

Hon. Robert Brutinel, Chair  
Committee on the Impact of Wireless Mobile Technologies  
and Social Media on Court Proceedings  
1501 W. Washington St., Suite 410  
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of	)	
	)	
PETITION TO AMEND SUPREME	)	Supreme Court No. R-13-0012
COURT RULE 122	)	
	)	Petitioner's Reply
_____	)	

Petitioner respectfully replies to comments concerning the amended petition, as provided by the Court's Order establishing a modified comment period. The Appendix to this Reply contains proposed amendments to Supreme Court Rule 122 in two versions: (1) a "mark-up" showing revisions to the "clean" version included with the original rule petition, and (2) a "clean" version of Rule 122 as now proposed.

**I. Background.** Petitioner is the Chair of the Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings (the "Wireless Committee"), which was established by Administrative Order No. 2012-

22. The Wireless Committee presented its report and recommendations to the Arizona Judicial Council (“AJC”) on December 13, 2012, at which time the AJC approved the Wireless Committee’s request to file a petition to amend Rule 122.

Administrative Order 2012-22 recognized the “unprecedented growth” of wireless mobile technologies. The Order continued by stating, in part:

Arizona courts have rules governing cameras in the courtroom. Most rules allow media cameras in the courtroom with the judge’s permission. Today, many devices such as laptops, cell phones, and tablets can take photos and videos... Rule 122 may need revision to provide additional guidance to judges and other court personnel on how to respond appropriately to legitimate concerns about the use of cameras or other recording devices in the courtroom or the courthouse.

The Supreme Court adopted Rule 122 in 1993. The Court most recently amended the rule in 2008, following a rule petition by KPNX Broadcasting Company, Rule Petition Number R-07-0016. The current Rule 122 addresses the news media’s use of cameras in the courtroom, but with the recent “unprecedented growth” of new technology, Rule 122 now must encompass use of cameras by “citizen journalists” and other courtroom visitors. When the Court adopted Rule 122, broadcast-quality cameras were bulky, and the presence of a media camera in court was obvious. The explosive growth in technology now allows a member of the public to use a compact camera that can record and transmit high-quality still and moving images instantly and wirelessly, thereby creating multiple “media centers” in every courtroom. The proposed amendments address these concerns.

**II. Summary of comments.** The State Bar of Arizona filed the sole comment during the initial comment period. The comment was comprehensive and constructive. The State Bar’s comment was also noteworthy because it did not endeavor to draft language for a modified rule, but rather it identified areas the Wireless Committee should consider further. In the process of considering the State Bar’s comments, the Wireless Committee discussed additional ways to clarify and to streamline the text of the proposed rule.

The Maricopa County Attorney (“MCA”) and the Arizona Prosecuting Attorneys Advisory Council (“APAAC”) filed comments during the second comment period. These two comments addressed provisions affecting prosecutors, law enforcement officers, victims, and witnesses.

The Wireless Committee held public meetings following the close of each comment period.

**III. Overview of the proposed amendments to Rule 122.** The most visible differences between existing Rule 122 and the proposed amendments are the result of “restyling.” The Federal Rules of Civil Procedure and the Federal Rules of Evidence have been restyled, and Arizona adopted its own restyled rules of evidence effective on January 1, 2012. Restyling includes elimination of inconsistent, ambiguous, redundant, repetitive, or archaic words. (See the Federal

Advisory Committee’s notes to the 2011 amendments to the Federal Rules of Evidence that follow Rule 101.<sup>1)</sup>

In addition to making the text of Rule 122 clearer, the restyled version also promotes greater clarity by re-organizing the rule. One of the ways the rule does this is by placing provisions of the rule in a sequence that more closely follows the chronology of a typical Rule 122 request. The proposed rule also combines related provisions of the existing rule, and eliminates superfluous text. Section headings have been included in the Wireless Committee’s revised version to make the rule easier to use, and to achieve a format that is consistent with other Supreme Court rules.

**IV. Changes to specific sections of Rule 122:** The proposed amendments to Rule 122 also include the following changes.

(1) Definitions: The existing rule has no definitions. A new section (b) defines nine operative words: “camera,” “courtroom,” “coverage,” “judge,” “person,” “personal audio recorder,” “proceeding,” “recording device,” and “victim.”

(2) Who must submit a request: Section (f) of the current rule begins, “Requests by the media for coverage....” Some construe this current phrasing to

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<sup>1</sup> See also the Prefatory Comment to the 2012 Amendments to the Arizona Rules of Evidence: “*The restyling is intended to make the rules more easily understood and to make style and terminology consistent throughout the rules....*”

require only the media to submit a request for camera coverage. Section (c) of the revised rule eliminates this ambiguity and clarifies that any “person,” as this word is defined in section (b), must submit a request for camera coverage of a court proceeding. A “citizen journalist” or a member of the public may therefore submit a request for coverage, and must do so, if he or she wishes to use a camera in the courtroom.

(3) Process: The current rule omits a comprehensive process for submitting a request. Section (c) of the revised rule supplies a clear procedure. This proposed section requires a person to “submit” rather than “file” a written request, because the filing of a request with the court clerk could delay its transmission to the appropriate judge. In Maricopa and Pima counties, a person may submit an on-line request to the court’s Public Information Officer or its Community Relations Officer, who will route it to the proper judge. Subsection (c)(3) requires the court to notify the parties of its receipt of a request, and includes a provision for when the judge must hold a hearing on the request.

(4) Time: Because the court usually schedules a trial date well in advance, subsection (c)(2) of the revised rule requires a person to submit a request to cover a trial at least seven days before the trial starts, rather than two days as provided in the existing rule. (This expanded time might help to avoid situations such as the one presented in *Star Publishing Company v Bernini*, 228 Ariz. 490, 268 P.3d

1147 (Div. Two, 2012), where a coverage request filed two working days before the start of a jury trial made it difficult for the trial court to schedule a Rule 122 hearing before the trial commenced.) The proposed amendments require a person to submit a request to cover proceedings, other than trials, forty-eight hours before the proceeding (compared to two days under the current rule.) However, if the court schedules a proceeding less than seventy-two hours in advance, a person must submit the request “as soon as reasonably possible before the proceeding as not to delay or interfere with it.”

(5) Denial or limitation of coverage: New section (d) was one of the most thoroughly discussed. As shown in the Appendix, section (d) begins by stating,

“A properly submitted request for coverage should generally be approved, but a judge may deny or may limit the request as provided in this section.”

Subsection (d)(1) requires the judge to make specific findings to deny a request for coverage, or to sustain a party’s objection to coverage. This section includes the substance of the seven factors in existing Rule 122(b), but it adds references to “victims” in two of those factors. It also adds a new factor that a judge must consider in ruling on a coverage request, “whether the person making the request is engaged in the dissemination of news to a broad community.” This additional factor favors camera use that fulfills the original intent of the rule, which is making court events available for the public-at-large.

Subsection (d)(2) concerns situations where coverage is allowed, but with limitations, upon motion of a party, a victim, a witness, or sua sponte. Like a denial of coverage, a limitation of coverage also requires specific findings based on the eight enumerated factors. In addition, coverage of the testimony of a witness may be prohibited under subsection (d)(2)(C) “...upon a determination that coverage would have a substantial adverse impact upon that witness or his or her testimony.”

(6) Multiple devices: Section (g) of the proposed revisions retains a “presumptive limit” of one microphone and one recording device for audio coverage, and one video and one still camera. However, the judge conducting the proceeding has discretion under this revised section to approve a request for additional recording devices, particularly multiple cameras. Multiple cameras may produce a superior journalistic product without disrupting a proceeding. Cameras are quieter and less distracting than those used twenty years ago. Some cameras have remote controls that do not require the physical presence of camera operators in the courtroom.

(7) Victims: Rule 122 currently does not have a provision regarding coverage of a victim. By comparison, the amended rule mentions victims more than a dozen times. These revisions acknowledge the special status of a victim, who may be neither a party nor a witness in a criminal proceeding.

(8) Exceptions to the section (c) request requirement: Under the current rule, only a journalist may use a personal audio recorder; the proposed rule contains no such limitation. “Personal audio recorder,” which is an undefined term in the current rule, is defined in section (b) of the proposed amendments as “a device used to record audio only, and that is on, held by, or immediately next to, the person who is operating the device.” The revisions shown in Rule 122(h) allow use of a personal audio recorder, but only after the operator notifies the court of the intended use. The judge has no authority under the proposed rule to forbid use of a personal audio recorder, but the notice requirement will alert the court when one is being used in the courtroom.

Under proposed section (i), a person may verbally request, and a judge may verbally approve, use of a recording device to record or to photograph a celebratory or ceremonial court proceeding. Another provision in this section requires a person who wishes to use a recording device in a courtroom when that courtroom is not in session to first obtain the permission of the presiding judge or a designee. The intent of this provision is to avoid the use of an empty courtroom as a setting for a commercial production, or for any other inappropriate purpose.

(9) Prohibitions: Section (k) of the proposed amendments contains five prohibitions on recording and photography in the courtroom. Three of these prohibitions are derived from the existing rule (no coverage of jurors, no coverage

of attorney conferences or bench conferences, and no coverage of juvenile proceedings.) However, there are two new prohibitions.

The first new prohibition allows use of a recording device only when the judge is on the bench. Recording must terminate when the judge leaves the bench. This gives the judge greater knowledge and control over who and what is covered in the courtroom. The other new prohibition recognizes that new technology produces cameras with extraordinarily resolution, and capturing a readable image of confidential documents with these cameras is becoming increasingly feasible. A provision added to section (k) therefore precludes use of a camera to take readable images of the contents of documents that are located at counsel table, the judge's bench, the work area of judicial staff, or the jury box.

(10) Technical update: The revisions also eliminate technical requirements and references in the current rule that have become obsolete or archaic since the adoption of the rule in 1993. For example, Rule 122 now refers to tripods, tapes, reels, and wires, but tripods are no longer essential, and tapes, reels, and wires are or may soon become passé.

**V. Conclusion.** The Wireless Committee appreciates the comments concerning this rule petition and the amended petition. The Wireless Committee reviewed and discussed those comments and suggestions, and twice revised its proposed amendments in response to these comments. Its goal was to improve

Rule 122 as much as possible. The Wireless Committee now submits its final revisions to Rule 122 in the Appendix to this reply.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of July 2013

By \_\_\_\_\_  
Hon. Robert Brutinel, Chair  
Committee on the Impact of Wireless Mobile  
Technologies and Social Media on Court  
Proceedings  
1501 W. Washington Street  
Phoenix, AZ 85007

Mark-up of the clean version filed with the original rule petition: deleted text has ~~strikethrough~~; new text has underline

**Rule 122. Use of Recording Devices ~~during in~~ a Court Proceeding Courtroom**

**a. Purpose.** This rule allows the use of recording devices ~~during in~~ a court proceeding 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 ~~any~~ an electronic or mechanical device used to photograph, record, or broadcast still or moving images.

~~2- A “court proceeding” is an event conducted in a courtroom. A court proceeding does not include an event conducted in judicial chambers, in anterooms, in rooms where jurors assemble or deliberate, or in other areas of the courthouse.~~

(2) A “courtroom” is an area of a “courthouse,” which is defined in Rule 122.1, where a judge or judicial officer conducts a proceeding.

~~(3-)~~ “Cover” and “coverage” refer to a person’s use of a recording device during a ~~court~~ proceeding.

~~(4-)~~ A “judge” is a judicial officer in an appellate, superior, or limited jurisdiction court presiding over a proceeding.

4. ~~(5)~~ A “person” includes an individual and any organization except a the court.

~~5- (6)~~ A “personal audio recorder” is ~~any audio recording~~ a device used to record audio only, and that is on, held by, or immediately next to, a the person who is operating the device.

~~6- (7)~~ A “proceeding” is an event concerning a court case that takes place in a courtroom.

~~(8)~~ A “recording device” is ~~any~~ an electronic or mechanical apparatus and related equipment used to capture and store ~~the~~ sound or ~~the~~ images, or both, ~~of a court proceeding, and~~ 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 ~~court~~ proceeding.** A Except as provided in sections (h) and (i) of this rule, a person who wishes to use a recording device during a ~~court~~ proceeding, other than a

*Appendix to Reply, Mark-up Version*

personal audio recorder as provided in section (j), must submit a written or electronic request to approve coverage 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 ~~designated by the presiding judge for receiving~~ authorized to receive requests under this rule. ~~The request must identify at a minimum the person who is submitting it, the case, the proceeding, and the date(s) of the proposed coverage. The submission of a request~~ A person who submits a request to cover a court proceeding ~~provides a person with~~ has standing on the request, but ~~it~~ the submission of a request does not confer upon a 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 specified start of the proceeding, to allow the judge to consider the request in a timely manner. However,

(C) If the court schedules a any proceeding on less than seventy-two hours notice, a person must file the request sufficiently in advance of 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. ~~A court may provide coverage of its own proceedings, and it is exempt from the requirements of section (e).~~

*(4) ~~Time for a party to object to a request:~~* A party waives an objection to a request for coverage unless of a proceeding if the party objects does not object to the request in writing or on the record no later than the commencement start of the specified proceeding, or the conclusion of a hearing held under section (e)(3), whichever occurs first 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. Anyone else who calls a witness to testify is responsible for notifying their witness of coverage, and the witness' right to object to coverage, prior to the witness' testimony.

~~e. Factors a judge must consider; findings when a judge limits or denies a request for coverage.~~ In deciding whether to approve a person's request to cover a court proceeding or a party's objection to coverage, the judge conducting the proceeding must consider the following factors:

**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 section. 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.

(4A) The impact of coverage upon the right of any party to a fair hearing or trial;

(2B) The impact of coverage upon the right of privacy of any party, victim, or witness;

(3C) The impact of coverage upon the safety and well-being of any party, victim, witness, or juror;

(4D) The likelihood that coverage would distract participants or that coverage would detract from the dignity of, or would disrupt, a proceeding;

(5E) The adequacy of the physical facilities of the court;

(6F) The timeliness of the request pursuant to section (c)(2) of this rule;

(7G) Whether the person making the request is engaged in the dissemination of news to a broad community; and

(8H) Any other factor affecting the fair administration of justice.

~~The judge conducting the proceeding may limit or deny coverage only after making specific, on-the-record findings that there is a likelihood of harm arising from one or more of the above factors, and that the harm outweighs the benefit of coverage to the public. A judge's decision to limit or to deny a request for coverage under this rule is reviewable only by special action.~~

~~f. Objection to coverage by a non-party victim or witness.~~ An attorney who represents a non-

(2) Limitation of coverage: A judge may allow coverage as requested, or may impose the following limitations on coverage after making specific, on-the-record findings based on the factors in subsection (d)(1), or based on paragraph (C) below:

(A) In a criminal proceeding, a judge on his or her own motion or upon request of a party or a victim may order that no one may photograph, record, or broadcast a defendant, a law enforcement officer, or a victim in the courtroom.

(B) A judge on his or her own motion or upon request of a party, victim, or witness, may order that video coverage must effectively obscure the face and identity of that party, victim, or who calls a witness to testify, must notify that victim or witness of, or that there be only audio coverage of the court proceeding. A non-party victim or witness may object to coverage of his or her appearance or testimony at any time, of a party, victim, or witness.

(C) A judge on his or her own motion or upon request of a witness may grant the objection and prohibit coverage of the appearance or testimony of a particular non-party victim or that witness after consideration of the factors in section (e) and upon a determination that coverage would have a greater substantial adverse impact upon that victim or witness or his or her testimony, that other traditional methods of news reporting.

**g. e. Manner of coverage.** The judge ~~conducting the proceeding~~ 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. ~~Operators of recording~~ 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 ~~conducting the proceeding~~ may order a restriction or cessation of coverage during a proceeding in furtherance of the interests of justice.

**h. f. Equipment.** A person must not install, move, or take recording equipment, other than a personal audio recorder, from the courtroom during a ~~court~~ 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 ~~of the judge conducting the proceeding~~. 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 section (c). The judge may direct whatever modifications or improvements are deemed necessary. ~~The, but the~~ judge may not require that use of public funds be used to make or to maintain any such modifications or improvements. Microphones, cameras, and other equipment used for coverage must ~~meet current industry standards, so that the recording devices are~~ be as unobtrusive and as equivalent in technical quality and sensitivity as recording devices in general use ~~by major broadcast stations in the~~

community where the courtroom is located. ~~Recording devices that, and must not produce distracting sounds are not permitted. Any questions concerning whether particular equipment complies with this rule will be resolved by the presiding judge or a designee otherwise disrupt the proceeding.~~

**i.g. Number of recording devices; pooling.** A request submitted under section (c) may ask the judge to approve audio coverage, ~~or coverage by video camera or 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 ~~court~~ 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.

**j.h. Personal audio recorders; required notice to the court.** ~~Any person, including a journalist, may use a personal audio recorder during a court proceeding, but only after the person has given notice of that intended use to must notify the judge or to 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 section (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 pursuant to this section may must not be obtrusive, distracting, or otherwise prohibited, and use is subject to the prohibitions of section (m)(2) of this rule. Anyone who wishes to audio record a court proceeding with a device that is not on the person, as specified in section (b)(5), must submit a request pursuant to section (e) of this rule. (k) of this rule.~~

**k.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 section.~~

**j. Recording not admissible as evidence.** No video, photograph, or audio reproduction of a judicial proceeding that is obtained pursuant to this rule ~~or Rule 122.1~~ 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.

**l. Informal approval for use of a recording device.** ~~Notwithstanding other provisions of this rule, a person may verbally request, and a judge conducting the proceeding may verbally approve, use of a recording device in a courtroom to photograph or to record a celebratory or ceremonial court proceeding. A person must obtain the express permission of the presiding judge or a designee to use a recording device in any courtroom when that court is not in session.~~

**m.k. Prohibitions.** ~~Recording or broadcasting~~ 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.

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

~~2. (3) Attorney~~ 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.

~~3. Other areas of the courthouse.~~ A person whose request under this rule has been granted may not photograph, record in, or broadcast from, locations in a courthouse where a court proceeding is not being conducted, without the judge's express approval.

(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) Juvenile No juvenile proceedings: Photographing, recording, or broadcasting of juvenile court proceedings is only as allowed by Arizona law, or as provided in section (h).

~~5. Criminal proceedings.~~ In a criminal proceeding, a judge on his or her own motion may order that no one may photograph, record, or broadcast the victim in the courtroom. The judge may alternatively order that video coverage must effectively obscure the victim's face and identity, or that there may only be audio coverage of the victim's testimony.

~~n. Use of a recording device prohibited without approval.~~ Use of a recording device during court proceedings is prohibited except as allowed by this rule. A court must use reasonable means to inform the public of these prohibitions.

~~o. l. Other governing law.~~ A person whose request under section (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

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***Appendix to Reply, Mark-up Version***

alters the obligation of any attorney to comply with the provisions of the Arizona Rules of Professional Conduct governing trial publicity.

~~**p. Appellate courts.** For coverage of proceedings in the Arizona Supreme Court and Courts of Appeal, any reference in this rule to the “*judge conducting the proceeding*” or to the “*presiding judge*” means the Chief Justice of the Arizona Supreme Court or the Chief Judge of the Court of Appeals, as applicable.~~

**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 or judicial officer 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 sections (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. Anyone else who calls a witness to testify is responsible for notifying their witness of coverage, and the witness' right to object to coverage, prior to the witness' 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 section. 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 detract from the dignity of, or would disrupt, a proceeding;
- (E) The adequacy of the physical facilities of the court;
- (F) The timeliness of the request pursuant to section (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:* A judge may allow coverage as requested, or may impose the following limitations on coverage after making specific, on-the-record findings based on the factors in subsection (d)(1), or based on paragraph (C) below:

- (A) In a criminal proceeding, a judge on his or her own motion or upon request of a party or a victim may order that no one may photograph, record, or broadcast a defendant, a law enforcement officer, or a victim in the courtroom.
- (B) A judge on his or her own motion or upon request of a party, victim, or witness, may 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) A judge on his or her own motion or upon request of a witness may 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 section (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 section (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 section (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 section (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 section.

**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.

(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 section (i).

**I. Other governing law.** A person whose request under section (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.