

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009 (formerly CX-89-1863)

OFFICE OF
APPELLATE COURTS

MAR 11 2011

FILED

PROMULGATION OF AMENDMENTS TO
THE MINNESOTA GENERAL RULES OF PRACTICE
FOR THE DISTRICT COURTS AND IMPLEMENTATION
OF A PILOT PROJECT TO ALLOW MORE EXTENSIVE
AUDIO AND VIDEO COVERAGE OF DISTRICT COURT
PROCEEDINGS IN CIVIL CASES

ORDER

By order filed February 12, 2009, we directed the Supreme Court Advisory Committee on the General Rules of Practice for the District Courts to recommend draft rules establishing a pilot project on cameras in the courtroom that would include “effective mechanisms for measuring the impact of cameras on the proceedings and on the participants before, during and after the proceedings, and the financial impact of both the pilot project and study, and the ongoing administration of cameras in the courtroom.” On October 29, 2010, the Committee filed its Final Report, which presented two options for the pilot project: (1) a formal research study on the impact of cameras in the courtroom, and (2) a scaled-down research study that would rely on informal surveys of participants. By order filed November 19, 2010, we solicited comments assessing the relative merits of the two options presented in the Final Report.

We have reviewed the options and the submitted comments, and are fully advised in the premises. After careful consideration, we have decided to move forward with a

two-year pilot project allowing cameras in the courtroom in civil proceedings with the consent of the district court judge, but without requiring the consent of all the parties. The pilot project will begin on July 1, 2011. The Advisory Committee on the General Rules of Practice will monitor the pilot project and after two years will report to us its recommendations for continuation, abandonment, or modification of the rules for cameras in the courtroom as implemented during the pilot period. The pilot project will exclude criminal cases and the categories of civil cases listed in Minn. Gen. R. Prac. 4.02(c)(vi). All other provisions of Minn. Gen. R. Prac. 4 shall apply to the pilot project, including the prohibition on audio and video coverage of jurors, Minn. Gen. R. Prac. 4.02(c)(i), the prohibition on audio and video coverage of witnesses who object to coverage of their testimony, Minn. Gen. R. Prac. 4.02(c)(ii), and the technical standards for photography, electronic and broadcast coverage of judicial proceedings contained in Minn. Gen. R. Prac. 4.04. The pilot project will not incorporate either of the research studies contemplated by the two options presented in the Final Report of the Advisory Committee.

IT IS HEREBY ORDERED THAT:

1. Except as otherwise provided, the attached amendments to the General Rules of Practice for the District Courts are prescribed and promulgated to be effective on July 1, 2011.
2. The existing language in Rule 4.04 of the General Rules of Practice relating to camera access in appellate court proceedings is deleted from the General Rules of

Practice and by separate order is added to Rule 134 of the Rules of Civil Appellate Procedure.


3. Except as otherwise provided, the attached amendments shall apply to all actions pending on the effective date of this order and those filed thereafter.

4. By June 1, 2011, the Advisory Committee on the General Rules of Practice shall, in consultation with the petitioning media organizations, identify media coordinators who will facilitate interaction between the courts and the electronic media during the course of the pilot project. The media coordinators shall not be employed or funded by the judicial branch.

5. The Advisory Committee on the General Rules of Practice shall monitor the implementation of the pilot project and shall, by October 1, 2013, submit a report and recommendations to the court, including any proposed amendments to the General Rules of Practice relating to audio and video coverage of district court proceedings.

Dated: March 11, 2011

BY THE COURT:



Lorie S. Gildea
Chief Justice

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MEMORANDUM

In March 2007, several media organizations filed a joint petition to allow more extensive audio and video recording of district court proceedings. The media organizations proposed giving district court judges the authority to allow cameras in the courtroom over the objection of one or more of the parties to the proceeding. In response to the petition, we asked the Advisory Committee on the General Rules of Practice to make recommendations regarding the use of cameras and recording devices in Minnesota courtrooms.

After extensive study, deliberations, and public hearings, the Advisory Committee presented majority and minority reports in a Final Report to this court, dated March 31, 2008. The majority report concluded that, in the absence of a clear benefit and in light of concerns about a potential chilling impact on victims and witnesses, there was no compelling reason to change the current rules on cameras in the courtroom. The minority report concluded that there are sufficient safeguards in place to address any issues related to victim or witness participation and recommended that we adopt rules that commit the decision about media access to the discretion of the district court, without requiring the consent of all the parties, but with specific limitations, such as cases in which privacy is a concern.

We solicited comments on the Advisory Committee reports and held a public hearing. By order filed February 12, 2009, we declined to adopt rules that would allow more extensive televised broadcast of district court proceedings.¹ In rejecting broader rules regarding cameras in the courtroom, we noted that “[n]umerous participants in the justice system who work on a regular basis with victims and witnesses expressed the firmly held view that televised proceedings would make a difficult situation even more problematic.” We also observed that there was “no empirical evidence addressing whether the prospect of televised proceedings has a chilling impact on victims and witnesses.” Therefore, we directed the Advisory Committee, in consultation with the petitioning media organizations, to design a pilot project that included “effective mechanisms for measuring the impact of cameras on the proceedings and on the participants before, during and after the proceedings, and the financial impact of both the pilot project and study, and the ongoing administration of cameras in the courtroom.” We also asked the Advisory Committee for recommendations for funding the pilot project, making it clear that with the serious budget constraints facing the judiciary, any pilot project could not rely upon the judicial branch for funding.

¹ As part of the February 12, 2009, order, we adopted amendments to Rule 4 of the General Rules of Practice, which became effective on March 1, 2009. But we maintained the existing general rule that “no pictures or voice recordings,” other than the recording made as the official court record, shall be taken in any courtroom “during a trial or hearing of any case or special proceeding incident to a trial or hearing, or in connection with any grand jury proceedings.” Minn. Gen. R. Prac. 4.01. We also continued to allow cameras and recordings in certain cases when the district court judge and all the parties consented. Minn. Gen. R. Prac. 4.02(c).

After additional study and deliberations, on October 29, 2010, the Advisory Committee submitted its Final Report with recommendations to this court. The Advisory Committee presented two options for a pilot project measuring the impact of cameras in the courtroom: (1) a formal research study, and (2) a scaled-down research study that would rely on informal surveys of court participants.

A bare majority of the Advisory Committee (7 members in favor, 6 opposed) recommended that we move forward with a statewide, formal research study conducted by academic personnel from the University of Minnesota—the only entity that submitted a research proposal. According to University of Minnesota Professor Eugene Borgida, the proposed principal investigator, the research study would “examine the impact of cameras on proceedings and participants in both camera-coverage and no-camera coverage cases” and “collect data pertinent to assessing the potentially ‘chilling’ impact of camera coverage on victim and witness participation rates and experiences.” We received many comments supporting the formal research study as a unique opportunity to conduct a scientifically valid study that would assess fundamental questions about the impact of cameras in the courtroom. The comments uniformly praised the research design of the study and described Professor Borgida as well qualified to undertake this research.

We appreciate the substantial effort by Professor Borgida and his colleagues in developing the proposal for the formal research study. We are in full agreement with the Advisory Committee’s statement in its report that the research study “would effectively address the Court’s mandate for mechanisms to measure the impact of cameras on court

proceedings before, during and after the actual court events.” Nonetheless, a number of factors led us to decide against the formal research study at this time, many of them related to the budgetary constraints facing the judiciary.

To begin with, the Advisory Committee estimated that funding the cost of the formal research study would require raising at least \$750,000. The Advisory Committee noted that fundraising “would require a substantial amount of time to complete, potentially as long as a year” and that “there is some risk that the fundraising efforts would not be successful.” The formal research study would depend upon a substantial grant from the National Science Foundation, financial support from the University of Minnesota, and additional money from Minnesota law firms, corporations, and philanthropists. And although the Advisory Committee contemplated “substantial support” from the news media, the petitioning media organizations advised us that “such expectations are not realistic.” Therefore, we have concerns about raising the money needed for the formal research study, as well as concerns about further delays in implementing the pilot project.

Our major concern however is the impact that the formal research study would have on district court judges. The formal research study would involve a number of surveys: surveys to determine eligibility for the study, surveys in cases in which the district court judge has chosen to opt out of camera coverage, and surveys in cases that have gone to trial. In her comments on the two options presented in the October 2010 Final Report, the State Court Administrator indicated that using surveys to collect data “will have the greatest impact on judges.” For example, the State Court Administrator

estimated that “the total amount of judicial time involved in completing the initial survey” for the cases to be considered for inclusion in the research study is “nearly the equivalent of a judge year for weighted caseload.” At this time, when the judiciary has incurred repeated budget cuts and shortfalls and faces continuing serious budget constraints, we are unwilling to impose additional burdens on district court judges in connection with the collection of data for a formal research study.

We also reject a scaled-down research study involving informal surveys of participants in court proceedings, which was recommended by a minority of the Advisory Committee (5 members in favor, 8 opposed). We agree with the minority that this approach would be less expensive and could be implemented more rapidly than the formal research study. But this approach would still require resources from the judicial branch in terms of designing the surveys, implementing the surveys, and studying the results of the surveys. Moreover, a number of the comments we received noted that the informal surveys would have little scientific value. Even the minority acknowledges that the informal surveys would elicit essentially “anecdotal information.”

Nonetheless, we believe it is time for Minnesota to move forward with a pilot project allowing cameras in courtrooms in certain civil proceedings. As we observed in our February 12, 2009, order, “Most states allow cameras in the courtroom, and the evidence seems clear that cameras themselves do not impact the actual in-court proceedings.” In declining to allow more extensive audio and video coverage of district court proceedings in the past, our principal concerns related to criminal proceedings. We stated that “[n]umerous participants in the justice system who work on a regular basis

with victims and witnesses expressed the firmly held view that televised proceedings would make a difficult situation even more problematic.” These participants believed that audio and video coverage would have a negative effect on victims and witnesses in deciding whether to report crime, cooperate with law enforcement, and appear to testify.

Accordingly, because of our continuing concerns about audio and video coverage of criminal proceedings, we limit the pilot project to civil proceedings, subject to the limitations imposed by Minn. Gen. R. Prac. 4.02(c)(vi). Rule 4.02(c)(vi) provides that there shall be no audio or video coverage in certain types of proceedings, including child custody proceedings, marriage dissolution proceedings, juvenile proceedings, child protection proceedings, paternity proceedings, and petitions for orders for protection. The district court judge must consent to audio or video coverage during the pilot project, although our amendments to Rule 4.02(c) do not require the consent of the parties. During the pilot project, we will maintain our existing prohibitions on audio and video coverage of jurors, Minn. Gen. R. Prac. 4.02(c)(i), and audio and video coverage of witnesses who object to coverage of their testimony, Minn. Gen. R. Prac. 4.02(c)(ii).²

In our amendments to Rule 4, we have outlined new procedures regarding requests for audio or video coverage and have made other clarifying changes. Audio and video coverage of district court proceedings during the pilot project must conform in all

² We note that the Judicial Conference of the United States recently approved a three-year, national pilot project that will evaluate the effects of cameras in federal district courts. The project applies only to civil trial proceedings. The broadcasting of criminal proceedings is prohibited by the Federal Rules of Criminal Procedure. Fed. R. Crim. P. 53.

respects to the requirements in Rule 4, including the technical standards for photography, electronic and broadcast coverage.

In our order establishing the pilot project, we have directed the Advisory Committee, in consultation with the petitioning media organizations, to identify media coordinators. The media coordinators will facilitate interaction between the district courts and the electronic media during the course of the pilot project. The media coordinators will not be employed or funded by the judicial branch.

We once again express our thanks to the members of the Advisory Committee for their work on the proposals. We also express our thanks to the researchers from the University of Minnesota for their development of the formal research study for our consideration.

AMENDMENTS TO MINNESOTA GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

In the following amendments, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

RULE 4. PICTURES AND VOICE RECORDINGS

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Rule 4.02. Exceptions

~~A judge may, however, authorize:~~

- (a) A judge may authorize the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration;
- (b) A judge may authorize the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings;
- (c) ~~upon the consent of the trial judge and~~ A judge may authorize, with the consent of all parties in writing or made on the record before the commencement of the trial in criminal proceedings, and without the consent of all parties in civil proceedings, the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
 - (i) There shall be no audio or video coverage of jurors at any time during the trial, including *voir dire*.
 - (ii) There shall be no audio or video coverage of any witness who objects thereto in writing or on the record before testifying.
 - (iii) Audio or video coverage of judicial proceedings shall be limited to proceedings conducted within the courtroom, and shall not extend to

activities or events substantially related to judicial proceedings that occur in other areas of the court building.

- (iv) There shall be no audio or video coverage within the courtroom during recesses or at any other time the judge is not present and presiding.
- (v) During or preceding a jury trial, there shall be no audio or video coverage of hearings that take place outside the presence of the jury. Without limiting the generality of the foregoing sentence, such hearings in criminal proceedings would include those to determine the admissibility of evidence, and those to determine various motions, such as motions to suppress evidence, for judgment of acquittal, *in limine* and to dismiss. This provision does not prohibit audio or video coverage of appropriate pretrial hearings in civil proceedings, such as hearings on dispositive motions.
- (vi) There shall be no audio or video coverage in cases involving child custody, marriage dissolution, juvenile proceedings, child protection proceedings, paternity proceedings, petitions for orders for protection, motions to suppress evidence, police informants, relocated witnesses, sex crimes, trade secrets, undercover agents, and proceedings that are not accessible to the public. ~~No ruling of the trial court relating to the implementation or management of audio or video coverage under this rule shall be appealable until the trial has been completed, and then only by a party.~~

Rule 4.03. Procedures Relating to Requests for Audio or Video Coverage of District Court Proceedings

(a) Unless notice is waived by the presiding judge, the media shall provide written notice of their intent to cover district court proceedings by either audio or video means to the judge, all counsel of record, and any parties appearing without counsel as

far in advance as practicable, and at least 10 days before the commencement of the hearing or trial.

(b) In civil proceedings, if a party opposes audio or video coverage, the party shall provide written notice of the party's objections to the presiding judge, the other parties, and the media requesting coverage as soon as practicable, and at least 3 days before the commencement of the hearing or trial in cases where the media have given at least 10 days' notice of their intent to cover the proceedings. The judge shall rule on any objections and make a decision on audio or video coverage before the commencement of the hearing or trial. However, the judge has the discretion to limit, terminate, or temporarily suspend audio or video coverage of an entire case or portions of a case at any time.

(c) At or before the commencement of the hearing or trial in cases with audio or video coverage, each party shall inform all witnesses the party plans to call that their testimony will be subject to audio or video recording unless the witness objects in writing or on the record before testifying.

(d) No ruling of the presiding judge relating to the implementation or management of audio or video coverage under this rule shall be appealable until the trial has been completed, and then only by a party.

Rule-4.03 4.04. Technical Standards for Photography, Electronic and Broadcast Coverage of Judicial Proceedings

The district court may regulate any aspect of the proceedings to ensure that the means of recording will not distract participants or impair the dignity of the proceedings. In the absence of specific order imposing additional or different conditions, the following provisions apply to all proceedings.

(a) Equipment and personnel.

- (1) Not more than one portable television or movie camera, operated by not more than one person, shall be permitted in any district court proceeding.

- (2) Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment for print purposes, shall be permitted in any proceeding in any district court.
- (3) Not more than one audio system for radio broadcast purposes shall be permitted in any proceeding in any district court. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court. If no technically suitable audio system exists in the court, 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 judge.
- (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 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 judge shall exclude from a proceeding all media personnel who have contested the pooling arrangement.

(b) Sound and light.

- (1) Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. Excepting modifications and additions made pursuant to Paragraph (e) below, no artificial, mobile lighting device of any kind shall be employed with the television camera.
- (2) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. Specifically, such still camera equipment shall produce no greater sound or light than a 35 mm Leica "M" Series Rangefinder camera,

and no artificial lighting device of any kind shall be employed in connection with a still camera.

- (3) Media personnel must demonstrate to the judge adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light requirements of this rule. A failure to demonstrate that these criteria have been met for specific equipment shall preclude its use in any proceeding.

(c) Location of equipment and personnel.

- (1) Television camera equipment shall be positioned in such location in the court as shall be designated by the judge. The area designated shall provide reasonable access to coverage. When areas that permit reasonable access to coverage are provided, all television camera and audio equipment must be located in an area remote from the court.
- (2) A still camera photographer shall position himself or herself in such location in the court as shall be designated by the judge. The area designated shall provide reasonable access to coverage. Still camera photographers shall assume a fixed position within the designated area and, once a photographer has established himself or herself in a shooting position, he or she shall act so as not to attract attention by distracting 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.

(d) Movement of equipment during proceedings. News media photographic or audio equipment shall not be placed in, or removed from, the district court except before commencement or after adjournment of proceedings each day, or during a recess. Microphones or taping equipment, once positioned as required by Paragraph (a)(3)

above, may not be moved from their position during the pendency of the proceeding. Neither television film magazines nor still camera film or lenses may be changed within a court except during a recess in the proceedings.

(e) **Courtroom light sources.** When necessary to allow news coverage to proceed, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions do not produce distracting light and are installed and maintained without public expense. Such modifications or additions are to be presented to the judge for review before their implementation.

(f) **Conferences of counsel.** To protect the attorney-client privilege and the effective right to counsel, there shall be no video or audio pickup or broadcast of the conferences which occur in a court between attorneys and their client, co-counsel of a client, opposing counsel, or between counsel and the judge held at the bench. In addition, there shall be no video pickup or broadcast of work papers of such persons.

(g) **Impermissible use of media material.** None of the film, videotape, still photographs or audio reproductions developed during, or by virtue of, coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any retrial or appeal of such proceedings.

~~Rule 4.04. Camera Access in Appellate Court Proceedings~~

~~(a) Unless notice is waived by the Chief Justice of the Supreme Court or the Chief Judge of the Court of Appeals, notice of intent to cover appellate court proceedings by either audio or video means shall be given by the media to the Clerk of the Appellate Courts at least 24 hours prior to the time of the intended coverage.~~

~~(b) Camera operators, technicians, and photographers covering a proceeding must:~~

- ~~• avoid activity which might distract participants or impair the dignity of the proceedings;~~
- ~~• remain seated within the restricted areas designated by the Court;~~

- ~~• observe the customs of the Court;~~
- ~~• conduct themselves in keeping with courtroom decorum; and~~
- ~~• not dress in a manner that sets them apart unduly from the participants in the proceeding.~~

~~(c) All broadcast and photographic coverage shall be on a pool basis, the arrangements for which must be made by the pooling parties in advance of the hearing. Not more than one (1) electronic news gathering ("ENG") camera producing the single video pool feed shall be permitted in the courtroom. Not more than two (2) still photographic cameras shall be permitted in the courtroom at any one time. Motor-driven still cameras may not be used.~~

~~(d) Exact locations for all camera and audio equipment within the courtroom shall be determined by the Court. All equipment must be in place and tested 15 minutes in advance of the time the Court is called to order and must be unobtrusive. All wiring, until made permanent, must be safely and securely taped to the floor along the walls.~~

~~(e) Only existing courtroom lighting may be used.~~