

## **Proposed Rule 4-401:**

### Rule 4-401. Electronic Media Coverage of Court Proceedings.

#### *Intent:*

To establish uniform standards and procedures for electronic media coverage of proceedings in the courts of the state.

To permit electronic media coverage of courtroom proceedings while protecting the rights of parties to a fair trial, legitimate personal privacy and safety interests, the decorum and dignity of judicial proceedings, and the fair administration of justice.

#### *Applicability:*

This rule applies to the courts of record and not of record.

This rule governs electronic media coverage and conduct of courtroom proceedings that are open to the public.

This rule does not govern coverage of courtroom proceedings by a news reporter who is not using a camera or electronic equipment to photograph or create audio or video recordings or transmissions of judicial proceedings.

Except as provided by this rule, the use of cameras, cellular phones, personal computers or other portable electronic devices to photograph or create audio or video recordings or transmissions of courtroom proceedings without the express permission of the judge is prohibited.

This rule shall not diminish the authority conferred by statute, rule, or common law of the judge or court to control the conduct of proceedings in the courtroom or areas immediately adjacent to the courtroom.

#### *Statement of the Rule:*

##### (1) *Definitions.*

(A) “Judge” as used in this rule means the particular judge, justice, or judicial officer who is presiding over the public proceeding.

(B) “Proceeding” as used in this rule means any trial, hearing, motion, or any other matter held in open court which the public is entitled to attend.

(C) “Electronic media coverage” as used in this rule means a news reporter taking photographs or broadcasting, televising, recording, streaming, or transmitting images or sounds by electronic means, including but not limited to video cameras, still cameras, cellular phones, audio recorders, computers, or other portable electronic devices.

(D) “News reporter” as used in this rule means any person who gathers, records, photographs, reports, or publishes information for the primary purpose of disseminating news and information to the public, and any newspaper, magazine, or other periodical publication, press association or wire service, radio station, television station, satellite broadcast, cable system or other organization with whom that person is connected.

(2) *Presumption of electronic media coverage; restrictions on coverage.*

(A) There is a presumption that electronic media coverage shall be permitted in courtroom proceedings that are open to the public. Limitations on electronic media coverage must be supported by reasons found by the judge to be sufficiently compelling to outweigh the presumption.

(B) When determining whether the presumption of electronic media coverage has been overcome and whether such coverage should be prohibited or restricted beyond the limitations provided in this rule, a judge shall consider some or all of the following factors:

- (i) whether there is a reasonable likelihood that electronic media coverage would prejudice the rights of the parties to a fair proceeding;
- (ii) whether there is a reasonable likelihood that electronic media coverage would jeopardize the safety or well-being of any individual;
- (iii) whether there is a reasonable likelihood that electronic media coverage would jeopardize the interests or well-being of a minor;
- (iv) whether there is a reasonable likelihood that electronic media coverage would constitute an unwarranted invasion of personal privacy of any party or witness;
- (v) whether electronic media coverage would create adverse effects that would be greater than those caused by traditional media coverage;
- (vi) the adequacy of the physical facilities of the court for electronic media coverage;
- (vii) the public interest in and newsworthiness of the proceeding;
- (viii) potentially beneficial effects of allowing public observation of the proceeding through electronic media coverage; and

(ix) any other factor affecting the fair administration of justice.

(C) The judge shall make particularized findings on the record supporting a prohibition of electronic media coverage or restrictions on such coverage beyond the limitations provided by this rule. Such findings may be made orally or in a written order. Any written order granting or denying a request for electronic media coverage shall be made part of the record of the proceedings.

(D) Any reasons found sufficient to support restrictions on electronic media coverage beyond the limitations provided in this rule shall relate to the specific circumstances of the case before the court rather than reflecting merely generalized views or preferences.

(3) *Duty of news reporters to obtain permission; termination or suspension of coverage.*

(A) News reporters desiring permission to provide electronic media coverage of a proceeding shall file a written request with the court at least 24 hours prior to the proceeding; however, the judge may grant such a request on shorter notice or waive the requirement for a written request upon a showing of good cause.

(B) A judge may terminate or suspend electronic media coverage at any time without prior notice when it is determined that a news reporter has violated the limitations set forth in this rule or ordered by the court, or that continued electronic media coverage is no longer appropriate based upon a consideration of one or more of the factors set forth in Rule 4-401(2)(B). If permission to provide electronic media coverage is terminated or revoked, the judge shall make oral or written particularized findings on the record.

(4) *Conduct in the courtroom; pool coverage.*

(A) A judge may position news reporters and equipment in the courtroom to permit reasonable news coverage. No more than one video camera person and one still photographer shall be permitted in the courtroom. The camera operator and still photographer may use tripods, but shall not change location when court is in session.

(B) If more than one news reporter has requested permission to provide electronic media coverage, it is the responsibility of news reporters to determine who will participate at any given time or, in the alternative, how they will pool their coverage. The pooling arrangement shall be reached outside the courtroom and before court session, and without imposing on the judge or court staff.

(C) News reporters shall designate a representative with whom the court may consult regarding pool coverage, and shall provide the court with the name and contact information for such representative.

(D) To be eligible to participate in a camera pool, a news reporter must apply for permission to provide electronic media coverage pursuant to Rule 4-401(3)(A). The pool photographer shall use equipment that is capable of disseminating photographs, video or audio to pool recipients in a generally accepted format.

(E) It shall be the responsibility of news reporters to make arrangements for the sharing and dissemination of photographs, video or audio produced by pool coverage. Neither judges nor court personnel shall be called upon to resolve disputes concerning pooling arrangements.

(F) Photographers shall not use flash or strobe lights. News reporters shall use normally available courtroom equipment unless the judge and court administrator approve modifications, which shall be installed and maintained without public expense. Any such modifications, including microphones and related wiring, shall be as unobtrusive as possible, shall be installed in advance of the proceeding or during adjournment, and shall not interfere with the movement of those in the courtroom.

(G) Proceedings in the courtroom shall not be disrupted. Photographers and news reporters in the courtroom shall:

- (i) not use equipment that produces loud or distracting sounds;
  - (ii) not place equipment in or remove equipment from the courtroom while court is in session;
  - (iii) conceal on all cameras any identifying business names, marks, call letters, logos or symbols;
  - (iv) not make comments in the courtroom during the court proceedings;
  - (v) not comment to or within the hearing of the jury or any member thereof at any time before the jury is dismissed;
  - (vi) present a neat appearance and conduct themselves in a manner consistent with the dignity of the proceedings;
  - (vii) not conduct interviews in the courtroom except as permitted by the judge;
- and

(viii) comply with the orders and directives of the court.

(5) *Violations.*

In addition to contempt and any other sanctions allowed by law, a judge may remove anyone violating these rules from the courtroom and revoke permission to provide electronic media coverage.

(6) *Limitations on electronic media coverage.*

Notwithstanding an authorization to conduct electronic media coverage of a proceeding, and unless otherwise authorized by the judge, there shall be no:

(A) electronic media coverage of a juror or prospective juror until the person is dismissed;

(B) electronic media coverage of the face of a person known to be a minor;

(C) electronic media coverage of an exhibit or a document that is not part of the official public record;

(D) audio recording or transmission of the content of bench conferences or in camera hearings; or

(E) audio recording or transmission of the content of confidential communications between counsel and client, between clients, or between co-counsel.

(F) A judge may order further limitations on electronic media coverage as deemed appropriate in consideration of the factors set forth in Rule 4-401(2)(B).