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COURTS General Provisions: Establish Factors for Courts to Consider When Determining Whether to Allow Filming or Videotaping in the Courtroom; Allow for Citations When Court Orders Related to Media Cameras in the Courtroom are Violated

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COURTS

***General Provisions: Establish Factors for Courts to Consider
When Determining Whether to Allow Filming or Videotaping in
the Courtroom; Allow for Citations When Court Orders Related
to Media Cameras in the Courtroom are Violated***

CODE SECTIONS: O.C.G.A. §§ 15-1-4 (amended), -10.1 (new)
BILL NUMBER: HB 1122
ACT NUMBER: 832
GEORGIA LAWS: 1996 Ga. Laws 734
SUMMARY: The Act establishes factors for courts to consider in deciding whether to allow filming or videotaping of judicial proceedings. The Act provides courts with the discretion to allow cameras to film all or a portion of a judicial proceeding. The Act does not apply to the use of electronic or photographic presentation of evidence. The Act grants courts the power to hold any person in contempt of court for violating a court order related to the filming or videotaping of judicial proceedings.
EFFECTIVE DATE: July 1, 1996

History

Extensive television coverage of the O.J. Simpson trial focused national attention on media access to court proceedings.¹ The effects of cameras both on trial procedure and trial participants have come under increasing scrutiny.² Although controversy over the presence of the media in the courtroom is not new,³ it was not until the Simpson trial

1. Jill Smolowe, *TV Cameras On Trial: The Unseemly Simpson Spectacle Provokes a Backlash Against Televised Proceedings*, TIME, July 24, 1995, at 38.

2. *Id.*

3. See *Harris v. State*, 260 Ga. 860, 401 S.E.2d 263 (1991) (holding presence of cameras in courtroom did not deprive criminal defendant of due process or detract from dignity of court); *Georgia Television Co. v. State*, 257 Ga. 764, 363 S.E.2d 528 (1988) (upholding denial of television station's motion to televise pretrial proceedings on grounds that defendant's right to due process would be violated by the increased publicity); *Multimedia WMAZ, Inc. v. State*, 256 Ga. 698, 353 S.E.2d 173 (1987) (overturning order denying camera access to courtroom because of judge's failure to exercise his discretion regarding presence of cameras in courtroom in the face of an inflexible local rule); *Smith v. State*, 198 Ga. App. 647, 402 S.E.2d 738 (1991).

that the Georgia General Assembly contemplated the establishment of restrictions on that media access.⁴

Prior to passage of the Act, local court rules guided judicial decisions regarding the presence of cameras in Georgia courtrooms.⁵ The rules did not establish a bright-line test for judges to follow in considering requests for media access, but deferred entirely to the judges' discretion.⁶ The Supreme Court of Georgia in *Multimedia WMAZ, Inc. v. State*⁷ established that, pursuant to existing court rules, judges must exercise that discretion.⁸ Factors to consider in exercising discretion were due process requirements and the preservation of dignity and decorum in the court.⁹

Representative Murphy, sponsor of HB 1122, felt that the publicity given to the O.J. Simpson case harmed the judicial system, giving the public an incomplete view of trial processes and potentially discouraging witnesses from coming forward.¹⁰ He introduced this legislation to address public concerns raised by the O.J. Simpson trial, to prevent the occurrence of a similar "fiasco" in Georgia, and to give parties and witnesses the power to influence whether cameras would be allowed in the courtroom.¹¹

HB 1122

As introduced, the bill would have amended Code section 15-1-4 by extending the power of courts to issue contempt citations for violations of a proposed new Code section 15-1-10.1.¹² This new section would have prohibited television broadcasting from or motion picture filming in courtrooms during judicial proceedings, absent consent of all parties,¹³ thus empowering parties to veto media coverage of their trial.¹⁴ The bill also would have provided that the judge could still

4. Telephone Interview with Rep. Thomas B. Murphy, House District No. 18 (May 8, 1996) [hereinafter Murphy Interview]. Georgia is one of 47 states that allow media access in the courtroom. Judy Bailey, *Pulling the Levers to Pull the Plug*, FULTON COUNTY DAILY REP., Jan. 8, 1996, at 1.

5. GA. SUP. CT. R. 75 to 91; UNIFORM SUPERIOR CT. R. 22; UNIFORM JUV. CT. R. 26.2; UNIFORM PROB. CT. R. 18; UNIFORM MAGISTRATE CT. R. 11.

6. *See, e.g.*, UNIFORM SUPERIOR CT. R. 22(B), (C), (N).

7. 256 Ga. 698, 353 S.E.2d 173 (1987).

8. *Id.* at 699-70, 353 S.E.2d at 174; *see also* Harris v. State, 260 Ga. 860, 866, 401 S.E.2d 263, 268 (1991).

9. *Multimedia WMAZ*, 256 Ga. at 700, 353 S.E.2d at 174-75.

10. Murphy Interview, *supra* note 4.

11. *Id.*; Bailey, *supra* note 4, at 2.

12. Compare HB 1122, as introduced, 1996 Ga. Gen. Assem. with 1987 Ga. Laws 1156, § 2, at 1158 (formerly found at O.C.G.A. § 15-1-4 (1994)).

13. HB 1122, as introduced, 1996 Ga. Gen. Assem.

14. *Id.* This provision addressed Rep. Murphy's concern that parties should not be forced into the public eye. Murphy Interview, *supra* note 4. However, notwithstanding

exercise discretion to bar media access, even in the event that both parties agreed to allow cameras into the courtroom.¹⁵ Finally, as introduced, the bill exempted evidence presentations using “electronic or photographic means” from its restrictions.¹⁶

The bill met intense media opposition, based on concerns that it encroached upon First Amendment rights¹⁷ and reversed the existing trend in favor of cameras in the courtroom.¹⁸ Media representatives also claimed that the bill was a solution to a problem that had not occurred in Georgia.¹⁹ They believed that the current system effectively balanced the interests of the public and of litigants.²⁰ Media attorneys and lobbyists expressed opposition to the bill via testimony before the House Judiciary Committee.²¹

In response to this opposition and to fears the bill would not pass the Senate as drafted,²² House Judiciary Committee Chairman Tommy Chambliss requested that several media representatives draft a substitute bill for Committee consideration—one that would incorporate the suggestion that standards be established upon which judges might rely in exercising their discretion to consider media requests for camera access.²³ When presented to the House Judiciary Committee, this

Representative Murphy’s concern for witnesses’ unwilling media exposure, the bill, as introduced, included no provision to allow witnesses to withhold consent from the broadcasting or filming of judicial proceedings. HB 1122, as introduced, 1996 Ga. Gen. Assem.

15. See HB 1122, as introduced, 1996 Ga. Gen. Assem.

16. *Id.* Representative Murphy stated this provision was meant to preserve the taking and use of videotape deposition testimony. Murphy Interview, *supra* note 4.

17. Bailey, *supra* note 4, at 2; Judy Bailey, *Media Tiptoe Into Battle on TV in Court*, FULTON COUNTY DAILY REP., Jan. 22, 1996, at 6.

18. Telephone Interview with Peter Canfield, attorney for WSB-TV and the Atlanta Journal-Constitution (June 4, 1996) [hereinafter Canfield Interview]; Letter from Peter C. Canfield and James W. Kimmell, Jr., Dow, Lohnes & Albertson, L.L.C., to The Honorable Zell Miller, Governor, State of Georgia (Mar. 22, 1996) [hereinafter Canfield Letter] (available in Georgia State University College of Law Library).

19. Telephone Interview with Norman Underwood, attorney for Turner Broadcasting System (May 6, 1996) [hereinafter Underwood Interview]; Canfield Interview, *supra* note 18; Bailey, *supra* note 17, at 6. The bill was opposed by Representative McCracken Poston, Jr. on the grounds that the O.J. Simpson trial was an anomaly in the justice system, unlikely to occur in Georgia. See Telephone Interview with Rep. McCracken Poston, Jr., House District No. 3 (May 8, 1996) [hereinafter Poston Interview]; Canfield Interview, *supra* note 18.

20. Canfield Letter, *supra* note 18.

21. Underwood Interview, *supra* note 19; Bailey, *supra* note 17, at 1, 6.

22. Murphy Interview, *supra* note 4; Underwood Interview, *supra* note 19.

23. Underwood Interview, *supra* note 19.

substitute passed with minor changes,²⁴ and passed both the House and Senate without further amendment.²⁵

The Act amends Code section 15-1-4 by providing that courts may issue contempt citations for violations of a court order regarding cameras in the courtroom.²⁶ The Act also adds a new Code section establishing the factors a court must consider to determine whether to issue a court order banning electronic media access to judicial proceedings.²⁷

Factors Guiding Judges' Discretion

Pursuant to the Act, the factors courts are to consider are: the nature of the judicial proceeding;²⁸ the consent or objection of witnesses or parties;²⁹ the possibility of increased access to judicial proceedings;³⁰ the impact cameras might have on the integrity, dignity, and administration of the court;³¹ due process concerns;³² the effect media access would have on justice;³³ any special circumstances any participant might have regarding protection or safety;³⁴ and any other factor the court deems appropriate for consideration.³⁵ In addition, the

24. HB 1122 (HCS), 1996 Ga. Gen. Assem. The factors drafted by Norman Underwood, George "Buddy" Darden, attorney for Court TV, and David Kohler, attorney for CNN, did not include consideration of the objection of witnesses to cameras in the courtroom. Underwood Interview, *supra* note 19. Thus, the House Judiciary Committee amended their draft version to address Representative Murphy's concern for the effect of cameras in the courtroom on witnesses. *Id.* These factors are discussed *infra* notes 29-36 and accompanying text.

25. Final Composite Status Sheet, Mar. 18, 1996.

26. O.C.G.A. § 15-1-4(a)(5) (Supp. 1996).

27. *Id.* § 15-1-10.1. Although Representative Poston proposed an amendment on the House floor to leave consideration of these factors to the judge's discretion rather than making such contemplation mandatory, support for Representative Murphy was strong and the amendment failed. Poston Interview, *supra* note 19.

28. O.C.G.A. § 15-1-10.1(b)(1) (Supp. 1996).

29. *Id.* § 15-1-10.1(b)(2). During House floor debate on the bill, Representative Poston moved to remove this factor, on the basis that witnesses and parties should not have the power to deny public access to proceedings dealing with matters of significance; his motion to amend failed. Poston Interview, *supra* note 19.

30. O.C.G.A. § 15-1-10.1(b)(3) (Supp. 1996).

31. *Id.* § 15-1-10.1(b)(4) to (5).

32. *Id.* § 15-1-10.1(b)(6).

33. *Id.* § 15-1-10.1(b)(7).

34. *Id.* § 15-1-10.1(b)(8). Protection of jurors was initially considered as a separate factor, as were general security concerns. Underwood Interview, *supra* note 19. However, these factors were considered implicit in other factors, and were thus removed from the draft substitute bill. *Id.*

35. O.C.G.A. § 15-1-10.1(b)(9) (Supp. 1996). To arrive at this list of factors, Mr. Underwood consulted with former Supreme Court of Georgia Justice Harold Clarke, who assisted in drafting Uniform Superior Court Rule 22 addressing cameras in the courtroom. Underwood Interview, *supra* note 19. Mr. Underwood determined the listed

Act provides that courts may hear from trial participants and media representatives in order to aid them in coming to a decision.³⁶

Partial Bar of Cameras

The Act specifically allows courts the discretion to admit or bar media access to the courtroom for any portion of a judicial proceeding.³⁷ Some media representatives sought this provision to soften the blow of an order restricting court access, in that they could argue for access to non-sensitive portions of the trial.³⁸

Presentation of Evidence

Finally, the Act exempts from its restrictions the use of "electronic or photographic means for the presentation of evidence or the perpetuation of a record."³⁹ This provision was meant to protect the use of videotaped deposition testimony.⁴⁰

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factors are those implicit in Rule 22's requirement that judges exercise their discretion in making this decision. *Id.*

36. O.C.G.A. § 15-1-10.1(c) (Supp. 1996). This was the general procedure used by judges in hearing requests for media access prior to passage of the Act. Underwood Interview, *supra* note 19.

37. O.C.G.A. § 15-1-10.1(e) (Supp. 1996).

38. Underwood Interview, *supra* note 19.

39. O.C.G.A. § 15-1-10.1(d) (Supp. 1996).

40. Murphy Interview, *supra* note 4; Underwood Interview, *supra* note 19.