

¹ Plaintiffs also sought injunctive relief and nominal damages from Crisp County Sheriff Donnie Haralson and Ben Hill Superior Court Bailiffs James R. Butts, James C. Clark, John K. Fletcher, Dewey Hannon, Wilbert King, and Donald Paulk. Plaintiffs have dismissed Defendant Haralson from this lawsuit based on his agreement to be bound by this Settlement Agreement between Plaintiffs and Defendant-Judges, and anticipate dismissing the Bailiffs on the same grounds.

courtrooms in Ben Hill and Crisp Counties for criminal matters in Superior Court except in certain limited situations, and have entered a Standing Order to that effect.

II. TERMS OF AGREEMENT

The parties agree as follows:

- a. The First Amendment requires all pre-trial proceedings held in Ben Hill and Crisp counties, whether in jail courtrooms or elsewhere, be presumptively open to the public. Closures of a courtroom violate the First Amendment unless accompanied by documented findings of fact justifying a compelling interest in the public's exclusion in a particular case, and the consideration of narrowly tailored alternatives to closure, as required under *Presley v. Georgia*, 130 S. Ct. 721, 722 (2010), *Waller v. Georgia*, 467 U.S. 39, 45 (1984), and *Press Enterprise Co. v. Superior Court*, 464 U.S. 501, 509–10 (1984).
- b. Requiring citizens seeking entry into a courtroom to either prove their relationship to a criminal defendant appearing in court, or otherwise conditioning access on the plea ultimately entered by the criminal defendant, notwithstanding available space, violates citizens' First Amendment right of access.
- c. In order to access public courtrooms, citizens need not answer questions from court or law enforcement staff, and Defendants must not demand that persons seeking entry explain who they are and their reasons for seeking entry into courtrooms.
- d. A court must consider alternatives to partial or total courtroom closures and "hold a hearing and articulate specific findings" justifying closures of either type. *Judd v. Haley*, 250 F.3d 1308, 1314 (11th Cir. 2001) (quoting *Douglas v. Wainwright*, 739 F.2d 531, 532 (11th Cir. 1984)) (per curiam); see also *United States v. Valenti*, 987 F.2d 708, 713 (11th Cir. 1993).
- e. In the case of total closures, the presumption of openness can only be overcome "by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise*, 464 U.S. at 510. Partial closures require a

finding that "substantial" interests justify the closure. Accordingly, Defendant-Judges must make findings in each particular case justifying the partial or total closure of the Ben Hill and Crisp County courtrooms.

- f. Defendant-Judges have the authority and responsibility to maintain the integrity and decorum of the courtroom. The law requires that disruptions to courtroom proceedings be dealt with on a case-by-case basis. See *Presley*, 130 S. Ct. at 724. Accordingly, Defendant-Judges retain the right to post and enforce basic rules of conduct as to all persons within the courtroom, and they agree to deal with such disruptions or violations of such rules of conduct in the courtroom on a case-by-case basis, except as to matters of public safety, such as possession of weapons, which will be handled prior to entry into the courtroom by bailiffs or sheriff's deputies.
- g. The Georgia Judicial Qualifications Commission has recently issued its Opinion 239, which deals with public access to courtroom proceedings. Defendant-Judges acknowledge that they are governed by this opinion and they have provided the same to the sheriff's deputies and bailiffs and instructed them that they are bound by the terms of that opinion as well. A copy of this letter is attached to this agreement as Exhibit A.
- h. To effectuate the terms set out above, Defendant-Judges agree to:
 - 1. Place on or near the doors to each courtroom a sign informing the public of their right to observe superior court hearings unless case-specific factual and legal findings are made on the record justifying closure of a particular proceeding. A copy of said sign is attached hereto as Exhibit B.
 - 2. Instruct bailiffs and sheriff's deputies to promptly ensure the public is able to enter the courtroom following the partial or total closure of a proceeding as a result of the court's case-specific findings.
 - 3. Stop using the Law Enforcement Center courtrooms for criminal proceedings, except in limited circumstances which will be detailed in case-specific orders with findings as to why the use of such courtrooms is necessary in a specific criminal case. (Defendant-Judges have already issued Standing Order 2013-01 to this effect and they agree to maintain and abide by that Order. See Exhibit C.)

- i. The Parties agree to enter into a consent order to be in effect for 18 months subsequent to its effective date.
- j. If Plaintiffs form a reasonable belief that Defendants, including Defendant Haralson and Defendant-Bailiffs, are in violation of this Settlement Agreement, Plaintiffs shall give notice to Defendants in writing, and shall state with specificity the alleged noncompliance. If Defendants have not acted to cure such noncompliance within 30 days, Plaintiffs may seek contempt from the District Court or, if the 18 month term of the consent order has expired, exercise their statutory right to pursue preliminary or permanent injunctive relief under 42 U.S.C. § 1983, or they may file a complaint with the Georgia Judicial Qualifications Commission.

III. ATTORNEYS' FEES

Defendants agree to pay a reduced amount of fees in the amount of \$40,000. In doing so Defendants do not agree that they acted outside of their jurisdiction within the meaning of 42 U.S.C. § 1988.

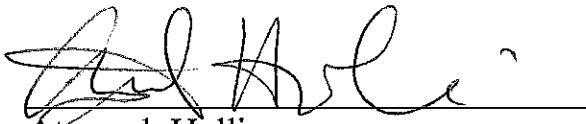
IV. MISCELLANEOUS PROVISIONS

- A. Each party agrees it will perform its obligations under this Agreement in accordance with all applicable laws.
- B. This Settlement Agreement constitutes the entire agreement between the parties with regard to the subject matters contained therein, and hereby supersedes all prior agreements, representations, statements, negotiations, and undertakings.
- C. The parties further state that they have carefully read the within and foregoing Agreement and know and understand the contents thereof and that they executed the same of his/her own free act and deed.

Executed this 4th day of November, 2013.

CONSENTED TO:

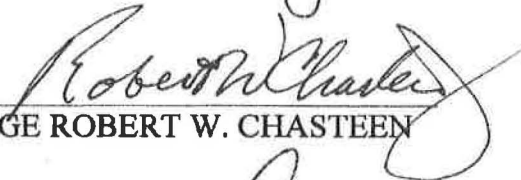
REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read 'Atteeyah Hollie', written over a horizontal line.

Atteeyah Hollie

Attorney for Plaintiffs

Defendants:


CHIEF JUDGE JOHN C. PRIDGEN
JUDGE ROBERT W. CHASTEEN
JUDGE T. CHRISTOPHER HUGHES

REVIEWED AND APPROVED BY:



Devon Orland
Attorney for Defendant-Judges

EXHIBIT A

**SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT**
BEN HILL, CRISP, DOOLY & WILCOX COUNTIES

COP

JUDGE ROBERT W. CHASTEEN, JR.
P.O. Box 448
FITZGERALD, GA 31750
PHONE 229-426-5139
FAX 229-426-5733



JUDGE T. CHRISTOPHER HUGHES
P.O. Box 5149
FITZGERALD, GA 31750
PHONE 229-426-5638
FAX 229-426-5639

CHIEF JUDGE JOHN C. PRIDGEN
P.O. Box 5025
CORDELE, GA 31010
PHONE 229-271-4722
FAX 229-271-4714

August 29, 2013

Honorable Donnie Haralson
Sheriff of Crisp County, Georgia
196 Highway 300 S.
Cordele, GA 31015

RE: JQC Opinion 239 regarding public access to court proceedings

Dear Sheriff Haralson:

Please find attached a four-page opinion issued by the Judicial Qualifications Commission of the State of Georgia regarding public access to courtrooms and court proceedings. The JQC states in Opinion 239 that judges are responsible to ensure that the public has unfettered and unobstructed access to court proceedings. The purpose of this letter is to inform you of the JQC opinion and ask that you remind the bailiffs and/or deputies serving in any capacity with respect to court proceedings that no member of the public is to be excluded from said proceedings. Any member of the public who attempts to enter a proceeding should gain entry without being questioned. **If there is inadequate available seating for a person who arrives to observe a proceeding, please notify the presiding judge of said issue immediately.**

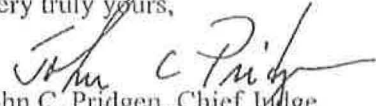
The JQC advises that it is generally improper for court staff, sheriff's deputies, or bailiffs to demand that members of the public state their business prior to being allowed to enter a public courtroom. Please advise the deputies and/or bailiffs that no member of the public is to be questioned about his relationship to any defendant or asked to give a reason for his interest in the proceeding, as his or her response will not affect his ability to observe a proceeding.

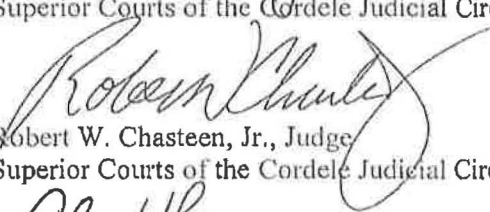
The Court will deal with any disruptions, including offensive clothing and unruly children and adults, on a case-by-case basis. Standing Order 2011-12, entitled "Courtroom Attire," is hereby vacated and rescinded. The bailiffs and deputy sheriffs shall not exclude any member of the public from entering a court proceeding based on his attire but shall notify the presiding judge of any clothing deemed inappropriate or disruptive. Likewise, children will be allowed to enter proceedings, and any disruption will be handled as it arises.

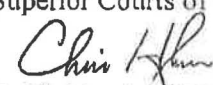
We appreciate your efforts to ensure that the public is afforded unobstructed and

unfettered access to proceedings held in the Superior Court of Crisp County.

Very truly yours,


John C. Pridgen, Chief Judge
Superior Courts of the Cordele Judicial Circuit


Robert W. Chasteen, Jr., Judge
Superior Courts of the Cordele Judicial Circuit


T. Christopher Hughes, Judge
Superior Courts of the Cordele Judicial Circuit

cc: Honorable Devon Orland, Assistant Attorney General

Opinion 239 (approved August 28, 2013)

Absent specific legal authority, public access to court proceedings should be unfettered and unobstructed. Georgia's courtrooms shall be open to the public unless otherwise provided by law. Presley v. Georgia, 558 U.S. 209, 213-16, 130 S. Ct. 721, 723-25 (2010).

We issue this opinion to clarify how the open courtroom issue relates to our role as this state's regulatory body for the judiciary and in specific response to requests by judges for guidance as to how best to ensure compliance with the law regarding public access to judicial proceedings. We are charged with enforcing the Georgia Code of Judicial Conduct. Canon 2 provides that "Judges shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Accordingly, judges who do not adhere to the open courtroom principles outlined in Presley may be in violation of the Code of Judicial Conduct, as well as the Constitution of the United States and the Constitution of the State of Georgia. See Presley, 558 U.S. at 212-13, 130 S. Ct. at 724.

The Constitution of the State of Georgia mandates that "[i]n criminal cases, the defendant *shall* have a *public* and speedy trial by an impartial jury." GA. CONST. art. 1, § 1, para. 11(a). The First and Sixth Amendments to the Constitution of the United States also guarantee this right to a public trial. U.S. CONST. amend. 1; U.S. CONST. amend. 6; Press-Enterprise Co. v. Superior Court of California, Riverside County, 464 U.S. 501, 516 n.1, 104 S. Ct. 819, 827 (1984) (Stevens, J., concurring); Purvis v. State, 288 Ga. 865, 866 (2011).

The United States Supreme Court found that "historically both civil and criminal trials have been presumptively open." Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 580 n.17 (1980) (plurality opinion). Georgia courts have recognized that "[t]he function of a free press is

just as important in civil cases as in criminal cases.” Munoz v. American Lawyer Media LP, 236 Ga. App. 462 (1999). See also Atlanta Journal and Atlanta Constitution v. Long, 258 Ga. 410, 411 (1988).

The public has a constitutional right of access to court proceedings and judges, as public officers and servants of the people, are responsible to ensure that access is unfettered and unobstructed. The Constitution of the State of Georgia provides that “[a]ll government, of right, originates with the people, is founded upon their will only; and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them.” GA. CONST. art. 1, § 2, para. 1.

In Presley, the United States Supreme Court ruled that the First and Sixth Amendments to the United States Constitution require that *voir dire* be conducted in a courtroom open to the public. Presley, 558 U.S. at 212-13, 130 S. Ct. at 724. The ruling in Presley is not, however, an absolute prohibition on closed proceedings. Id. Rather “the right to an open trial may give way in certain cases to other rights or interests, such as the defendant’s right to a fair trial or the government’s interest in inhibiting disclosure of sensitive information. Such circumstances will be rare, however, and the balance of interests must be struck with special care.” Id. (citing Waller v. Georgia, 467 U.S. 39, 45, 104 S. Ct. 2210 (1984)) (internal citation omitted). In seeking to strike this balance, “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.” Id. (citing Waller, 467 U.S. at 45, 104 S. Ct. 2210).

We issue this opinion not because of a desire to discipline judges for closed courtroom violations, but rather because we believe that existing issues with public access to court proceedings can, in most instances, be prevented or resolved through education and awareness of the state and federal limitations on the closure of judicial proceedings. In general, there are rare circumstances when court proceedings may legally occur outside the presence of the public. See Presley, 558 U.S. at 212-13, 130 S. Ct. at 724. The court must cite specific legal authority for this action, however, and the party seeking closure must demonstrate “an overriding interest that is likely to be prejudiced” if the proceeding, or portion thereof, remains open to the public. Id. Upon such a showing, the court must provide notice and opportunity to be heard to the opposing party, and must make a finding, on the record, that the proceeding can be properly closed consistent with the standard set forth in Presley. Id. Moreover, “the closure must be no broader than necessary to protect [the] interest [specified by the moving party, and] the trial court must consider reasonable alternatives to closing the proceeding.” Id.

It is difficult to catalog succinctly the volume and variety of complaints we regularly receive on this issue. Some complaints involve court staff or sheriffs’ deputies excluding the public. Other complaints involve court personnel demands made on members of the public to state their business prior to being allowed to enter a public courtroom. In some courthouses, signs are posted on the entrance doors to a courtroom that forbid the admittance of a certain class of persons, signs such as “no children,” “attorneys and defendants only,” or “no guests or family permitted.”

All of the above practices are, generally, improper. We recognize, however, the authority of the judge to maintain the integrity and decorum of the courtroom, and in no way expect a judge to permit loud or unruly children or adults to disrupt court proceedings. Yet the law

requires that such disruptions to public proceedings be dealt with on a case-by-case basis. See Presley, 558 U.S. at 212-13, 130 S. Ct. at 724.

In issuing this opinion, we do not speak to instances where a judge makes findings on the record to close a proceeding properly and consistent with the law. There are a number of instances where those findings are justified, and litigants who are dissatisfied with such decisions may appeal. It is not within our purview to review those orders.

The courtroom closures, which are the subject of this opinion, are ones where there are no findings of fact or an order in a specific case, but rather a systematic exclusion of the public by the court. Although many of these blanket exclusions are often based on logistical concerns (i.e., too little space, too many cases on the calendar, etc.), such concerns cannot be resolved by the blanket exclusion of the public, or a specified class or portion thereof, without violating both the law and the Code of Judicial Conduct. Although we recognize that many courtrooms do not have adequate space, we urge members of the judiciary to consider options and alternatives appropriate under the circumstances that may allow individuals to view and participate in proceedings, including, but not limited to, viewing rooms, additional seating, smaller calendars, or dividing the docket between morning and afternoon calendars.

Based upon Presley and other state and federal decisions, together with this opinion and the vigilant efforts of a conscientious judiciary, we hope that these recurring problems can be resolved without the necessity for any further action by the Commission.

[Pertinent Code of Judicial Conduct provision: Canon 2]

EXHIBIT B

Public Welcome

Members of the public are welcome to attend all court proceedings subject to occupancy and safety requirements unless otherwise ordered in specific cases.

If you have any problems or questions contact the Circuit Court Administrator at 229-271-4724 or PO Box 5025, Cordele, Georgia 31010.

EXHIBIT C

IN THE SUPERIOR COURTS OF THE
CORDELE JUDICIAL CIRCUIT

STATE OF GEORGIA

STANDING ORDER 2013-01

COURTROOM ACCESS FOR CRIMINAL PROCEEDINGS

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Jean H. Rogers, Clerk
CRISP SUPERIOR COURT

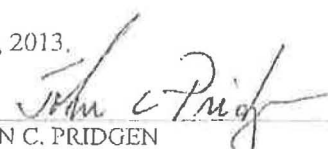
Whereas this Circuit has been and will continue to be dedicated to the Constitutional Rights of the Public to have access to its Courts; and

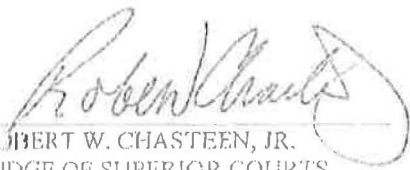
Whereas it is and always has been the policy of the Superior Court Judges of the Cordele Judicial Circuit that all Court proceedings in all courtrooms of the Circuit be open to the general public, except when closure is specifically found by the Court to be necessary in certain specific cases as provided by law;

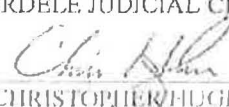
It is hereby ordered that the bailiffs and/or deputy sheriffs responsible for providing security for said courtrooms shall allow access for persons who wish to observe court proceedings to the extent possible to remain in compliance with occupancy and safety requirements, unless otherwise ordered in specific cases by the Court. It is further ordered that ALL PROCEEDINGS IN CRIMINAL MATTERS in the Superior Courts of Ben Hill and Crisp Counties henceforth will be held only in the courtrooms of the Ben Hill Courthouse and Crisp County Courthouse.

In the event there is a situation involving a particular criminal defendant that poses significant concerns related to health or safety, the Court will make specific findings related to those security or health concerns and if it is determined that those concerns will be remedied by holding the hearing at the Ben Hill or Crisp Law Enforcement Center then the matter may be held at the Center for the purpose supported by the factual findings. If such a hearing is conducted at the Center, it is hereby ordered that the bailiffs and/or deputy sheriffs shall comply with this standing order and ensure access by the public as appropriate.

SO ORDERED, this 6th day of March, 2013.


JOHN C. PRIDGEN
JUDGE OF SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT


ROBERT W. CHASTEEN, JR.
JUDGE OF SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT


T. CHRISTOPHER HUGHES
JUDGE OF SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT

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IN THE SUPERIOR COURTS OF THE
CORDELE JUDICIAL CIRCUIT

MAR 07 2013

STATE OF GEORGIA

Ben Hill County
JUDGE/SUPERIOR COURT, BEN HILL CO., GA.

STANDING ORDER 2013-01

7th *13*
12th *13*
12th *13*
12th *13*

COURTROOM ACCESS FOR CRIMINAL PROCEEDINGS

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SO ORDERED, this 6th day of March, 2013.

Robert W. Chasteen, Jr.
ROBERT W. CHASTEEN, JR.
JUDGE OF SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT

John C. Pridgen
JOHN C. PRIDGEN
JUDGE OF SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT

T. Christopher Hughes
T. CHRISTOPHER HUGHES
JUDGE OF SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT