

LINDA A. KLEIN, SENIOR MANAGING SHAREHOLDER
Direct Dial: 404.221.6530
Direct Fax: 404.238.9630
E-Mail Address: lklein@bakerdonelson.com

June 23, 2021

Via E-Mail macdonaldn@cscj.org

Annahita Natasha Nankali
General Counsel
Council of Superior Court Judges of Georgia
18 Capitol Square SW
Suite 104
Atlanta, GA 30334

RE: Copyright on Pattern Jury Instructions

Dear Ms. Nankali:

I understand that you are counsel to the Council of Superior Court Judges. This firm is privileged to represent Public.Resource.Org., Inc., a non-profit corporation dedicated to enhancing public access to public law.

As was reported to Judge Padgett last month in a letter from the President of Public.Resource.Org, that organization has posted to its publicly available website two publications of the Council of Superior Court Judges:

Pattern Jury Instructions, Volume 1, Civil Cases
(at https://archive.org/details/ga.civil_pattern_jury_instructions/mode/2up), and

Pattern Jury Instructions, Volume II, Criminal Cases
(at https://archive.org/details/ga.criminal_pattern_jury_instructions/mode/1up)

Each of these works contains a copyright notice in the name of “the Council of Superior Court Judges of Georgia.” The Criminal volume indicates a copyright date of 2018, and the Civil volume indicates a copyright date of 2019. Both of these dates were before the United States Supreme Court unambiguously confirmed that such works are not copyrightable, in an opinion by Chief Justice Roberts:

Under what has been dubbed the government edicts doctrine, officials empowered to speak with the force of law cannot be the authors of—and therefore cannot

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copyright—the works they create in the course of their official duties. We have previously applied that doctrine to hold that non-binding, explanatory legal materials are not copyrightable when created by judges who possess the authority to make and interpret the law. *See Banks v. Manchester*, 128 U.S. 244, 9 S.Ct. 36, 32 L.Ed. 425 (1888).”

Georgia v. Public.Resource.Org, Inc., 140 S.Ct. 1498, 1504 (2020).

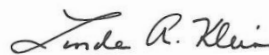
The Court went on to state that, “Under the government edicts doctrine, judges . . . may not be considered the ‘authors’ of the works they produce in the course of their official duties as judges.” *Id.*, at 1506.

In reaching the specific holding in that case, that the annotations to the O.C.G.A. were not copyrightable, the Court noted that, although “these supplementary materials do not have the force of law, yet they are covered by the doctrine. The simplest explanation is the one *Banks* provided: These non-binding works are not copyrightable because of who creates them—judges acting in their judicial capacity.” *Id.*, at 1511-12.

The publication of Georgia’s pattern jury instructions, with the Council’s copyright notice, first occurred before the Supreme Court decided the case noted above. Nonetheless, the copyright notices are still there, raising the very unfortunate prospects the Chief Justice warned against. On behalf of our client, and in the interest of all those who seek to teach, learn, or otherwise rely on the law of our State, we respectfully request that the Council remove its copyright notice from its publications. Thank you for your kind attention to this matter.

Respectfully,

BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ



Linda A. Klein

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