



Sam Morley
<SMorley@flpress.com>
02/01/2011 05:06 PM

To "katherine.giddings@akerman.com"
<katherine.giddings@akerman.com>, "jjenning@flabar.org"
<jjenning@flabar.org>
cc Sandy D'Alemberte <dalembert@fsu.edu>, Larry Schwartztol
<lschwartztol@aclu.org>, Barbara Petersen
<Sunshine@floridafaf.org>, "ldalGLISH@rcfp.org"
bcc

Subject Objection to Proposed Rule 2.451

The Florida Press Association, Florida First Amendment Foundation, Florida Association of Broadcasters, and Reporters Committee for Freedom of the Press object to proposed new Rule 2.451 dealing with the use of electronic devices as it pertains to journalists. The rule gives judges and quasi-judicial officers the authority to ban and confiscate devices such as digital and video cameras, audio recorders, and cell phones but provides an "exception" for "professional journalists" as defined in section 90.5015, Florida Statutes. The rule's incorporated definition of "professional journalists" is a narrow one used for purposes of the journalist's shield law. This definition limits "journalists" to salaried employees or independent contractors for traditional news establishments such as newspapers and television networks. Thus, the proposed rule on controlling devices would apply to anyone the judge considers as not falling within this narrow definition of a "professional journalist." [Under the proposed rule, those "professional journalists" not subject to the new rule would continue be governed by the general technology coverage of Rule 2.450 that mainly pertains to cameras in the courtroom.]

We believe the professional journalist definition of the shield law is not appropriate in the context of limiting devices; it is way too narrow to use in the current context and would result in the exclusion of a substantial array of non-salaried or non-contracted journalists who might not fit under this definition. For example, free-lance journalists, community association reporters, book authors, citizen bloggers, as well as journalists working for web-based news organizations could all be banned from using devices routinely used on a daily basis by a broad spectrum of the public, thereby in practical effect preventing coverage of the court proceedings of the day. This, we believe, is a serious intrusion on public access and press freedoms.

The protection of public access to judicial proceeding serves fundamental constitutional values. In particular "the value of openness lies in the fact that people actually attending trials can have confidence that standards of fairness are

being observed.” *Sarasota Herald-Tribune v. State* , 924 So. 2d 8, 12 (Fla. App. 2 Dist. 2005) (quoting *Press-Enter. Co. v. Superior Court* , 464 U.S. 501, 508 (1984)). A trial courtroom is a “public place where people have a general right to be present, and what transpires in the courtroom is public property.” *Plaintiff B. v. Francis* , No. 5:08-cv-79, 2010 WL 503067, *2 (N.D. Fla. Feb. 5, 2010). As for the press’s role, as the Florida Supreme Court has noted, it plays an indispensable function in maintaining “the judicial system’s credibility in a free society.” *Barron v. Florida Freedom Newspapers, Inc.* , 531 So. 2d 113, 116 (Fla. 1998).

We believe that the rule as currently written seriously undermines these values. Anyone who is not a salaried or contracted reporter is a potential target of the rule. The presiding judge is free to ban a potentially large category of individuals from using tools necessary to report on the proceedings. Press credibility cannot be maintained when members of the public and media are dependent on the judge’s unbridled discretion on banning devices. The rule as written is of special concern in light of today’s fast-moving digital world where “traditional” media is difficult – if not impossible – to define, has many moving parts, and certainly cannot be limited to salaried journalists as defined in the shield law.

We would also note that the rule does not apply any specific standard. The rule permits control or confiscation if the manner of use “is determined to be disruptive to the judicial proceeding.” A balancing test or some standard should be applied to reflect the importance of technology to providing public oversight and access.

Of course we have no objection to ordinary and uniform procedures to ensure court security and administration of justice and to control appropriate use of such devices by jurors. However, a rule allowing judges to ban a broad swath of devices commonly used in the course of legitimate reporting deprives the press and citizens of rights established under Florida law and the U.S. constitution. The rule also leaves opening for unintended abuse.

We urge you to revoke or change the rule so that it is narrowly tailored to control devices based on ordinary security measures yet allows for full observation and reporting of proceedings by all members of the public reporting the proceedings.

Respectfully submitted,

Samuel J. Morley, General Counsel Dean Ridings, President/CEO
Florida Press Association/Service

336 E. College Ave., Suite 203
Tallahassee, FL 32301-1559
smorley@flpress.com
office 850.521.1199
cell 850.212.4395
fax 850.577.3629

Barbara A. Petersen, President
First Amendment Foundation
336 E. College Ave., Suite 101
Tallahassee, FL 32301
sunshine@floridafaf.org
office 850.224.4555
cell 850.212.8665 fax 850.224.0435

Pat Roberts, President CEO
Florida Association of Broadcasters
201 South Monroe St.
Tallahassee, FL 32301-1559
cproberts@fab.org
office 850.681.0007
fax 850.222.3957

Lucy A. Dalglish
Executive Director
Reporters Committee for Freedom of the Press
1101 Wilson Blvd., Suite 1100
Arlington, VA 22209
phone: (703) 807-2100
email: ldalglish@rcfp.org