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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-26-0003

10 **PETITION TO AMEND RULES**
11 **122 AND 122.1 OF THE ARIZONA**
12 **RULES OF SUPREME COURT**

STATE BAR OF ARIZONA
COMMENT

13 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar
14 of Arizona (the “State Bar”) hereby submits the following as its Comment to the
15 above-captioned Petition.
16

17 The State Bar of Arizona supports the Petition to Amend Rules 122 and 122.1
18 of the Rules of the Arizona Supreme Court governing the use of electronic devices,
19 including recording devices, in Arizona courts. The Petition is the culmination of
20 an evaluation of those rules performed by the Task Force on Rules of the Supreme
21 Court of Arizona (the “Task Force”). The Supreme Court created the Task Force in
22 May 2025 to review the entire Supreme Court rules set and to recommend
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1 substantive and stylistic changes. The Task Force’s mandate and work are well-
2 described in the Petition.

3 Rule 122 was adopted in 1993 primarily to regulate television cameras in the
4 courtroom. It was extensively modified in 2013 in response to significant
5 technological changes in the manufacture and use of video recording devices. Rule
6 122.1 was also amended at that time to regulate the use of other portable electronic
7 devices. The amendments proposed by the Task Force seek to further modernize the
8 rules in the wake of the ongoing evolution and proliferation of electronic devices,
9 including recording devices, which now can be easily and unobtrusively used by
10 anyone, in many ways, for many purposes.

11 Although the Task Force has not concluded its work related to other Supreme
12 Court rules, it filed the Petition now because of what it characterized as “issues of
13 immediate concern” regarding changes in technology governed by Rules 122 and
14 122.1. (*Petition*, page 2, ¶1.) One of the issues is confusion under current Rule 122
15 about whether a cell phone can be used as a recording device without the protections
16 that apply to requests made to use other types of recording devices, which are defined
17 under current Rule 122(b). (*Petition*, pp. 6-10.) The timing of the Petition also was
18 driven in part by another petition to amend Rule 122 that was filed during the 2025
19 rules cycle as Supreme Court No. R-25-0031. The Supreme Court referred the issues
20 raised by that petition to the Task Force and continued its consideration of that
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1 petition until its August 2026 Rules agenda. This implies the Court expected or
2 hoped the Task Force would make recommendations about Rules 122 and 122.1
3 before the August 2026 Rules agenda. The State Bar agrees there are good reasons
4 for the Supreme Court to consider amending Rules 122 and 122.1 sooner rather than
5 later.
6

7 The State Bar believes the Petition does an excellent job of describing the
8 history of Rules 122 and 122.1 and explaining the reasons they should be amended.
9 While the proposed amendments provide a good framework for the continued
10 regulation of electronic devices, the State Bar believes a more comprehensive
11 overhaul of the organization, substance, and style of the rules would improve their
12 clarity and utility.
13

14 In that spirit, the State Bar offers the following changes to the amendments
15 proposed by the Task Force. Appendices A and B are the State Bar’s proposed
16 changes redlined against a clean version of the Task Force’s amendments to Rules
17 122 and 122.1 respectively. Appendices C and D are clean versions of the State
18 Bar’s redlined proposals. The State Bar’s recommendations are described below.
19

20 “SB” refers to the State Bar. “TF” refers to the Task Force. The Rule numbers
21 in bold identify the Rules as proposed by the State Bar.
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1 The definition of a “recording” was added as SB Rule 122(b)(7) to help better
2 define the uses of a recording device and for stylistic ease and consistency
3 throughout the rule.
4

5 TF Rule 122(b)(7) defining a “victim” was moved to SB Rule 122(b)(8). The
6 reference to Arizona Rules of Criminal Procedure, Rule 39 in defining a “victim”
7 was eliminated. Although Rule 39 uses the term “victim,” that term is actually
8 defined in Arizona Rules of Criminal Procedure, Rule 1.4. Since Rule 1.4 is already
9 referenced in all existing and proposed versions of the Rule, the reference to Rule
10 39 does not appear to add anything to that definition and may even cause confusion.
11

12 The State Bar questions the utility of defining a “courthouse” as inclusive of
13 areas outside of a court building. Current Rule 122 contemplates “proceedings,” as
14 defined in TF Rule 122(b)(5), which would take place in that outside area. The State
15 Bar struggled to think of a situation where such a proceeding would occur outside
16 but did not propose changes to those parts of the rule.
17

18 ***Rule 122(c):*** This subsection addresses requests to use a recording
19 device during a proceeding. Changes were made to eliminate superfluous language
20 and improve flow, clarity and organization.
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22 The requirements under TF Rule 122(c)(2) regarding the timing of such
23 requests were clarified to take into consideration that a request might not be made
24 until after the start of a longer proceeding. For example, under the current version
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1 of the Rule, a person would be prohibited from making a request to record any part
2 of a lengthy trial unless they submitted the request seven days before the trial began.
3 Changes proposed in SB Rule 122(c)(2)(C) also resolve confusing language
4 governing situations when a court provides less notice of a proceeding than the time
5 within which a person must submit a request to record it.
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7 TF Rule 122(c)(3) permits a judge to deny an untimely request without
8 conducting a hearing. SB Rule 122(c)(3)(C) clarifies that a judge may grant an
9 untimely request to record a proceeding subject to other requirements of the Rule.
10

11 TF Rule 122(c)(4) and (5) were reorganized to improve flow and clarity.

12 ***Rule 122(d):*** The title of this subsection, which addresses denials and
13 limitations of requests made pursuant to SB Rule 122(c), was amended to make it
14 conform to the title of SB Rule 122(c). Changes also were made to eliminate
15 superfluous language and improve flow and clarity.
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17 TF Rule 122(d)(2)(B) addresses obscuring a witness's identity and audio-only
18 recording. The State Bar recommends splitting it into two subparts, renumbered SB
19 Rule 122(d)(2)(B) and (C), each individually addressing these two distinct topics.
20 Changes were also made to improve flow and clarity.
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22 TF Rule 122(d)(2)(C) addresses prohibitions on recording a party, victim, or
23 witness. It was eliminated because the subject is addressed in SB Rule 122(d)(2)(A).
24

25 TF Rule 122(d)(2)(C) was replaced with SB Rule 122(d)(2)(C) as set forth above.

1 TF Rule 122(d)(3) addresses a court’s ability to record on its own initiative.
2 It was moved to SB Rule 122(l) to improve organization, and because the topic of
3 the court’s ability to record on its own initiative should have a distinct subsection.
4

5 **Rule 122(e):** TF Rule 122(e) addresses multiple somewhat unrelated
6 issues (i.e. requiring persons to avoid wearing undignified clothing, virtual settings,
7 etc.). It was eliminated as vague and unnecessary, and because the use of recording
8 devices during virtual settings is covered by other parts of the Task Force’s proposal,
9 including TF Rule 122(b).
10

11 TF Rule 122(f), governing equipment logistics, is now SB Rule 122(e). It was
12 also amended to improve flow and clarity.
13

14 **Rule 122(f):** TF Rule 122(g) was moved to SB Rule 122(f). It governs
15 the number of recording devices that can be used in a courtroom. Changes to TF
16 Rule 122(g) eliminate the reference to “pooling” and the uncertainty created by the
17 requirement that those competing for space in the courtroom pool “settle their own
18 disputes.” The changes clarify that only the judge has the authority to resolve
19 disputes over its limitations on the use of recording devices and the sharing of
20 resources.
21

22 **Rule 122(g):** TF Rule 122(k) was moved to SB Rule 122(g). It imposes
23 limitations on the use of recording devices. It was reorganized to improve flow and
24 clarity.
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1 **Rules 122(h) and (i):** TF Rule 122(h) was moved to SB Rule 122(m) for the
2 reasons stated in the comment to SB Rule 122(m) below. TF Rule 122(i) addresses
3 celebratory and ceremonial proceedings as well as recording when court is not in
4 session. These topics are better organized in two subsections. SB Rule 122(h) is the
5 part of TF Rule 122(i) related to celebratory and ceremonial proceedings. SB Rule
6 122(i) is the part of TF Rule 122(i) related to recording when court is not in session.
7

8 **Rule 122(j):** This subsection states a recording is not an official record.
9 It was modified to improve flow and recognize the existence of a “recording” as a
10 newly defined term.
11

12 **Rule 122(k):** TF Rule 122(l) was moved to SB Rule 122(k). It governs
13 the use of a recording device outside of a courtroom. Stylistic changes were made
14 to improve flow and clarity.
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16 **Rule 122(l):** TF Rule 122(d)(3) was moved to SB Rule 122(1) for the
17 reasons stated in the comments regarding SB Rule 122(d)(3) above.
18

19 **Rule 122(m):** SB Rule 122(m) remains the same as TF Rule 122(m),
20 with the exception of one stylistic change.

21 **Rule 122(n):** TF Rule 122(h) was moved to SB Rule 122(n). It
22 addresses sanctions for the unauthorized use of a recording device. The subsection
23 was moved to the end of the Rule because that is where a discussion of sanctions
24 seems most appropriate.
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RULE 122.1

The use of the word “portable” was removed from the phrase “portable electronic device/s” in the title and throughout the Rule because the State Bar believes a single set of rules should apply to the use of all electronic devices. The use of the term also creates potential ambiguity about whether a device can reasonably be characterized as “portable” or something else.

Rule 122.1(a): TF Rule 122.1(a) was changed to eliminate superfluous language, improve flow and conform to its counterpart in SB Rule 122(a). As set forth in the comment to SB Rule 122(a) above, whatever language is used, both rules should be consistent.

Rule 122.1(b): Changes to TF Rule 122.1(b), which defines an electronic device, eliminates language listing various electronic devices. The nature of what an electronic device is in the context of the Rule has become well-understood since the Rule was enacted in 2013, if it was not already at that time. With the State Bar’s addition of devices that are capable of “receiving information” to the definition, the first sentence of the TF Rule 122(b) is broad enough to capture any electronic device. While examples can be helpful, including them in the definition also might create ambiguity by omission and fail to capture new technologies as they emerge.

APPENDIX A

Rule 122. Use of Recording Devices at a Courthouse

- (a) **Purpose.** This rule specifies the permitted and prohibited uses of recording devices ~~in a courthouse, while allowing the court to preserve the dignity of proceedings and ensure courthouse safety and security, and subject to specified requirements and limitations.~~ at a courthouse.
- (b) **Definitions.** ~~The following definitions apply in this rule.~~
- (1) A “courthouse” ~~includes all areas within the exterior walls of a court building, or if the court does not occupy the entire building, is that portion of the~~ building used for the administration and operation of the court. ~~A “courthouse” also includes, including the areas immediately outside a court building where a judge conducts an event concerning a court case~~ of the building.
 - (2) A “courtroom” is an area of a courthouse, ² or a virtual setting, where a judge conducts a proceeding.
 - (3) A “judge” is a judicial officer in an appellate, superior, or limited jurisdiction court presiding over a proceeding.
 - (4) A “person” ~~includes~~ is an individual ~~and any~~ or entity ~~except the, but does not include~~ court officers and staff.
 - (5) A “proceeding” is an event ~~concerning~~ in a court case ~~conducted in a courtroom.~~
 - (6) A “recording device” is ~~any~~ a device ~~including a cell phone, camera, apparatus, or application (“app”), whether analog or digital, mechanical or electronic, used to capture sounds or images or otherwise record, photograph~~ that can be used to capture, store, preserve, transcribe, broadcast, transmit, or stream a proceeding or that can be used with other devices to broadcast a proceeding. sounds or images.
 - ~~(6)~~(7) A ~~“recording device includes a device that uses artificial intelligence.”~~ is a sound or image captured, stored, preserved, broadcast, transmitted or streamed by a recording device.
 - ~~(7)~~(8) A “victim” ~~has the same meaning as set out~~ is defined in Arizona Rule of Criminal Rules Procedure 1.4 and 39.

(c) **Request to Use a Recording Device During a Proceeding.** Except as provided in subsections (h) and (i), a person who wishes to use a recording device during a proceeding must submit a written ~~or electronic~~ request to ~~use a recording device during the proceeding,~~ do so as follows:

(1) ~~*Requirements for Submission of*~~ ***Submitting a Request.*** The person must submit the request to the judge ~~who will conduct the proceeding,~~ or to an ~~office~~ officer of the court authorized to receive requests under this rule. Submitting a request does not make ~~that~~ the person submitting it a party to the case.

(2) ~~*Time Limit for Submission of*~~ ***Submitting a Request:*** ~~A person must submit a request as set forth below:~~

(A) If the ~~specified~~ proceeding is a trial, a person must submit a request no later than 7 ~~court~~ days before the ~~trial date~~ day or days they wish to record the proceeding.

(B) If the proceeding is not a trial, a person must submit a request ~~as soon as possible, and~~ no later than 5 ~~court~~ days before the ~~start of~~ day or days they wish to record the proceeding.

(C) If ~~the~~ a court ~~schedules any proceeding on~~ provides fewer than 7 ~~court~~ days' notice of a proceeding than required by this rule to make a request, a person must submit ~~the~~ a request as soon as reasonably possible ~~before the proceeding to avoid delay or interfering with it.~~

(3) ***Court Action Upon Receiving a Request.*** ~~The~~ A court must promptly ~~notify~~ provide notice to the parties and ~~the~~ any victim's attorney, ~~if any, in writing of its receipt of~~ that it has received a request ~~to use a recording device. The court's.~~ The notice must specify a deadline for submitting an objection. ~~The~~ to a request. A judge must ~~promptly~~ hold a hearing if the judge intends to deny all or part of a timely request ~~or a portion of the request,~~ or if a party objects to a request. ~~The~~ A judge may grant an untimely request. A judge may deny an untimely request without conducting a hearing. ~~This rule does not preclude a judge from granting an untimely request that would otherwise be granted if it were timely made.~~

(4) ***Time for a Party to Object to a Request.*** A party's objection to a request must be in writing or on the record as follows.

(A) **Family Law and Protective Order Cases.** At any time, a party in a family law case, or a protective order case ~~as defined in~~ under Rule 4 of the Arizona Rules of Protective Order Procedure, may object to the use of a recording device at any time.

(B) **Other Cases.** A party in a case other than those identified in subsection (c)(4)(A) ~~waives any objection to a request if the party does not~~ must object ~~to the request~~ within the time specified in the ~~court's~~ notice required under subsection (c)(3).

~~(C) **Form of Objection.** A party's objection to a request to use a recording device must be in writing or on the record.~~

(5) ***Time for a Victim or Witness to Object to a Request: Victims.*** A victim or witness ~~witness~~ may object to use of a recording device during a proceeding at any time during their appearance or testimony. ~~Any~~ An objection must be in writing or on the record.

(A) **Notice to Victims.** The prosecutor's office is responsible for notifying ~~victims and the prosecutor's witnesses of a request to use a recording device, and~~ a victim of their right to object to use of that device, before the victims' appearances or the witnesses' testimony at the proceeding. The a request before the victim's appearance. A prosecutor may submit an objection for the on behalf of a victim or the witness. Other parties.

(B) **Notice to Witnesses.** A party who ~~call witnesses~~ calls a witness to testify ~~are~~ is responsible for notifying ~~the~~ the witness of a request ~~to use, or the use of, a recording device,~~ and the witness's right to object to ~~use of the device~~ request, before the ~~witness's testimony~~ witness testifies.

(d) **Denial or Limitation of Request.** ~~A properly submitted request should~~ to Use a Recording Device During a Proceeding. A timely request to use a recording device during a proceeding generally should be approved, but a judge may deny or may limit a request under (c) or (1). A judge's decision on a request ~~to use a recording device, or on an objection to a request,~~ is reviewable only by special action.

(1) **Denial of Request.** A judge may deny a request only after making specific, ~~findings 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 to the public:

- (A) the impact on the right of any party to a fair hearing or trial;
- (B) the impact on the right of privacy of any party, victim, or witness;
- (C) the impact on the safety and well-being of any party, victim, witness, or juror;
- (D) the likelihood that use of a recording device would distract participants or would disrupt, or detract from the dignity of, a proceeding;
- (E) the adequacy of the court's physical facilities;
- (F) the timeliness of the request under subsection (c)(2);
- (G) whether the person making the request is engaged in the dissemination of news; and
- (H) any other factor affecting the administration of justice or court security.

(2) **Limitation of Request.** A judge who grants a request may ~~allow use of a recording device as requested or may~~ impose limitations after making specific, ~~on the record~~ findings based on the factors set forth in subsection (d)(1), ~~impose limitations, including the following orders:~~

- (A) ~~no one may record, photograph, broadcast, transmit, or stream a criminal defendant, a prohibiting the recording of a law enforcement officer, or a victim or a witness;~~
- (B) requiring the person using the recording device must effectively to obscure the face and identity of ~~a party, victim, or witness, or that there be~~ an individual being recorded; and
- (B)(C) permitting only ~~audio of the testimony of a party, victim, or witness; and~~ recording.

~~(C) prohibiting use of a recording device during the testimony of a party, victim, or witness upon a determination that use of a recording device would have a substantial adverse impact on that person or the person's testimony.~~

~~(3) (e) Type Recording, Broadcasting, Transmitting, or Streaming on the Court's Initiative. This rule does not limit a court from recording, broadcasting, transmitting, or streaming on its own initiative.~~

~~(e) **Conduct.** All persons and affiliated individuals using a recording device must avoid conduct or dress that may disrupt or detract from the dignity of the proceeding, disrupt courthouse operations, or compromise courthouse security. To further the interests of justice, the judge may order a restriction or cessation of the use of a recording device in a courthouse or during a virtual proceeding.~~

~~**Equipment. Use of Recording Devices.** Only recording devices and any other equipment must be approved by the judge may be used during a proceeding. Recording devices must be as unobstructive as possible and must not produce distracting sounds or otherwise disrupt the proceeding. The judge may designate the placement of recording devices and personnel. All recording devices and personnel must be restricted to the designated area. recording device operators. Recording devices must not be moved about the courtroom while court is in session. during a proceeding. A person may not connect equipment a recording device to an existing a courtroom electronic system or digital recording system without the judge's approval. A person must hide wiring as much as possible, and wiring must not cause an inconvenience or a hazard. Only equipment approved by the judge may be used.~~

~~(f) **Number of Recording Devices; Pooling.** The presumptive limits to recording devices are one microphone and audio recording device, or one video camera and one still camera, but the judge conducting the proceeding may. A judge may approve a person's more than one person's request to use additional a recording devices. If a judge approves requests by more than one person to cover device during a proceeding, the judge but may require those persons to pool their resources to limit the number of recording devices in the courtroom. Those persons have the responsibility to settle their own disputes, to facilitate pooling as necessary, and to implement procedures that meet the~~

assigned judge's approval before any recording and without disruption to the court. If the judge does so, the requesting persons must jointly provide the judge with a plan for the use of recording devices within the limitations imposed by the judge. The judge may grant or modify any plan.

~~(f) **Limitations on Unauthorized Use of a Recording Device.** Except as this rule permits, a person who uses a recording device in the courthouse or in a virtual proceeding without prior approval is in violation of this rule and is subject to sanctions, including contempt of court or criminal charges.~~

~~(g) **Approving Use of a Recording Device for During a Proceeding.** Use of a recording device during a proceeding is subject to the following limitations.~~

~~(1) **Judge Must Be Present in the Courtroom.** A person may not use a recording device during a proceeding unless the judge is present in the courtroom, except as provided in subsections (h) and (i).~~

~~(2) **No Recording Jurors.** A person must avoid recording jurors. A person must not record a juror's statements or conversation with other jurors during the course of a trial.~~

~~(3) **No Recording Attorney Conferences.** A person may not record bench conferences between a judge and counsel, conferences between attorneys and their clients, or conferences between attorneys in a courthouse.~~

~~(4) **No Recording Readable Documents.** A person may not use a recording device to record readable images of a document or other written material located within a courtroom without permission of the judge.~~

~~(5) **No Recording Juvenile Proceedings or Children.** Use of a recording device during a juvenile court proceeding, an A.R.S. Title 36, Chapter 4 or 5 proceeding, or a proceeding involving a child witness are prohibited, except as allowed by Arizona law, or as provided in subsection (h).~~

~~(h) **Use of a Recording Device during Celebratory or Ceremonial Proceedings, or While Court is Not in Session.** Notwithstanding this rule's provisions, a person may orally request, and a judge may orally approve, use of a recording device in a courtroom to photograph or to record during a celebratory or ceremonial proceeding. If a person wishes to use~~

~~(g)~~**(i) Use of a Recording Device in a Courtroom other than During a Proceeding.** Use of a recording device in any courtroom ~~when that~~ other than during a proceeding must be approved by the judge to whom the courtroom is ~~not in session, before using the device, the person must obtain the permission of assigned,~~ the presiding judge ~~of that jurisdiction, or the permission of,~~ or an ~~office~~ officer of the court authorized by the presiding judge to approve such a request.

~~(h)~~**(j) Recording Not the Official Court Record.** Unless the court orders otherwise, ~~no video, photograph, or audio reproduction~~ a recording of a proceeding ~~that is obtained~~ made under this rule ~~will be~~ is not the official court record of that proceeding. ~~It may be admissible at that or any other proceeding if it is offered for a proper purpose.~~

~~(g)~~ ~~Limitations.~~ Use of a recording device is subject to the following limitations:

~~(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 or court is not in session, except as provided in ~~(i).~~

~~(2) — Not Showing Jurors.~~ Recording devices must be placed to avoid showing jurors in any manner. 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.~~ 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 recording device to take readable images of the contents of documents or other materials, whether in electronic or other form, that are located within the courtroom without express consent.

~~(5) — Prohibited Proceedings.~~ Use of a Recording Device at a juvenile court proceeding, A.R.S. Title 36, Chapter 4 or 5 proceedings, or any portion

~~of a proceeding involving a child witness are prohibited except as allowed by Arizona law, or as provided in (i).~~

(k) Use of a Recording Device at a Courthouse Outside of a Courtroom.

(1) **Generally.** ~~The use of a recording device in areas of thea~~ courthouse ~~other than the~~ outside of a courtroom must be approved by the presiding judge, ~~an officer of the court authorized by the presiding judge or the presiding judge's designee~~ to approve such a request, or as otherwise provided by local administrative order.

(2) **Limitations.** No one may ~~photograph or~~ record an individual at a courthouse outside of a courtroom without that individual's express or implied consent. ~~A judge's permission to use a recording device in the courtroom does not authorize use of the device in other areas of the courthouse.~~ Judges, clerks, court administration, ~~or~~ and court security are authorized to limit or terminate recording activity in a courthouse outside of a courtroom that is disruptive to court operations or that compromises courthouse security.

(3) **Interviews, Evaluations, Mediations, or Depositions.** ~~An individual~~ A person does not need to make a request ~~under this rule~~ to use a recording device ~~to conduct~~ during an interview, evaluation, mediation, or deposition that takes place in a court-location at the courthouse designated location for such activities.

~~(4) **Recording, Broadcasting, Transmitting, or Streaming on the Court's Initiative.** Applicability of (d). The provisions of (d) apply to a request under (1).~~

(l) Recording, Broadcasting, Transmitting or Streaming on the Court's Initiative. This rule does not prevent a court from recording a proceeding, or from broadcasting, transmitting, or streaming a recording of a proceeding on its own initiative.

(m) Other Governing Law. ~~By local administrative order,~~ A court may adopt further reasonable limits on the use of a recording device inat a courthouse by administrative order.

(n) Unauthorized Use of a Recording Device. ~~A person requesting to use~~ who uses a recording device underin violation of this rule is ~~also~~ subject to any

~~such administrative order. The law generally applicable to inclusion or exclusion of the press or the public at court proceedings or during the testimony~~sanctions, including contempt of a particular witness applies to persons who submit a request 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.court and criminal charges.

Appendix B

Rule 122.1

State Bar Redline of Task Force Proposal

Rule 122.1. Use of ~~Portable~~ Electronic Devices at a Courthouse

(a) **Purpose.** This rule specifies the permitted and prohibited uses of ~~portable electronic devices in a courthouse. A portable~~an electronic device ~~may have the capability of functioning as a recording device as defined in Rule 122. This rule governs portable electronic devices at a courthouse when they are~~it ~~is~~ not being used as a recording device. ~~The use of a portable electronic device as a recording device is governed by, and subject to the limitations and requirements of, Rule 122.~~

(b) **Definitions.**

(1) ~~A “portable~~An “electronic device” is a ~~mobile~~ device capable of electronically storing, accessing, receiving or transmitting information. ~~The term encompasses, among other things, a transportable computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone, or other wireless phone; a camera and other audio or video recording devices; other devices that provide internet access; and any similar items.~~

(2) This rule incorporates the definitions set forth in Rule 122(b).

(c) Use of an Electronic Device In a Courtroom. A judge may regulate the use of an electronic device that is disruptive to a court proceeding or contrary to the administration of justice. A person must silence an electronic device in a courtroom, but may use it subject to the following restrictions.

(1) **Jurors.** A juror must turn off electronic devices while present in a courtroom, and while present during a jury's deliberations, except during breaks.

(2) **Witnesses.** A witness may use an electronic device while testifying only with the permission of a judge.

(3) **Attorneys, Parties and members of the Public.** ~~a Portable~~ An attorney, party or member of the public may not use a portable electronic device to make or receive telephone calls during a proceeding.

(e)(d) Use of an Electronic Device in a Courthouse Outside of a Courtroom; **Limitations.** ~~Except as provided in (d) and (e),~~ A person may use a ~~portable~~an electronic device in a courthouse, outside of a courtroom subject to the authority of judges, clerks, court administration, or court security to limit or

terminate activity that is disruptive to court operations or that compromises courthouse security.

~~(d) **Jurors and Witnesses.** The following restrictions apply to use of portable electronic devices by jurors, including prospective jurors, and by witnesses.~~

~~(3) **Jurors.** Jurors must turn off their portable electronic devices while present in a courtroom and while present in a jury room during the jury's deliberations and discussions concerning a case. Jurors may use their portable electronic devices for allowable purposes during breaks.~~

~~(4) **Witnesses.** A witness must silence any portable electronic device while in a courtroom and may use a portable electronic device while testifying only with permission of a judge.~~

~~(e) **Attorneys, Parties, and Members of the Public.** The following provisions apply to use of portable electronic devices in a courtroom by attorneys, parties, and members of the public. Any allowed use of a portable electronic device under this section is subject to the authority of a judge to terminate activity that is disruptive or distracting to a court proceeding, or that is otherwise contrary to the administration of justice.~~

~~(1) **Allowed Uses.** Attorneys, parties, and members of the public may use a portable electronic device in a courtroom to retrieve or to store information, to access the Internet, and to send and receive text messages or information.~~

~~(2) **Prohibited Uses.** A portable electronic device may not be used, without permission of the court, to make or to receive telephone calls or for other audible functions while court is in session, and attorneys, parties, and members of the public must silence portable electronic devices while in the courtroom.~~

~~(f)~~**(e) Unauthorized Use of a Portable Electronic Device.** A person who uses a portable electronic device in violation of this rule is subject to sanctions, including contempt of court or criminal charges.

Appendix C

Rule 122
Clean Version of
State Bar Redline of Task Force Proposal

Rule 122. Use of Recording Devices at a Courthouse

- (a) **Purpose.** This rule specifies the permitted and prohibited uses of recording devices at a courthouse.
- (b) **Definitions.**
- (1) A “courthouse” is that portion of a building used for the operation of a court, including the areas immediately outside of the building.
 - (2) A “courtroom” is an area of a courthouse, or a virtual setting, where a judge conducts a proceeding.
 - (3) A “judge” is a judicial officer in an appellate, superior, or limited jurisdiction court presiding over a proceeding.
 - (4) A “person” is an individual or entity, but does not include court officers and staff.
 - (5) A “proceeding” is an event in a court case.
 - (6) A “recording device” is a device that can be used to capture, store, preserve, transcribe, broadcast, transmit, or stream sounds or images.
 - (7) A “recording” is a sound or image captured, stored, preserved, broadcast, transmitted or streamed by a recording device.
 - (8) A “victim” is defined in Arizona Rule of Criminal Procedure 1.4.
- (c) **Request to Use a Recording Device During a Proceeding.** Except as provided in subsections (h) and (i), a person who wishes to use a recording device during a proceeding must submit a written request to do so as follows.
- (1) ***Submitting a Request.*** The person must submit the request to the judge, or to an officer of the court authorized to receive requests under this rule. Submitting a request does not make the person submitting it a party to the case.
 - (2) ***Time for Submitting a Request.***
 - (A) If the proceeding is a trial, a person must submit a request no later than 7 days before the day or days they wish to record the proceeding.

- (B) If the proceeding is not a trial, a person must submit a request no later than 5 days before the day or days they wish to record the proceeding.
 - (C) If a court provides fewer days' notice of a proceeding than required by this rule to make a request, a person must submit a request as soon as reasonably possible.
- (3) ***Court Action Upon Receiving a Request.*** A court must promptly provide notice to the parties and any victim's attorney that it has received a request. The notice must specify a deadline for submitting an objection to a request. A judge must hold a hearing if the judge intends to deny all or part of a timely request, or if a party objects to a request. A judge may grant an untimely request. A judge may deny an untimely request without conducting a hearing.
- (4) ***Time for a Party to Object to a Request.*** A party's objection to a request must be in writing or on the record as follows.
 - (A) **Family Law and Protective Order Cases.** At any time, a party in a family law case, or a protective order case under Rule 4 of the Arizona Rules of Protective Order Procedure, may object to the use of a recording device at any time.
 - (B) **Other Cases.** A party in a case other than those identified in subsection (c)(4)(A) must object within the time specified in the notice required under subsection (c)(3).
- (5) ***Time for a Victim or Witness to Object to a Request.*** A victim or witness may object to use of a recording device during a proceeding at any time during their appearance or testimony. An objection must be in writing or on the record.
 - (A) **Notice to Victims.** The prosecutor's office is responsible for notifying a victim of their right to object to a request before the victim's appearance. A prosecutor may submit an objection on behalf of a victim.
 - (B) **Notice to Witnesses.** A party who calls a witness to testify is responsible for notifying the witness of a request, and the

witness's right to object to the request, before the witness testifies.

(d) Denial or Limitation of Request to Use a Recording Device During a Proceeding. A timely request to use a recording device during a proceeding generally should be approved. A judge's decision on a request is reviewable only by special action.

(1) Denial of Request. A judge may deny a request only after making specific findings on the record that the likelihood of harm arising from one or more of the following factors outweighs the benefit to the public:

- (A)** the impact on the right of any party to a fair hearing or trial;
- (B)** the impact on the right of privacy of any party, victim, or witness;
- (C)** the impact on the safety and well-being of any party, victim, witness, or juror;
- (D)** the likelihood that use of a recording device would distract participants or would disrupt, or detract from the dignity of, a proceeding;
- (E)** the adequacy of the court's physical facilities;
- (F)** the timeliness of the request under subsection (c)(2);
- (G)** whether the person making the request is engaged in the dissemination of news; and
- (H)** any other factor affecting the administration of justice or court security.

(2) Limitation of Request. A judge who grants a request may impose limitations after making specific findings based on the factors set forth in subsection (d)(1), including:

- (A)** prohibiting or limiting the recording of a law enforcement officer, victim, party or witness;
- (B)** requiring the person using the recording device to obscure the face and identity of an individual being recorded; and
- (C)** permitting only audio recording.

- (e) **Type and Use of Recording Devices.** Only recording devices approved by the judge may be used during a proceeding. Recording devices must be as unobstructive as possible and must not disrupt the proceeding. The judge may designate the placement of recording devices and recording device operators. Recording devices must not be moved about a courtroom during a proceeding. A person may not connect a recording device to a courtroom electronic system without the judge's approval.
- (f) **Number of Recording Devices.** A judge may approve more than one person's request to use a recording device during a proceeding, but may limit the number of recording devices in the courtroom. If the judge does so, the requesting persons must jointly provide the judge with a plan for the use of recording devices within the limitations imposed by the judge. The judge may grant or modify any plan.
- (g) **Limitations on Use of a Recording Device During a Proceeding.** Use of a recording device during a proceeding is subject to the following limitations.
 - (1) ***Judge Must Be Present in the Courtroom.*** A person may not use a recording device during a proceeding unless the judge is present in the courtroom, except as provided in subsections (h) and (i).
 - (2) ***No Recording Jurors.*** A person must avoid recording jurors. A person must not record a juror's statements or conversation with other jurors during the course of a trial.
 - (3) ***No Recording Attorney Conferences.*** A person may not record bench conferences between a judge and counsel, conferences between attorneys and their clients, or conferences between attorneys in a courthouse.
 - (4) ***No Recording Readable Documents.*** A person may not use a recording device to record readable images of a document or other written material located within a courtroom without permission of the judge.
 - (5) ***No Recording Juvenile Proceedings or Children.*** Use of a recording device during a juvenile court proceeding, an A.R.S. Title 36, Chapter 4 or 5 proceeding, or a proceeding involving a child witness are prohibited, except as allowed by Arizona law, or as provided in subsection (h).

- (h) **Use of a Recording Device during Celebratory or Ceremonial Proceedings.** Notwithstanding this rule's provisions, a person may orally request, and a judge may orally approve, use of a recording device during a celebratory or ceremonial proceeding.
- (i) **Use of a Recording Device in a Courtroom other than During a Proceeding.** Use of a recording device in a courtroom other than during a proceeding must be approved by the judge to whom the courtroom is assigned, the presiding judge, or an officer of the court authorized by the presiding judge to approve such a request.
- (j) **Recording Not the Official Court Record.** Unless the court orders otherwise, a recording of proceeding made under this rule is not the official record of that proceeding.
- (k) **Use of a Recording Device at a Courthouse Outside of a Courtroom.**
 - (1) **Generally.** The use of a recording device in a courthouse outside of a courtroom must be approved by the presiding judge, an officer of the court authorized by the presiding judge to approve such a request, or as provided by local administrative order.
 - (2) **Limitations.** No one may record an individual at a courthouse outside of a courtroom without that individual's express or implied consent. Judges, clerks, court administration, and court security are authorized to limit or terminate recording activity in a courthouse outside of a courtroom that is disruptive to court operations or that compromises courthouse security.
 - (3) **Interviews, Evaluations, Mediations, or Depositions.** A person does not need to make a request to use a recording device during an interview, evaluation, mediation, or deposition that takes place in a location at the courthouse designated for such activities.
- (l) **Recording, Broadcasting, Transmitting, or Streaming on the Court's Initiative.** This rule does not prevent a court from recording a proceeding, or from broadcasting, transmitting, or streaming a recording of a proceeding on its own initiative.
- (m) **Other Governing Law.** A court may adopt further reasonable limits on the use of a recording device at a courthouse by administrative order.

- (n) **Unauthorized Use of a Recording Device.** A person who uses a recording device in violation of this rule is subject to sanctions, including contempt of court and criminal charges.

Appendix D

**Rule 122.1
Clean Version of
State Bar Redline of Task Force Proposal**

Rule 122.1. Use of Electronic Devices at a Courthouse

- (a) Purpose.** This rule specifies the permitted and prohibited uses of an electronic device at a courthouse when it is not being used as a recording device.
- (b) Definitions.**

 - (1)* An “electronic device” is a device capable of electronically storing, accessing, receiving or transmitting information.
 - (2)* This rule incorporates the definitions set forth in Rule 122(b).
- (c) Use of an Electronic Device In a Courtroom.** A judge may regulate the use of an electronic device that is disruptive to a court proceeding or contrary to the administration of justice. A person must silence an electronic device in a courtroom, but may use it subject to the following restrictions.

 - (1) Jurors.* A juror must turn off electronic devices while present in a courtroom, and while present during a jury's deliberations, except during breaks.
 - (2) Witnesses.* A witness may use an electronic device while testifying only with the permission of a judge.
 - (3) Attorneys, Parties, and Members of the Public.* An attorney, party or member of the public may not use a portable electronic device to make or receive telephone calls during a proceeding.
- (d) Use of an Electronic Device in a Courthouse Outside of a Courtroom.** A person may use an electronic device in a courthouse outside of a courtroom subject to the authority of judges, clerks, court administration, or court security to limit or terminate activity that is disruptive to court operations or that compromises courthouse security.
- (e) Unauthorized Use of a Portable Electronic Device.** A person who uses an electronic device in violation of this rule is subject to sanctions, including contempt of court or criminal charges.