

Judge Closes Hearing over John Edwards Sex Tape

Digital Media and Data Privacy Law Blog

on 02.06.2010

Posted in Access to Courtrooms

The presiding judge closed a hearing Friday on whether to hold Andrew Young and his wife in contempt for failing to turn over a sex tape purportedly showing Rielle Hunter and disgraced former presidential candidate John Edwards consummating their much-publicized affair. The hearing was held in Chatham County, North Carolina, and it was set in a lawsuit brought by Hunter to recover possession of the tape from Young. Young, a former aide to Edwards, was apparently part of Edwards's misbegotten scheme to cover up his fathering of a child with Hunter, as Young originally claimed the child was his. In a book he recently published, Young says he found the tape in the home where Hunter lived with Young's family for a period of time.

The tawdry story has blanketed tabloids and dailies, but on Friday it gave occasion to consider an important newsroom law issue. At the hearing on whether to hold Young in contempt for not turning over the tape in response to a prior order, the judge without prior notice announced that he would hear argument in chambers, outside the presence of reporters and members of the public. As was reported in the Raleigh News & Observer, the judge heard argument for approximately one hour before emerging and issuing his ruling that Young and his wife were in contempt and would be jailed if the tape is not turned over by 2:00 pm on Wednesday.

Although the trial court administrator contended that closing the hearing was within the judge's "discretion," summarily closing the hearing without notice, without affording the press an opportunity to object, and without entering factual findings supporting closure and reflecting the consideration of alternatives violated North Carolina law.

The North Carolina Constitution specifically provides that "all courts shall be open." This provision entitles members of the press and public to a qualified right to attend civil proceedings, such as the matter between Hunter and Young. Based on the media reports of the hearing, there is no evidence that the judge considered alternatives to conducting the hearing in private or articulated any interests in secrecy that would overcome the presumption of access.

Unfortunately, it appears that none of the phalanx of media representatives who were present invoked a special North Carolina statute that provides a mechanism for gaining access to closed proceedings and sealed documents. In particular, N.C. Gen. Stat. 1-72.1 provides:

Judge Closes Hearing over John Edwards Sex Tape

Any person asserting a right of access to a civil judicial proceeding or to a judicial record in that proceeding may file a motion in the proceeding for the limited purpose of determining the person's right of access.

Once a motion is made under the statute, the court must convene a hearing "before conducting any further proceedings" relating to the matter in question. Following the hearing, the court must

rule on the motion after consideration of such facts, legal authority, and argument as the movant and any other party to the action desire to present. The court shall issue a written ruling on the motion that shall contain a statement of reasons for the ruling sufficiently specific to permit appellate review. The order may also specify any conditions or limitations on the movant's right of access that the court determines to be warranted under the facts and applicable law.

The ruling is subject to immediate appellate review. It is unfortunate that in this case the court's decision to close the proceeding was not put to the test under G.S. 1-72.1. Nevertheless, the episode provides an important opportunity for reporters and editors to learn of this special procedural right they enjoy in North Carolina to challenge the closing of a courtroom or the sealing of a court record.