PODCAST NOTES - COVID-19 EPISODE

*[Tain- I wrote out the intro just because it has been a while and I wanted us to be as smooth as possible—feel free to go off script as much as you want. I will follow. You are in italics, I am in plain type]*

* Welcome everyone to another session of The Good Judge-Ment Podcast. I am Wade Padgett.
* *And I am Tain Kell.*
* Tain, we are in the middle of the unprecedented Judicial Emergency and we wanted to reach out with some thoughts, ideas and observations about how this pandemic has and will effect Georgia’s judicial system.
* *But we have no intention of talking about the pandemic itself, or whose fault it is or how long the shelter in place order from Governor Kemp should remain in effect.*
* Yes, it seems like that is the topic of most podcasts these days.
* *But Wade, you know we have recorded all previous episodes at the UGA Law School. Tell the people how it is we are able to record this episode.*
* We would not have been able to create anything without the amazing support of the UGA College of Law and, specifically, Jim Henneberger
* *That’s right – he’s amazing! We miss him.*
* Yep, we do. But with the University System closed indefinitely, we kind of doubted they were really worried about how we would record the Good Judge-Ment Podcast. So, we were able to obtain a grant that would allow us to record a portable recording unit.



* But Tain, that was only ½ of the solution
* *We are also under the shelter in place order and we could not find an exception for “podcast recording” in the activities that are allowed under the order.*
* So I am in my new “home recording studio”
* *And I am at my home, but I don’t have the fancy recording equipment so I am on my cell phone*
* We hope the quality is satisfactory and we are going to rely on Stephen Turner at Turner Up Productions to “fix it in the mix”
* *[something funny about that statement]*
* We know that everyone in Georgia’s judicial system is struggling with how to do our jobs in the midst of this Judicial Emergency
  + Trying to avoid being exposed
  + Keep our office and courtroom staff from being exposed
  + Taking care to avoid contact by public who may want to attend court hearings
* If we are being honest, we were not prepared for this pandemic and its effects on the courts
  + Initially, we were doing low-tech things *[Tain – talk about taping off the pews, floors, etc]*
  + In Augusta, we immediately started using the technology we had been using with the DOC with our local jails *[we had an active lawyer contract the virus almost when the pandemic “broke” and he had been in court, seem clients at the jail, etc.]*



* Chief Justice Melton issued the first Judicial Emergency Order and required us to perform only “essential services”



* + But when it became clear that many areas of the state became more capable of using videoconferencing, he issued the “extension Judicial Emergency” order and it still has “essential services” as a restriction BUT it also says we can do more if we use videoconferencing, etc.



* Thus far, in Augusta we are really focusing on handling cases where the defendant’s “status” would change – where the defendant would be going from custody to probation or from local custody to DOC custody
  + We realize how much the sheriffs are struggling to keep the virus out of the jails
  + It would be a disaster if they had multiple cases in local jails
  + We also realize that the DOC is no longer transporting prisoners or taking in newly convicted defendants
  + We are handling probation revocations that involve admissions
  + We have not really handled any cases that require witnesses to come to court
* Let’s stop for a minute and discuss a couple of legal issues
  + The right to confront witnesses is only a criminal issue
  + We can conduct civil hearings (I have actually presided over a MSJ and a final hearing on a custody modification)
  + So in civil cases, witnesses, parties, even court reporters can all attend via video
    - We have just required the parties to pre-mark any exhibits and email them to the judge and to opposing counsel
      * I then forward that email to the court reporter
* Justice Melton also got the Supreme Court to approve an amendment to Rule 9.2 that allows the judge to no longer be required to be located in the same “open courtroom” that the public has access to *[attached in the Dropbox folder]*
  + That does not mean that the judge can ignore the open courtroom requirement
    - In Augusta, we have placed notices of hearings being conducted via video on our website and are actually connecting a computer to the Webex meeting in an open courtroom – have yet to have anyone attend that way, but we have done it.
    - If anyone wanted to watch the hearing, I would absolutely allow them to join the meeting and I would simply mute them and close their video camera
      * They could see us but we could not see them
  + I know in Cobb, some judges were talking about live-streaming the feed to Facebook or YouTube *[not sure what the ultimate decision was]*
    - But there were concerns expressed about what someone could do with that video if they had dark heart
  + §17-5-21.1 *[copy in Dropbox]* Search warrant applications via video. I did one with the GBI via video. The video must be recorded and the judge will have to figure out how to sign the document.
    - I had the agent take the oath on the video and then signed it on my iPad with Apple Pencil and emailed it back to her
    - Our friends in Gwinnett have been doing these by video for a while – I am sure they have worked out the details of signatures
  + This emergency does not allow us to conduct “in abstentia” felony hearings
    - Chief Justice has a bunch of power but cannot change the law, only procedure



* + - The Gov. has some emergency authority to change some laws
  + I clarified with Probation just this week that if we needed to sentence someone to a split sentence that we could sentence, place them on probation until a date certain (August 1) and then require they report to local jail to begin service of a prison sentence
    - I know, who is going to report to prison, right?
    - 1) Feds do it every day; 2) If you make reporting a “special condition of probation,” judge can revoke entire balance merely for not reporting as ordered 3) the probation officer will be the person having to keep up with the dates, not the jails; allows you to move a case during the shut-down
      * But put the report date far enough in advance to hopefully be out of this mess
  + I know Probate Courts are being sued now because of not issuing Weapon Carry Licenses (fed and state lawsuits)
    - Let’s be careful because some of our colleagues will have to hear some of these cases
    - But their issue is the fingerprint requirement. Sheriffs have suspended non-essential people from being fingerprinted and the “inkless” fingerprint system requires Probate Court employees to touch the applicants
    - And we have suffered the death of Judge Nancy Stephenson in Albany from this COVID-19
  + I know some sheriffs are not executing probation violation warrants right now or are not going to pick up defendants with holds on them from other facilities
  + Another issue we have been dealing with is how lawyers meet with their clients in jail
    - Getting papers signed is tough w/o personal contact
    - Does law even require written “plea waiver forms?”
  + Gov. Kemp issued the “clarification” Exec Order concerning child custody and visitation orders remaining valid *[in the folder on Dropbox]*
  + So let’s spend a minute talking about the future and how we will handle court once it opens back up
    - We all realize we are going to be avalanched once we start having court again.
    - We are going to have potential jurors who do not want to serve in close proximity with others
    - I do not think most circuits have PPE (Personal Protection Equipment) sufficient for court staff, much less for all of the jurors, grand jurors, etc.
  + Jury selection itself – do we feel comfortable asking 50 jurors to sit right next to one another for voir dire?
    - * We may have to have multiple panels for general and individual voir dire – it may take a while to select a jury
  + I think we have learned a good lesson by being forced in the deep end with video hearings with people in jail – we should continue
  + The old “Rocket Docket” idea might come back into vogue
  + There is an ongoing conversation now at the highest levels about what to do with Grand Juries and terms of court. When we halted work, every circuit had a grand jury impaneled. Do we call them back? Do we simply skip forward to the next term and swear in that Grand Jury?
  + Same with terms of court (any issues with speedy trial demands has been addressed by the Judicial Emergency declaration and the subsequent order “clarifying” tolling *[copy in Dropbox folder]*
  + We have developed some skills we did not have before as a judicial branch
    - Video hearings



* + - Figuring out e-signing of documents



* + - We will be better prepared but I hope we never need it again
  + Wrap Up
    - Let us know about the sound quality
    - We know everyone is struggling and are as worried about what happens when this ends as much as what to do tomorrow