

*Right. Old Rule 22 was geared toward the “traditional” -and outdated- view of “media” in the courtroom. Things like tv cameras, still cameras and tape recorders.*

**For those of you who don’t know what we’re talking about, ask your mom or dad. They can tell you about something called “the nightly news”.**

*Exactly! With the invention of many modern innovations associated with the widespread use of -and reliance upon- computers, cell phones and the internet, came new challenges for administrating the use of those devices in the courtroom.*

**For example, the old rule required the Court to make an initial determination whether the entity requesting access for recording in a courtroom was a member of the traditional “media” or not. But things like bloggers and even podcasters-**

*-Weirdos and outcasts-*

**Right, they just didn’t fit neatly into one of those categories at all. So the question arose as to whether it matters in the modern era if someone who wants to use an electronic device is “media” or not.**

*The truth is, too, Wade, that we judges were all over the map as to how to administrate such things in the modern era. So like, some judges were saying that no one could use a cell phone to check messages in the courtroom, while others were allowing it as long as the phone was on silent mode. Others were not allowing anyone to bring a computer into the courtroom or only during trial, but others allowed you to bring your own devices but not access the internet.*

**No internet? No phone? How would you survive???**

**Truthfully, though, Tain, it was time for some uniformity across the board.**

*True. So enter the Rules committee and the Supreme Court. Shout out here to our friends Judge Stephen Schuster and Justice Nels Peterson, among others, who really got this ball rolling.*

**Trying to get going on something new like this really requires thinking outside the box. So they started by scrapping the old rule that only dealt with recording devices in court and traditional definitions of “media” and began with a clean slate.**

*The new rule is clearly centered on the concept of “open courtrooms”. In the preamble or “overview” section states:*

*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.*

**[“Reading law during a podcast is not awesome”]**

**Right, but that open courtroom concept is a well-established concept in Georgia law. For example, in *R.W. Page Corp. v. Lumpkin*, 249 Ga. 576 (1982), the Georgia Supreme Court emphasized that the Georgia law governing open courtrooms was and is more expansive than even the federal law.**

*Is that why when we talk about state cases in Georgia courts in the media, they have photos and videos and not those drawings from some first-grade class as illustrations?*

**Um, yeah, maybe…**

*I also know that the Supreme Court has said that not only the First Amendment rights of the media may be implicated by open courtroom issues, but the Sixth Amendment rights of a criminal defendant may also be involved.*

**Right. So the new Rule 22 looks at other factors to decide who can use devices in the courtroom and how they’re used. So let’s look at the rule.**

*One of the first things to note is that the rule governs two categories of devices:*

*First, devices capable of recording sound and images.*

**Right. These would include traditional video and still cameras, but would also encompass things like cell phones, iPads and tablets, and even computers- because all of these devices can record images.**

*The second category of devices covered by the rule is devices NOT used to record.*

*These again include cell phones, computers and the like, even when not being used to record proceedings.*

**Let’s start with the non-recording device category- things like your computer and cell phone. The general rule is that these devices can be used in the courtroom- without an order from the Court- by court personnel, lawyers and their employees, and self-represented litigants.**

*Jurors’ devices are specifically required to be powered off at all times in the courtroom and during deliberations. That’s what you do, too, right Wade?*

**[Insert rant here]**

*The rule goes on the say that witnesses must have their devices powered off while in the courtroom unless they are allowed to use them while on the stand by the Court. Witnesses are not allowed to record the proceedings.*

**So what about parties and spectators?**

*Those folks are only allowed to use devices in the courtroom if proper application is made with the court as required under the rule [“Hint: This means in advance”].*

**So, let’s talk now about RECORDING in the courtroom, the other category of device use. This represents a HUGE CHANGE from the old rule that no one could record proceedings except “media” (whatever that means in the modern era). Under Rule 22, attorneys and self-represented parties can now record proceedings -without permission of the court- by announcing to the Court and parties their intention to record.**

*So under Rule 22, recording by attorneys and self-represented is permitted as long as it is announced in advance. Of course, the Court could issue a prohibition in special circumstances, but it would require a pretty good reason.*

*What about witnesses?*

**They can’t record.**

*Well, now let’s get to the real meat of the rule. How can spectators record the proceedings? Like the media, or an interested citizen, or a family member, or an activist group, or anyone else?*

**Great question. I think it is important to look back at a case that predates the new rule to get a perspective on this. The case of *McLaurin v. Ott*, 327 Ga. App. 488 (2014). In that case, a law student wanted to record certain criminal proceedings. He applied for permission from the court and that was denied, so he sued. In that case, the Court of Appeals said that the trial court gave a thorough analysis of the issue, BUT**

The trial court's analysis of the statute, while thoughtful, overlooks  (1) our Supreme Court's direction that  when ruling on requests under [OCGA § 15-1-10.1](https://advance.lexis.com/document/?pdmfid=1000516&crid=4088bf95-5d31-4f24-a7f6-fecbc0e34e65&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A5CD1-G8D1-F04F-T007-00000-00&pdcontentcomponentid=6289&pdshepid=urn%3AcontentItem%3A5CDJ-R281-J9X6-H3BB-00000-00&pdteaserkey=sr0&pditab=allpods&ecomp=ydgpk&earg=sr0&prid=ba07eb9f-6c20-4eb5-bd29-7eed1041237d), trial courts “should bear in mind this State's policy favoring open judicial proceedings.” [*Morris Communications v. Griffin*, 279 Ga. 735, 736 (620 SE2d 800) (2005)](https://advance.lexis.com/document/?pdmfid=1000516&crid=4088bf95-5d31-4f24-a7f6-fecbc0e34e65&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A5CD1-G8D1-F04F-T007-00000-00&pdcontentcomponentid=6289&pdshepid=urn%3AcontentItem%3A5CDJ-R281-J9X6-H3BB-00000-00&pdteaserkey=sr0&pditab=allpods&ecomp=ydgpk&earg=sr0&prid=ba07eb9f-6c20-4eb5-bd29-7eed1041237d). “ (2) [A]lthough the decision whether to allow electronic and photographic coverage of a trial is within the discretion of the trial court, if a trial court denies such coverage, there must be a factual basis in the record that supports the denial.” Id.

In light of that policy, we must vacate the trial court's determination, under factor three, that because proceedings are open to anyone who wants to travel to the courthouse, the proposed coverage would not promote increased public access to the courts and openness of judicial proceedings. “A camera generally will increase the openness of a judicial proceeding, and there is nothing in the record in this case to indicate that [McLaurin's] camera would not have done so.”

*That sounds a lot like what the preamble to the new Rule says, doesn’t it?*

**Yes. Undoubtedly this policy was part of the considerations going into the creation of Rule 22. The Court in *McLaurin* also repeated the holding in *R.W. Page* that Georgia law regarding the public aspect of hearings in criminal cases is more protective of the concept of open courtrooms than federal law.**

*So let’s talk about what happens when a request is made from anyone to record proceedings. First, a couple of concepts are important. The statute does not really take into consideration who the requestor is. So, it is not important that it be someone connected with the case, or “traditional” media and so forth. Those concerns are not a part of the consideration in this statute. Second, there is no consideration of “why” the person may want to record the proceedings.*

*The general rule is: Approval of the judge to broadcast/record/photograph a proceeding, if granted, shall be granted without partiality or preference to any person, news agency, or type of electronic or photographic coverage*

**Here is what is required of the requestor: The person wanting to record must make a request to the Court in writing. The request must be at least 24 hours in advance (but the Court may consider a request made less than 24 hours in advance). The Court is then required to give notice to the parties of the receipt of the request. This notice does NOT have to be made 24 hours in advance.**

*Yeah, and practically speaking, that notice to the parties frequently may happen immediately before the proceeding in question.*

*So Wade, is a hearing required?*

**Well, yes and no. A hearing is required if: A) the Court intends to DENY the request; or B) if a party, witness or victim objects.**

*But wait, you said that the Court is only required to notify the parties of the request, right? How will the witness or victim know?*

**Great point. It is not addressed in the rule, but I suspect that this issue is one that can be raised at any time during the proceeding. So, for example, if a witness comes into the courtroom and sees a camera or recording device, they could object at that time. While one would also hope that the DA would raise the issue on behalf of a victim, it seems the victim could raise the issue, too.**

*Does that also imply that a Court should warn each witness that the proceedings are being recorded?*

**I don’t think that the rule either requires it or prohibits it. So it would be up to the Court’s discretion.**

*So, let’s talk about the factors the Rule requires the Court to consider in order to decide whether recording is allowed.*

(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;

**Other factors:**

**(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.​**

**Wow, that’s a lot to consider!**

*Yeah, it’s almost like they want us to take this seriously…*

**After taking all this into consideration, let’s say you decide to deny the request. Then what?**

*The rule requires that you make certain findings on the record:*

1. *Substantial likelihood of harm;​*
2. *Harm outweighs the benefit to the public; AND*
3. *Other lesser restrictions are unavailable or impractical​.*

**Ok, I read those to mean that you need a pretty darn good reason…**

*Agreed! The rule contains some standard prohibitions, too.*

1. *No recording while judge is out of courtroom​*
2. *No recording of jurors​*
3. *No recording of confidential conversations​*
4. *No recording of bench conferences​*

**Also:**

1. **Recording is not the official record​**
2. **Prohibitions do not apply to JQC or Bar​**
3. **Violations are punishable by exclusion or as contempt​**

*The last concept to consider is what happens after the request is granted. The Court still has authority to control things that may cause disruptions to the proceedings. For example, if you have a case in which multiple entities have requested an opportunity to record, you may order them to “pool” their coverage. In other words, one agency will be required to record the proceedings and then share the recordings with all other agencies requesting to record.*

**Where do cameras go in your courtroom, Tain?**

*Tain explains:*

**You can always control things like the placement of cameras and recording devices, control the lighting and sound in the courtroom, and anything that may tend to disrupt the proceedings.**

*Like in the era before digital cameras when cameras made noises each time a photo was made, you could prohibit taking photos during the hearing or trial or require silent” cameras.*

**Well let’s recap what we’ve learned today. First, Rule 22 controls all aspects of device utilization in the courtroom.**

*Second, recording by self-represented parties or counsel is permitted by simply putting the Court and other parties on notice.*

**Third, recording in the courtroom is considered an extension of the open courtroom concept in Georgia law.**

*Fourth, requests should be given due consideration and, if denied, require findings of fact and reasons on the record.*

**Well, folks, as always, we hope this has been helpful to you in your daily practice. If you’d like more information, don’t forget to check our website at goodjudgepod.com**

*That’s right, and be sure to follow The Good Judge-ment podcast on your favorite platform and “like” us just for fun!*

**I’m Wade Padgett**

*And I’m Tain Kell… [insert funny thing]*