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17A A.R.S. Sup.Ct.Rules, Rule 122

Rule 122. Use of Recording Devices in a Courtroom

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⌕ XII. Miscellaneous Provisions

➔ Rule 122. Use of Recording Devices in a Courtroom

(a) Purpose. This rule allows the use of recording devices in a courtroom, subject to specified requirements and limitations. A court must use reasonable means to inform the public of the provisions of this rule.

(b) Definitions. The following definitions apply in this rule. A term defined in the singular includes the plural.

- (1) A "camera" is an electronic or mechanical device used to photograph, record, or broadcast still or moving images.
- (2) A "courtroom" is an area of a "courthouse," which is defined in Rule 122.1, where a judge conducts a proceeding.
- (3) "Cover" and "coverage" refer to a person's use of a recording device during a proceeding.
- (4) A "judge" is a judicial officer in an appellate, superior, or limited jurisdiction court presiding over a proceeding.
- (5) A "person" includes an individual and any organization except the court.
- (6) A "personal audio recorder" is a device used to record audio only, and that is on, held by, or immediately next to, the person who is operating the device.
- (7) A "proceeding" is an event concerning a court case that takes place in a courtroom.
- (8) A "recording device" is an electronic or mechanical apparatus and related equipment used to capture and store sound or images, or both, or from which a person can retrieve or broadcast sound or images. A camera, a smart phone, and an audio recorder are examples of recording devices.
- (9) A "victim" has the same meaning as set out in Rule 39 of the Rules of Criminal Procedure.

(c) Request to cover a proceeding. Except as provided in paragraphs (h) and (i) of this rule, a person who wishes to use a recording device during a proceeding must submit a written or electronic request to cover the proceeding, as follows.

- (1) *Requirements for submission of a request:* The person must submit the request to the judge who will conduct the proceeding, or to an office of the court authorized to receive requests under this rule. A person who submits a request to cover a proceeding has standing on the request, but the submission of a request does not confer upon that person the status of a party to the case.
- (2) *Time limit for submission of a request:* A person must submit a request sufficiently in advance of the proceeding to allow the judge to consider it in a timely manner.

(A) If the specified proceeding is a trial, a person must submit a request at least seven calendar days before the trial date.

(B) If the proceeding is not a trial, a person must submit a request as soon as possible, and no less than forty-eight hours before the start of the proceeding.

(C) If the court schedules any proceeding on less than seventy-two hours notice, a person must file the request as soon as reasonably possible before the proceeding as not to delay or interfere with it.

(3) *Court action upon receiving a request:* The court will notify the parties of its receipt of a request for coverage. The judge will promptly hold a hearing if the judge intends to deny the request or a portion of the request, or if a party objects to a request.

(4) *Time for a party to object to a request:* A party waives an objection to a request for coverage of a proceeding if the party does not object to the request in writing or on the record no later than the start of the proceeding.

(5) *Time for a victim or witness to object to a request:* Victims or witnesses may object to coverage of their appearance or testimony at any time. The prosecutor's office is responsible for notifying victims and the prosecutor's witnesses of coverage, and their right to object to coverage, prior to the victims' appearances or the witnesses' testimony at the proceeding. Other parties who call witnesses to testify are responsible for notifying their witness of coverage, and the witness's right to object to coverage, prior to the witness's testimony.

(d) Denial or limitation of coverage. A properly submitted request for coverage should generally be approved, but a judge may deny or may limit the request as provided in this paragraph. A judge's decision on a coverage request, or on an objection to coverage, is reviewable only by special action.

(1) *Denial of coverage:* A judge on his or her own motion may deny a request for coverage, or may sustain a party's objection to coverage, only after making specific, on-the-record findings that there is a likelihood of harm arising from one or more of the following factors, and that the harm outweighs the benefit of coverage to the public:

(A) the impact of coverage upon the right of any party to a fair hearing or trial;

(B) the impact of coverage upon the right of privacy of any party, victim, or witness;

(C) the impact of coverage upon the safety and well-being of any party, victim, witness, or juror;

(D) the likelihood that coverage would distract participants or that coverage would disrupt or detract from the dignity of a proceeding;

(E) the adequacy of the physical facilities of the court;

(F) the timeliness of the request pursuant to paragraph (c)(2) of this rule;

(G) whether the person making the request is engaged in the dissemination of news to a broad community; and

(H) any other factor affecting the administration of justice.

(2) *Limitation of coverage:* Upon his or her own motion or upon the request of a party, victim, or witness, a judge may allow coverage as requested or may, after making specific, on-the-record findings based on the factors in paragraph (d)(1), impose limitations as follows:

(A) order that no one may photograph, record, or broadcast a criminal defendant, a law enforcement officer, or a victim in the courtroom;

(B) order that video coverage must effectively obscure the face and identity of that party, victim, or witness, or that there be only audio coverage of the testimony of a party, victim, or witness;

(C) prohibit coverage of the testimony of that witness upon a determination that coverage would have a substantial adverse impact upon that witness or his or her testimony.

(e) Manner of coverage. The judge will preserve the dignity of the proceeding by designating the

placement of equipment and personnel for photographing, recording, or broadcasting the proceeding, and all equipment and personnel will be restricted to the designated area. Recording devices may not be moved about the courtroom while court is in session. All persons and affiliated individuals engaged in the coverage must avoid conduct or dress that may disrupt or detract from the dignity of the proceeding. The judge may order a restriction or cessation of coverage during a proceeding in furtherance of the interests of justice.

(f) Equipment. A person must not install, move, or take recording equipment, other than a personal audio recorder, from the courtroom during a proceeding. A person must hide wiring as much as possible, and wiring must not cause an inconvenience or a hazard. A person may connect equipment used to provide coverage to an existing courtroom electronic system, if possible, but a person must not connect equipment to a court's digital recording system without the judge's express approval. A person must not bring flash devices, strobe lights, or other artificial lights of any kind into the courtroom. If a person wishes to use additional standard light fixtures or higher wattage light bulbs, additional microphones, or other modifications or improvements concerning lighting or sound, the person must submit this information in the request under paragraph (c). The judge may direct whatever modifications or improvements are deemed necessary, but the judge may not require use of public funds to make or to maintain any such modifications or improvements. Microphones, cameras, and other equipment used for coverage must be as unobtrusive as recording devices in general use in the community where the courtroom is located, and must not produce distracting sounds or otherwise disrupt the proceeding.

(g) Number of recording devices; pooling. A request submitted under paragraph (c) may ask the judge to approve audio coverage, video camera coverage, or coverage by still camera. The presumptive limits are one microphone and recording device for audio coverage, or one video camera and one still camera, but the judge conducting the proceeding has discretion to approve a person's request to use additional recording devices. If a judge approves requests by more than one person to cover a proceeding, those persons must pool their resources to limit recording devices in the courtroom to the number approved by the judge. Those persons have the responsibility to settle their own disputes, to facilitate pooling as necessary, and to implement procedures that meet the approval of the assigned judge prior to any coverage and without disruption to the court.

(h) Personal audio recorders; required notice to the court. A person may use a personal audio recorder during a proceeding, but the person must notify the judge or the judge's staff prior to using the device. A person who uses a personal audio recorder is not required to submit a request under paragraph (c) of this rule, but a person who wishes to record or broadcast the audio portion of a proceeding with a device that is not on the person must do so. The use of a personal audio recorder must not be obtrusive, distracting, or otherwise prohibited, and use is subject to the prohibitions of paragraph (k) of this rule.

(i) Approving use of a recording device for celebratory or ceremonial proceedings, or while court is not in session. Notwithstanding other provisions of this rule, a person may verbally request, and a judge may verbally approve, use of a recording device in a courtroom to photograph or to record a celebratory or ceremonial proceeding. If a person wishes to use a recording device in any courtroom when that courtroom is not in session, prior to using the device, the person must obtain the express permission of the presiding judge of that jurisdiction or an office of the court authorized by the presiding judge to approve requests under this paragraph.

(j) Recording not admissible as evidence. No video, photograph, or audio reproduction of a judicial proceeding that is obtained pursuant to this rule may be used to modify or supplement the official court record of that proceeding, nor is it admissible at that or any subsequent proceeding unless it is offered for another purpose allowed under the Arizona Rules of Evidence.

(k) Prohibitions. A person is not permitted to photograph, record, or broadcast a proceeding in the following circumstances:

(1) *No use of recording devices while the judge is off the bench:* A person may use a recording device in a courtroom only when the judge is on the bench, and use of a recording device must terminate when the judge leaves the bench, except as provided in paragraph (i).

(2) *No jurors:* Cameras must be placed to avoid showing jurors in any manner. Audio recordings or broadcasts of jurors' statements or conversations are also prohibited, except that a juror may expressly consent to an interview after the jury has been discharged.

(3) *No attorney conferences:* Audio recordings or broadcasts of bench conferences between a judge and counsel, or off-the-record conferences between attorneys and their clients, or between attorneys,

anywhere in the courthouse are prohibited.

(4) *No readable documents*: A person may not use a camera to take readable images of the contents of documents or other materials, whether in electronic or other form, that are located at counsel tables, the judge's bench, the work area of judicial staff, or the jury box.

(5) *No juvenile proceedings*: Photographing, recording, or broadcasting of juvenile court proceedings is only as allowed by Arizona law, or as provided in paragraph (i).

(I) Other governing law. A person whose request under paragraph (c) of this rule has been approved may photograph, record in, or broadcast from, locations in a courthouse other than a courtroom as provided in Supreme Court Rule 122.1. The law generally applicable to inclusion or exclusion of the press or the public at court proceedings or during the testimony of a particular witness applies to persons who submit a request or notice under this rule. Nothing in this rule alters the obligation of any attorney to comply with the provisions of the Arizona Rules of Professional Conduct governing trial publicity.

CREDIT(S)

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