

1 Honorable Barbara Rodriguez Mundell  
2 Presiding Judge  
3 Superior Court in Maricopa County  
4 125 W. Washington St.  
5 Phoenix, AZ 85003  
6 (602) 506-6130

7 In the Matter of PETITION TO AMEND  
8 RULE 122, RULES OF SUPREME  
9 COURT OF ARIZONA

Supreme Court No. R-07-0016  
COMMENT OF THE MARICOPA  
COUNTY SUPERIOR COURT IN  
SUPPORT OF THE PETITION TO  
AMEND RULE 122 WITH SUGGESTED  
REVISIONS

12 After filing the Petition to Amend Rule 122, petitioner David J. Bodney and two of  
13 his clients met with the Presiding Judge of the Superior Court in Maricopa County to  
14 discuss the rule petition. The Presiding Judge presented the petition for discussion by  
15 the Judicial Executive Committee (JEC), where it was decided to present the petition to  
16 the entire bench of the Superior Court in Maricopa County for discussion in March 2008.  
17 Many questions and issues were raised at this meeting. The petition was discussed  
18 again by the JEC in March, where the JEC authorized Honorable Peter Swann to  
19 discuss questions and concerns of the Maricopa County bench with Mr. Bodney. After  
20 these discussions, which included making certain revisions to the proposed  
21 amendments, the question of whether to support the petition was presented for a vote of  
22 the entire Maricopa County bench at its April 2008 meeting.

23 Having presented the petition to amend Rule 122, Rules of the Arizona Supreme  
24 Court, relating to cameras in the courtroom, to the bench of the Superior Court in  
25 Maricopa County, and the members of the bench attending the April 2, 2008 bench

1 meeting having voted overwhelmingly to support the petition subject to adoption of  
2 certain revisions, the Presiding Judge files this comment in support of the Petition on  
3 behalf of the bench of the Superior Court in Maricopa County, subject to the Court's  
4 inclusion of the revisions shown in attachment A. The suggested revisions, made in  
5 consultation with the rule's proponents, are summarized as follows:  
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7 1. Coverage of "Court Proceedings" and Other Areas of the Court.

8 The bench supports providing access to the public to court proceedings in a  
9 manner that does not pose a risk to the privacy of individuals who are not involved in  
10 the proceeding. To further this goal, it is recommended that the introductory paragraph  
11 to the rule be clarified to make it clear that only court proceedings conducted by a  
12 judicial officer are to be covered pursuant to the rule. Also, it is recommended that  
13 subsection (l) be revised to provide that, absent express permission of the court, there  
14 will be no camera coverage at other locations in the court building where a judicial  
15 proceeding is not in progress. This would allow taping in special circumstances, with  
16 judicial approval, such as occasions when jurors wish to be interviewed in the jury room  
17 following a verdict.  
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20 2. Discretion

21 Because special action review on an abuse of discretion standard is possible, it  
22 is appropriate to remove the term "sole discretion" from the rule. However, since judicial  
23 officers must exercise discretion to apply the criteria set out in the rule, the term  
24 "discretion" should be retained in subsection (b).  
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ATTACHMENT A

**Rule 122. Electronic and Photographic Coverage of Public Judicial Proceedings**

Electronic and still photographic coverage of public judicial proceedings ~~in the courtroom and areas immediately adjacent thereto~~ **CONDUCTED BY A JUDICIAL OFFICER** during sessions of court may be permitted in accordance with the following guidelines:

(a) No electronic or still photographic coverage of juvenile court proceedings shall be permitted, except that such coverage may be permitted in adoption proceedings for the purpose of memorializing the event, with the agreement of the parties to the proceeding and the court.

(b) Electronic and still photographic coverage of public judicial proceedings other than the proceedings specified in paragraph (a) above may be permitted in the ~~sole~~ discretion of the judge ~~of the particular proceeding~~ giving due consideration to the following factors:

- (i) The impact of coverage upon the right of any party to a fair trial;
- (ii) The impact of coverage upon the right of privacy of any party or witness;
- (iii) The impact of coverage upon the safety and well-being of any party, witness or juror;
- (iv) The likelihood that coverage would distract participants or would detract from the dignity of the proceedings;
- (v) The adequacy of the physical facilities of the court for coverage; ~~and~~
- (vi) Any other factor affecting the fair administration of justice; **AND**
- (vii) THE TIMELINESS OF THE REQUEST PURSUANT TO SUBSECTION (f) OF THIS RULE.**

**(c) THE JUDGE MAY LIMIT OR PROHIBIT ELECTRONIC OR STILL PHOTOGRAPHIC COVERAGE ONLY AFTER MAKING SPECIFIC, ON-THE-RECORD FINDINGS THAT THERE IS A SUBSTANTIAL LIKELIHOOD OF HARM ARISING FROM ONE OR MORE OF THE ABOVE FACTORS THAT OUTWEIGHS THE BENEFIT TO THE PUBLIC OF CAMERA COVERAGE.**

~~(e)-(d)~~ Electronic and still photographic coverage of the appearance or testimony of a particular witness may be prohibited if ~~in the sole discretion of the judge of the proceeding~~, the judge determines that such coverage would have a substantially greater adverse impact upon the witness or his or her testimony than non-electronic and non-photographic coverage would have.

~~(d) Nothing in paragraph (b) or (c) above shall be construed as requiring the judge of the particular proceeding to state grounds or make findings in support of the determination to permit, limit or preclude electronic and still photographic coverage, and the exercise of the judge's~~

1 ~~discretion in limiting or precluding such coverage shall not be subject to judicial review.~~

2 (e) The law generally applicable to inclusion or exclusion of the press or public at court  
3 proceedings or during the testimony of particular witness shall apply to the coverage hereunder.

4 (f) Requests by the media for coverage shall be made to the judge of the particular proceeding  
5 sufficiently in advance of the proceeding or portion thereof as not to delay or interfere with it.  
6 **UNLESS THE JUDICIAL PROCEEDING IS SCHEDULED ON LESS THAN THREE**  
7 **DAYS NOTICE, THE REQUEST TO TAPE OR PHOTOGRAPH A PROCEEDING**  
8 **MUST BE MADE NO LESS THAN TWO DAYS IN ADVANCE OF THE HEARING.** The  
9 judge shall notify all parties and witnesses of the request. **IF THERE IS ANY OBJECTION**  
10 **TO A REQUEST FOR CAMERA COVERAGE OR AN ORDER ALLOWING**  
11 **ELECTRONIC OR STILL PHOTOGRAPHIC COVERAGE, THE COURT SHALL**  
12 **HOLD A HEARING PROMPTLY.**

13 (g) Objections of a party to coverage must be made on the record prior to commencement of the  
14 proceeding or portion thereof for which coverage is requested. Objections of a non-party witness  
15 to coverage of his or her appearance or testimony may be made to the judge at any time. Any  
16 objection not so made will be deemed waived. ~~This provision shall not diminish the judge's~~  
17 ~~authority to preclude or limit coverage of a proceeding in the judge's sole discretion as above~~  
18 ~~provided.~~

19 (h) Nothing herein shall alter the obligation of any attorney to comply with the provisions of the  
20 Arizona Rules of Professional Conduct governing trial publicity.

21 (i) Individual journalists may use their personal audio recorders in the courtroom, but such usage  
22 shall not be obtrusive or distracting and no changes of tape or reels shall be made during court  
23 sessions. In all other respects, news reporters or other media representatives not using cameras  
24 or electronic equipment shall not be subject to these guidelines.

25 (j) No media film, videotape, still photograph or audio reproduction of a judicial proceeding shall  
26 be admissible as evidence in such proceeding or in any retrial or appeal thereof.

27 (k) Coverage of jurors in a manner that will permit recognition of individual jurors by the public  
28 is strictly forbidden. Where possible, cameras should be placed so as to avoid photographing  
jurors in any manner.

(l) **ABSENT EXPRESS PERMISSION OF THE COURT, ¶**there shall be no audio recording  
or broadcasting of conferences in the courtroom **BUILDING** between attorneys and their clients,  
between attorneys, ~~or between attorneys and the court~~ **OF JURY INTERVIEWS OR IN ANY**  
**PART OF THE COURT BUILDING WHERE A JUDICIAL PROCEEDING IS NOT**  
**BEING CONDUCTED.**

(m) It shall be the responsibility of the media to settle disputes among media representatives,  
facilitate pooling where necessary, and implement procedures which meet the approval of the  
judge of the particular proceeding prior to any coverage and without disruption to the court. If

1 necessary the media representatives shall elect a spokesperson to confer with the court.

2 (n) No more than one television camera and one still camera mounted on a tripod, each with a  
3 single camera operator, shall be permitted in the courtroom for coverage at any time while court  
4 is in session. The broadcast media shall select a representative to arrange the pooling of media  
5 participants. The court shall not participate in the pooling agreement.

6 (o) The judge of a particular proceeding shall, in a manner which preserves the dignity of the  
7 proceeding, designate the placement of equipment and personnel for electronic and still  
8 photographic coverage of that proceeding, and all equipment and personnel shall be restricted to  
9 the area so designated. Whenever possible, media equipment and personnel shall be placed  
10 outside the courtroom. Videotape recording equipment not a component part of a television  
11 camera shall be placed outside the courtroom. To the extent possible, wiring shall be hidden,  
12 and in any event shall not be obtrusive or cause inconvenience or hazard. While court is in  
13 session, equipment shall not be installed, moved or taken from the courtroom, nor shall  
14 photographers or camera operators move about the courtroom.

15 (p) All persons engaged in the coverage permitted hereunder shall avoid conduct or dress which  
16 may detract from the dignity of the proceedings.

17 (q) If possible, media equipment shall be connected to existing courtroom sound systems. No  
18 flash bulbs, strobe lights or other artificial lights of any kind shall be brought into the courtroom  
19 by the media for use in coverage of a proceeding. Where the addition of higher wattage light  
20 bulbs, additional standard light fixtures, additional microphones or other modifications or  
21 improvements are sought by the media, the media, through their spokesperson, shall make their  
22 recommendations to the presiding judge of the Superior Court, who may direct whatever  
23 modifications or improvements deemed necessary. Any such modifications or improvements  
24 shall be made and maintained without public expense.

25 (r) Television or still cameras which produce distracting sound shall not be permitted. In this  
26 regard, the presiding judge may consider a still camera acceptable so long as it is contained in a  
27 "blimp" system or is the type of camera such as a Nikon F4 with a Nikon CS-13 camera blimp  
28 (otherwise known as a "corduroy sock") which effectively muffles camera sounds.

(s) Cameras and microphones used in the coverage permitted hereunder shall meet the "state of  
the art." A camera or microphone shall be deemed to meet the "state of the art" when equal in  
unobtrusiveness, technical quality and sensitivity to equipment in general usage by the major  
broadcast stations in the community in which the courtroom is located. The current "state of the  
art" for television cameras shall be met by cameras meeting or exceeding the performance levels  
of the RCA TK-76 camera system or the IKEGAMI HL-77 camera system or the SONY BP300  
camera system.

(t) Any questions concerning whether particular equipment complies with these guidelines shall  
be resolved by the presiding judge of the Superior Court or designee.

(u) To facilitate implementation of this rule, the presiding judge of the Superior Court may

1 appoint an advisory committee to make recommendations regarding improvements affecting  
2 media coverage of judicial proceedings.

3 (v) In the case of coverage of proceedings in the Arizona Supreme Court and Courts of Appeal,  
4 references herein to the “judge of the particular proceeding” or the “presiding judge of the  
5 Superior Court” shall mean the Chief Justice of the Arizona Supreme Court or the Chief Judge of  
6 the Court of Appeals, as the case may be.  
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