



August 28, 2013

JQC Advisory Opinion 239

Judicial Qualifications Commission Issues Advisory Opinion That Systemic Exclusion Of Public From Court Proceedings May Be Unconstitutional And In Violation Of The Georgia Code Of Judicial Conduct

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On August 28, the Judicial Qualifications Commission issued Advisory Opinion 239 holding that judges who conduct proceedings in courtrooms that are closed to the public, or to which access is significantly restricted, may be violating both the state and federal constitution as well as Canon 2 of the Code of Judicial Conduct. The Commission said it issued the opinion “in response to requests by judges for guidance” following widespread media reports of courtrooms that were closed to the public while court was in session. The Commission emphasized that there are only “rare circumstances when court proceedings may legally occur outside the presence of the public.” In order to close a proceeding,

The court must cite specific legal authority for this action ...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. 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 v. Georgia*, 558 U.S. 209, 213-16, 130 S.Ct. 721, 723-25 (2010)]. 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.”

JQC Op. 239 (Cites omitted). Furthermore, court personnel may not require individuals seeking to enter a courtroom to state why they wish to enter, or to post signs “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.’” Id.

The JQC opinion follows on the heels of a decision by a Federal District Court in Macon refusing, for the second time, to dismiss a lawsuit against the Superior Court judges and bailiffs in the Cordele Judicial Circuit that challenges the restriction of access to arraignments and bail hearings in Ben Hill County and Crisp County. See *Fuqua v. Pridgen*, 2013 U.S. Dist. LEXIS 106233, 2013 WL 3938517 (M.D. Ga., 2013).

While the JQC Opinion only addresses the conduct of judges, the opinion is important to prosecuting attorneys because 1) we have a duty “to aid the presiding judge in organizing the courts,” O.C.G.A. §§ 15-18-6(3); 15-18-66(a)(2); 2) the opinion sets standards for closing portions of court proceedings; and 3) a decision to close a courtroom in violation of the constitution could adversely affect a criminal conviction on appeal.