

Appendix to Petition to Amend Rule 122, Rules of the Supreme Court

Rules of the Supreme Court

Rule 122. Use of Recording Devices in a Courtroom

....

(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.

....

(3) *Court action upon receiving a request:* The court ~~will~~ must notify the parties before the hearing of its receipt of a request for coverage. The judge ~~will~~ must 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, except that a judge may deny an untimely request without a hearing.

....

(5) *Time for a victim, ~~or~~ witness, or party in a protective order proceeding to object to a request:* Victims, ~~or~~ witnesses, and either party in a hearing that occurs pursuant to A.R.S. §§ 12-1809(H), 12-1810(G), or 13-3602(L), 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 victim, witness, or 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:

....

(C) the impact of coverage upon the safety and well-being of any party, victim, witness, or juror, which specifically includes harassment as that term is defined in A.R.S. §§ 12-1809(T)(1), 13-2916(E)(3), or 13-2921(E);

....

(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, or either party in a hearing that occurs pursuant to A.R.S. §§ 12-1809(H), 12-1810(G), or 13-3602(L);

....

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

....

(h) Personal Audio Recorders; Required ~~Notice~~ Request 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~~ submit a request pursuant to paragraph (c) 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. A person may not disseminate their personal audio recording of a proceeding to the public without the permission of the court.~~ 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.

....

(l) 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.

(m) Rule Is Not a Defense: This rule does not create or otherwise operate as a defense to criminal or civil liability for any person who chooses to photograph, record, or broadcast in a courtroom.