**SEALING RECORDS- EPISODE NOTES**

Hello everyone and welcome back to the Good Judge-Ment Podcast. I am Wade Padgett

*And I am still Tain Kell.*

Tain, in this new job I have, I am trying to be careful to avoid discussing topics I am dealing with on appeals filed with the COA here on the podcast.

*I understand. That would be weird – kind of like discussing a case you were in the middle of as a judge or lawyer or mediator on the podcast.*

Exactly! So as we approached this recording date, I was honestly getting a little concerned about new topics for us to discuss. Then, almost as if from heaven, I got an email.

*You mean someone sent us a podcast topic idea at* *goodjudgepod@gmail.com*?

Yep – another FOP and one of our NJO graduates suggested a topic that is both interesting and timely – at least for this judge, it was timely.

*So, don’t keep me in suspense. What are we talking about today?*

Today we are going to discuss sealing records – the process and procedure involved with a request to have documents sealed.

*Well, let’s just dive into the deep end and get into it.*

To fully understand this topic, we need to remember the basic tenant of Georgia law that proceedings (and filings in those proceedings) are generally open to the public

U.S.C.R. 21 specifically provides “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.”

“In the State of Georgia, the public and the press have traditionally enjoyed a right of access to court records. Public 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. Like a candle, court records hidden under a bushel make scant contribution to their purpose.”[[1]](#endnote-1)

“To preserve this right, this court and the council of superior court judges have adopted a rule that presumes the public will have access to all court records.”[[2]](#endnote-2)

So we begin with the presumption that court records are public – similar to the general principle that our courtrooms are open the public – documents filed in court are generally open to the public

But the rule specifically provides that the documents filed in court are subject to public access UNLESS:

1. Access is limited by law; or
2. By the procedures set forth in Rule 21

So, the court must begin with the presumption of public access – which is an important consideration to keep in mind when there is a request to seal records –

And that presumption can only be overcome if another law provides that public access is limited OR the parties follow the procedures in Rule 21

The party seeking to seal court records has “the burden of overcoming this presumption, by [following provisions of Rule 21].”[[3]](#endnote-3)

In this episode, we are going to attempt to identify all of the different types of documents (i.e. adoptions, etc) that are “sealed” by law

Instead, we are going to focus on cases where the parties are seeking to seal documents that would otherwise be subject to public access

So there is a **process** that would allow documents to be “sealed” (“sealed” is a shorthand reference – the rules talk about “limitation to public access”)

Rule 21.1 sets forth the procedure – and it applies to both criminal and civil cases (I have seen it most often in connection with divorce actions, but it could apply in any type of case)

1. Upon motion by any party or the court’s own motion;
2. AFTER HEARING[[4]](#endnote-4);
3. Court may limit access.

The **order** that would accompany such “sealing” is also addressed in the rule – still in Rule 21.1

The order shall:

1. Identify the part of the file to which access is limited;
2. The nature of the limitation (i.e. fully sealed, sealed unless a judge grants access, etc);
3. The duration of the limitation; and
4. The reason for the limitation. (see next section/Rule)

Under U.S.C.R. 21.2, the trial court must make specific findings *following hearing*

“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.”[[5]](#endnote-5)

I have parties argue that records (usually in divorce cases) should be sealed because the content may be embarrassing, etc.

In such a case, the trial judge would have to find that the danger of embarrassment “clearly outweighs the public interest.”

More persuasive arguments might be that reveal the information could subject the party to hackers (i.e. where account numbers were revealed), where the party is a public official and the documents contain personally identifiable information, etc.

Stated another way, the law requires a showing that supports a finding that the harm to the privacy of the “person in interest” is clearly outweighed by the public interest

 Judges have discretion, but….

Rule 21.3 provides a process for temporary limitation to access which requires “compelling circumstances” and such an order cannot limit access for more than 30 days – it can be granted ex parte if application is accompanied by supporting affidavit

I am sure there is a scenario that you could develop where this “temporary seal” might be appropriate but I have never been asked to temporarily seal documents in a case

U.S.C.R. 21.4 provides that an order limiting access may be reviewed by interlocutory application to “the appellate court that has jurisdiction to hear the appeal”

Some of the appellate cases involving this Rule have a media outlet as a party[[6]](#endnote-6)

“If a trial court fails to hold a hearing on whether to seal a record or fails to make findings of fact concerning whether the privacy interests at stake outweigh the public's interest in access to records, an order sealing a record must be reversed on appeal.”[[7]](#endnote-7)

Under U.S.C.R. 21.5, “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 the appropriate appellate court at any time on its own motion or upon the motion of any person for good cause.”

 (This is how media outlets appeal an improperly sealed document/file)

This rule allows “any party” to seek amendment of an order sealing records. In contrast, only parties in interest (or the court sua sponte) can seek to have the records sealed.[[8]](#endnote-8)

 For a more detailed discussion of appellate court jurisdiction, see *Merchant Law Firm, P.C. v. Emerson*, 301 Ga. 609, n. 2 and 3 (2017).

**Where do problems arise involving the sealing of court records?**

1. Failing to conduct a hearing[[9]](#endnote-9);
2. Failing to enter an order;
	1. Within the order, not identifying the documents to be “sealed” (sealing entire file is a mistake in most cases)
	2. Within the order, not identifying the **duration** of the time during which the documents would be sealed.[[10]](#endnote-10) (NOTE: the duration can be permanent – but the order must make that specific finding)
	3. Within the order, not addressing how “embarrassment of [party] may suffer differs in degree or kind from that of parties in other civil suits. Embarrassment has always been a problem in civil suits, yet traditionally it has not prompted trial courts to routinely seal pre-judgment records. The presumption of open access that is built into Rule 21 implicitly takes this factor into account.”[[11]](#endnote-11)

**What is a “court record?”**

We probably all believe we understand what type of document makes up a “court record” governed by Rule 21.

 You might be surprised!

The Supreme Court of Georgia went to great lengths to define the term in *Undisclosed LLC v. State*, 302 Ga. 418 (2017). In that case, a podcast producer sought to obtain and copy the audio recordings maintained by the court reporter. The Supreme Court made a couple of things clear:

1. The right to access and inspect court records includes the right to make copies of those records; and
2. A “court record” is something filed with the court – and *does not* include audio recordings made by the court reporter.[[12]](#endnote-12)

“[T]he right of access begins when a ‘judicial document is filed.’”[[13]](#endnote-13) If the document is not filed, it is not a “court record.”

**One More Thing**

Interestingly, State Court, does not have their own version of U.S.C.R. 21. Probate Court does have a similar rule that largely tracks Rule 21 (UPCR 4). Magistrate Court has URMC 6 which is different, but has some similar provisions. Municipal Courts have their own Rule 6 which does not provide for the sealing of any records and directs the parties to follow the procedures of the Open Records Act to obtain records. (This “rule” may be in conflict with some other Supreme Court rulings – see *Green v. Drinnon, Inc.*, 262 Ga. 264, 265 (1992)[[14]](#endnote-14)).

So that is all for today’s episode dealing with the sealing of court records

*As always, there is an outline, filled with case citations, that can be found at goodjudgepod.com*

Remember to conduct a hearing, make findings and enter an order that at least addresses the duration of the sealing order

*Try to avoid sealing the entire record – that’s probably going to get reversed*

Keep in mind the presumption of public access

*So, with all of that said, is it time for trivia?*

Today’s session of music trivia follows up our previous episode where we tested Tain on the top 500 Songs as identified by Rolling Stone. If you missed the explanation to this list of songs, feel free to go back and check out our last episode where we had Tain guess numbers 20-11 of the top 500 songs of all time as ranked by Rolling Stone magazine.

So, Tain – I kind of feel like the Cat in the Hat – I came up with a game and I am not sure you love the game. How are you feeling about getting the top 10?

*Tain – ad lib*

Ok, let’s jump into the top 10 songs according to Rolling Stone and check Tain’s ability to guess correctly. Again, for the listeners, feel free to play along and scream out the answer to your device.

#10 on Rolling Stone’s list is a song from 2003 that was performed by a hip hop group with Atlanta ties. They are usually referred to as a duo, made up of Big Boi and Andre 3000. This song was their third #1 single. I would argue this is their most widely-known song but that would be debatable by those who love the band. Take a guess.

**ANSWER: OUTKAST *HEY YA!***

#9 is from a band that you love and we have discussed on the podcast previously. The album was released in 1977 and is filled with monster hits. But this was the band’s only #1 hit even though they had a bunch of big hits – almost all from this one album. There are men and women in this band and they may have been involved with a complicated love triangle (maybe quadrangle). Take a guess

**ANSWER: FLEETWOOD MAC *DREAMS***

#8 is a song that you might surprise me and actually guess correctly. But I would be a little surprised. 2001 song is by a female rapper whose real first name is Melissa but her stage name is a common nickname for someone named Melissa. I am surprised this song ranks this high on the list. It has been said that the song “sounds like some Japanese stuff mixed with a hip-hop beat.” I am not sure how to give you more clues so why don’t you give it a guess.

**ANSWER: MISSY ELLIOTT *GET UR FREAK ON***

#7 is the last song from the Fab 4 on the list. This song came out in 1967 and is described as a lonely song. John took the lead on this song and was recorded as a part of the so-called “Sgt. Pepper sessions” but this song is not on that album.

**ANSWER: *STRAWBERRY FIELDS FOREVER* BY THE BEETLES**

#6 is a very famous R&B song by a man who was also famously killed by his own father. He has always been seen as a monster R&B artist who many other bands/singers have actually called out in their own music. The song was released in 1971 and has been described as a cry for peace in a crazy world.

**ANSWER: MARVIA GAYE *WHAT’S GOING ON***

#5 skips us forward in time to the grunge era. The band was from Seattle and the drummer is now the lead singer for the Foo Fighters. We have talked about this song on prior episodes – particularly the video which takes place at a high school gymnasium with a bunch of interesting folks in attendance. Take a guess.

**ANSWER: NIRVINA *SMELLS LIKE TEEN SPIRIT***

#4 is by a widely-revered artist and I – frankly – never understood what all the fuss was about. 1965 was the year this song was released. The reason I do not love the artist is because I never understood a single word he sang – it was all sort of mushed together. Most of his music is deemed folk music. There is a definite connection with the name of this song, a band we have discussed in the prior episode and the magazine who made this infernal list.

**ANSWER: BOB DYLAN *LIKE A ROLLING STONE***

I really do not think you will get #3. I am going to give you the artist because the song was released before I was even born. Sam Cooke is the artist. The song is a ballad and I am not sure how to give you much more information about it without just telling you the name. If you want to guess, feel free. Otherwise, I give you a pass on this one.

**ANSWER: SAM COOKE *A CHANGE IS GONNA COME***

#2 is also a surprise but not because I have not heard it – I have. This 1989 song I have heard often but to say it is the second best song ever recorded stretches the mind a bit. This band has been referred to as being in the genre of “political hip-hop,” and “progressive rap.” One of their members famously wore a necklace with a huge clock on it – he went on to some fame as a reality tv star with his own dating show. The song has been referred to as the anthem for Spike Lee’s movie, *Do the Right Thing.* It is definitely an anti-establishment song. Want to guess?

**ANSWER: PUBLIC ENEMY *FIGHT THE POWER***

Because I know you, I know you are a little incredulous with how some of the songs on this list are ranked. But I think that you might actually give a nod to the #1 song on the list. The song is by a female R&B superstar and was released in 1967. But it came back in a big way when it was featured in the Blues Brothers movie. The song was originally written by Otis Redding, but this artist took it and it became her first #1 hit and resulted in her being known as the Queen of Soul. Fittingly, the song has a one word title.

**ANSWER: ARETHA FRANKLIN *RESPECT***

Tain, your thoughts on the list?

I am sure all of you out there in podcast land have your own list of the greatest songs of all time. Thanks for listening to us talk about this list. We hope it gave you a smile or two and helps you have a great day.

1. *Atlanta Journal v. Long*, 258 Ga. 410, 411 (1988). [↑](#endnote-ref-1)
2. *Green*, supra, citing *Atlanta Journal & Atlanta Constitution v. Long*, 258 Ga. 410, 411 (1988) and *R.W. Page Corp. v. Lumpkin*, 249 Ga. 576, n.1 (1982). [↑](#endnote-ref-2)
3. *Atlanta Journal v. Long*, 258 Ga. 410, 414 (1988). [↑](#endnote-ref-3)
4. *In re Atlanta Journal-Constitution*, 271 Ga. 436 (1999). [↑](#endnote-ref-4)
5. U.S.C.R. 21.2. [↑](#endnote-ref-5)
6. *Atlanta Journal v. Long*, 259 Ga. 23 (1989); *In re Atlanta Journal-Constitution*, 271 Ga. 436 (1999). [↑](#endnote-ref-6)
7. *Wall v. Thurman*, 283 Ga. 533, 535 (2008). [↑](#endnote-ref-7)
8. *Merchant Law Firm, P.C. v. Emerson*, 301 Ga. 609, 611-612 (2017). [↑](#endnote-ref-8)
9. *Yntema v. Smith*, \_\_ Ga. App. \_\_, 899 SE2d 543, 554 (2024) (order sealing documents vacated and case remanded when trial court did not conduct a hearing on the subject prior to entering an order sealing entire record); *Altman v. Altman*, 301 Ga. 211, 216-217 (2017) (court erred in sealing transcripts of child interviews and custody evaluation report). [↑](#endnote-ref-9)
10. *Atlanta Journal v. Long*, 258 Ga. 410, 413 (1988). [↑](#endnote-ref-10)
11. *Atlanta Journal v. Long*, 258 Ga. 410, 414 (1988). [↑](#endnote-ref-11)
12. *Undisclosed LLC v. State*, 302 Ga. 418, 430-431 (2017). NOTE: this is a lengthy decision that goes into great detail about the history of “public access” and is worth a read if you find yourself involved in one of these cases. [↑](#endnote-ref-12)
13. *Undisclosed*, 302 Ga. at 431. [↑](#endnote-ref-13)
14. “We disapprove of the trial court's ruling to the extent that it relied on the Open Records Act to grant the newspaper access to the court record. See *Coggin v. Davey,* 233 Ga. 407, 411, 211 S.E.2d 708 (1975); *Fathers Are Parents Too, Inc. v. Hunstein,* 202 Ga.App. 716, 415 S.E.2d 322 (1992); see also 1979 Att'y Gen. Op. 79–25 (concluding that the sunshine law does not apply to the judiciary because, like the General Assembly, the courts have a history of self-regulation).” [↑](#endnote-ref-14)