

Rules of Judicial Administration Committee Out-of-Cycle Report

The Rules of Judicial Administration Committee invites comments on the proposed rule amendment anticipated to be included in the Committee and Media Law Section joint out-of-cycle report regarding electronic devices for audio and video coverage of judicial proceedings.

Interested persons have until September 15, 2017, to submit any comments, electronically, to Judson Cohen, Chair of the Rules of Judicial Administration Committee, at jcohen@weinsteincohen.com and to the Bar staff liaison Krys Godwin, at kgodwin@floridabar.org.

RULE 2.450. TECHNOLOGICAL USE OF ELECTRONIC DEVICES FOR AUDIO AND VIDEO COVERAGE OF JUDICIAL PROCEEDINGS

(a) Electronic Devices Defined. An electronic device is any device capable of making or transmitting still or moving photographs, video recording, or images of any kind; any device capable of creating, transmitting, or receiving text or data; and any device capable of receiving, transmitting, or recording sound. Electronic devices include, without limitation, film cameras, digital cameras, video cameras, any other type of camera, cellular telephones, tape recorders, digital voice recorders, any other type of audio recorders, laptop computers, personal digital assistants, or other similar technological devices with the ability to make or transmit video recordings, audio recordings, images, text, or data. For purposes of this rule, an electronic device does not include equipment used by the court to produce the official record of a proceeding.

(b) Authority of Judge to Control Use of Electronic and Still Photography Allowed Devices. The use of electronic devices in a courtroom, including, without limitation, the type of devices allowed, the number of devices allowed, and the placement of the device, is §subject at all times to the authority of the presiding judge or quasi-judicial officers to:

- (i) control the conduct of proceedings before the court;
- (ii) ensure decorum and prevent distractions; and

~~(iii) ensure the fair administration of justice in the pending cause; electronic media and still photography coverage of public judicial proceedings in the appellate and trial courts of this state shall be allowed in accordance with the following standards of conduct and technology promulgated by the Supreme Court of Florida.~~

~~(b) Equipment and Personnel.~~

~~(1) At least 1 portable television camera, operated by not more than 1 camera person, shall be permitted in any trial or appellate court proceeding. The number of permitted cameras shall be within the sound discretion and authority of the presiding judge.~~

~~(2) Not more than 1 still photographer, using not more than 2 still cameras, shall be permitted in any proceeding in a trial or appellate court.~~

~~(3) Not more than 1 audio system for radio broadcast purposes shall be permitted in any proceeding in a trial or appellate court. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court facility. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the chief judge of the judicial circuit or district in which the court facility is located.~~

~~(4) Any “pooling” arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding.~~

~~(c) Sound and Light Criteria.~~

~~(1) Only television photographic and audio equipment that does not produce distracting sound or light shall be used to cover judicial proceedings. No artificial lighting device of any kind shall be used in connection with the television camera.~~

~~(2) — Only still camera equipment that does not produce distracting sound or light shall be used to cover judicial proceedings. No artificial lighting device of any kind shall be used in connection with a still camera.~~

~~(3) — It shall be the affirmative duty of media personnel to demonstrate to the presiding judge adequately in advance of any proceeding that the equipment sought to be used meets the sound and light criteria enunciated in this rule. A failure to obtain advance judicial approval for equipment shall preclude its use in any proceeding.~~

Approval Before Use of Electronic Devices for Audio or Video Coverage. Absent prior approval by the presiding judge or quasi-judicial officer, electronic devices must not be used during a court proceeding to make an audio or visual recording. The court must provide reasonable opportunities, such as prior to the proceeding or during a recess, for persons wishing to obtain prior approval to be heard.

(d) ~~Location of Equipment Personnel.~~

~~(1) — Television camera equipment shall be positioned in such location in the court facility as shall be designated by the chief judge of the judicial circuit or district in which such facility is situated. The area designated shall provide reasonable access to coverage. If and when areas remote from the court facility that permit reasonable access to coverage are provided, all television camera and audio equipment shall be positioned only in such area. Videotape recording equipment that is not a component part of a television camera shall be located in an area remote from the court facility.~~

~~(2) — A still camera photographer shall position himself or herself in such location in the court facility as shall be designated by the chief judge of the judicial circuit or district in which such facility is situated. The area designated shall provide reasonable access to coverage. Still camera photographers shall assume a fixed position within the designated area and, once established in a shooting position, shall act so as not to call attention to themselves through further movement. Still camera photographers shall not be permitted to move about in order to obtain photographs of court proceedings.~~

~~(3) — Broadcast media representatives shall not move about the court facility while proceedings are in session, and microphones or taping equipment once positioned as required by subdivision (b)(3) shall not be moved during the pendency of the proceeding.~~

Standard Governing Court Approval. The judge or quasi-judicial officer shall allow the use of electronic devices for coverage of the proceedings, subject to the judge’s authority to control the manner of their use. The court may exclude electronic coverage of a specific participant only upon a finding that such coverage will cause special and identifiable injury to the participant. Such special and identifiable injury is present where the coverage will substantially affect the participant in a way that is qualitatively different from the effect on a member of the general public, and where the type of electronic device used will have qualitatively different effect on the participant than coverage by other means.

(e) Evidentiary Hearing. Before prohibiting the use of electronic devices during any portion of a proceeding for any reason other than disruption of the proceeding or failure to obtain prior approval, the presiding judge or quasi-judicial officer shall hold an evidentiary hearing, upon reasonable notice, at which those requesting permission to use electronic devices have a fair opportunity to be heard.

(f) Movement During Proceedings. ~~News media photographic or audio equipment shall not be placed in or removed from the court facility except before commencement or after adjournment of proceedings each day, or during a recess. Neither television film magazines nor still camera film or lenses shall be changed within a court facility except~~ Equipment placement or changes potentially disruptive to a proceeding may be made only during a recess in the proceeding or as otherwise determined by a judge or quasi-judicial officer.

(f) Courtroom Light Sources. ~~With the concurrence of the chief judge of a judicial circuit or district in which a court facility is situated, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions are installed and maintained without public expense.~~

(g) Pooling Agreements. Any “pooling” arrangements among the media required by limitations on the use of electronic devices shall be the sole responsibility of the media without calling upon the presiding judge or quasi-judicial officer to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. When there is an objection to the agreement, the presiding judge or quasi-judicial officer may exclude from the courtroom any electronic device that is not used in accordance with this subdivision.

(h) Conferences of Counsel. To protect the attorney-client privilege and the effective right to counsel, there shall be no audio pickup or broadcast of conferences that occur in a court facility room used for a proceeding between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge or quasi-judicial officer held at the bench.

(hi) Impermissible Use of Media Material. ~~None of the film, videotape, still photographs, or audio reproductions developed during or by virtue of~~ No audio or video recording resulting from coverage of a judicial court proceeding shall be admissible as evidence in the proceeding out of which it arose, in any proceeding subsequent or collateral thereto, or upon retrial or appeal of such proceedings deemed the official record of the proceeding. Such recordings are only admissible in court proceedings as permitted by the applicable statutes and rules.

(ij) Appellate Review. ~~Review of an order excluding the electronic media from access to any proceeding, excluding coverage of a particular participant, or upon any other matters arising issued under these standards~~ this rule shall be pursuant to Florida Rule of Appellate Procedure 9.100(d).

Committee Note

20 Amendment. This rule has been updated to reflect the extensive and ongoing technological changes that have occurred since electronic coverage of court proceedings was first addressed by rule in 1993. The new version of the rule eliminates references to outdated technologies and processes. It is intended to encompass both existing technologies and those yet to be developed. The amended rule also addresses the use of technology by traditional media, non-traditional media, and individuals. It is designed to provide guidance to those stakeholders as well as establish a procedural framework for use by judges and quasi-judicial officers who seek to regulate the use of electronic devices in court proceedings in a manner consistent with controlling authority. The legal standard for exclusion of electronic media set forth in subdivision (d) of the revised rule was established by *Petition of Post-Newsweek Stations, Florida, Inc.*, 370 So. 2d 764 (Fla. 1979). The Florida Supreme Court has consistently adhered to this standard, most recently referencing it in *Chavez v. State*, 832 So. 2d 730 (Fla. 2002). The rule does not address procedural issues related to application of the qualified reporter's privilege established by the Florida Supreme Court in *State v. Davis*, 720 So. 2d 220 (Fla. 1998).

Court Commentary

1994 Amendment. This rule was copied from Canon 3A(7) of the Code of Judicial Conduct. Canon 3A(7) represented a departure from former Canon 3A(7) [ABA Canon 35]. The former canon generally proscribed electronic media and still photography coverage of judicial proceedings from within and in areas immediately adjacent to the courtroom, with three categories of exceptions — (a) use for judicial administration, (b) coverage of investitive, ceremonial, and naturalization proceedings, and (c) use for instructional purposes in educational institutions. Subject to the limitations and promulgation of standards as mentioned therein, the revised canon constituted a general authorization for electronic media and still photography coverage for all purposes, including the purposes expressed as exceptions in the former canon. Limited only by the authority of the presiding judge in the exercise of sound discretion to prohibit filming or photographing of particular participants, consent of participants to coverage is not required. The text of the rule refers to public judicial proceedings. This is in recognition of the authority reposing in the presiding judge, upon the exercise of sound discretion, to hold certain judicial proceedings or portions thereof in camera, and in recognition of the fact that certain proceedings or portions thereof are made confidential by statute. The term “presiding judge” includes the chief judge of an appellate tribunal.