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13 ARIZONA SUPREME COURT

14 In the matter of:)

15 Petition to Amend Rule 122, Rules of)
16 the Supreme Court of Arizona)

No. R-07-0016

**REPLY IN SUPPORT OF
PETITION TO AMEND
RULE 122**

17 Preliminary Statement

18 The many comments filed in support of KPNX’s Petition to Amend
19 Rule 122 demonstrate that there is strong state-wide support for KPNX’s
20 proposed amendment to Rule 122 governing camera coverage of court
21 proceedings. The comments include a few additional changes recommended by
22 the Presiding Judge of the Arizona Superior Court in Maricopa County and the
23 overwhelming majority of the Maricopa County Bench – changes that KPNX
24 fully supports. The changes clarify the factors that courts may consider when
25 balancing the well-settled right of the public to monitor court hearings against the
26 interests that militate in favor of limiting camera coverage. KPNX’s Petition is
27 also supported by former Arizona Supreme Court Chief Justice Frank X. Gordon,
28 who was instrumental in the study of cameras in Arizona courtrooms and
adoption of the pilot program that led to Rule 122. Justice Gordon, whose

1 experience includes service as a trial judge, has endorsed KPNX’s proposal,
2 noting that the changes would make “decisions of the trial courts in Arizona more
3 understandable” and would not unduly burden trial judges. [May 14, 2008
4 Comment of Frank X. Gordon, Jr.] All told, KPNX’s proposal is supported by 13
5 comments, including ones submitted by three Tucson news stations, two major
6 Arizona newspapers and Rep. Jonathan Paton.

7 In addition, Presiding Judge Mundell’s revisions to the proposed
8 Rule provide a ready response to the comments of the six individuals or entities
9 who filed objections to KPNX’s petition. Those opponents have focused on
10 issues that are squarely addressed by the Rule 122 factors or Judge Mundell’s
11 revisions, which prevent delay of proceedings and allow trial judges to balance
12 the risk of harm against the “benefit to the public of camera coverage.” [April 8,
13 2008 Comment of Maricopa County Superior Court (“Mundell Comment”),
14 Attachment A at 4] These revisions respond to complaints that the standard for
15 excluding cameras is too stringent or would somehow harm decorum in
16 courtrooms. They also confirm that KPNX’s proposal does not dilute the
17 discretion of trial judges to exclude cameras from proceedings where there is a
18 substantial risk posed by camera coverage to one of the Rule 122 factors. The
19 provisions simply require judges to explain their basis for denying a request for
20 camera coverage.

21 More significantly, KPNX’s proposed rule change will enhance
22 public trust in the judiciary by ensuring that “people understand as fully as
23 possible the operation of the justice system, and the courts in particular.” *In the*
24 *Matter of: Special Electronic Access to Superior Court Proceedings*, Admin.
25 Order No. 2006-9 (Jan. 11, 2006). An ever-increasing segment of the public
26 relies on electronic media as its principal source of news, and journalists
27 increasingly use camera technology to report information to the public. The
28 amendment will improve the fairness of decisions that courts make regarding this

1 important newsgathering tool. *Petition of WMUR Channel 9*, 813 A.2d 455, 461
2 (N.H. 2002) (“the more reason there is in the decision to admit or exclude”
3 cameras from the courtroom, “the more apt it is to be fair”). By preventing
4 reflexive denials of camera requests, the amended Rule will foster the ability of
5 the public to acquire information about what transpires in the courtroom, thereby
6 enhancing the public’s understanding of, and trust in, the judiciary. *Cf. Richmond*
7 *Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980). By modernizing Rule
8 122, the Court will bring Arizona into the ranks of those states that have
9 successfully implemented similar protections for camera requests, and it will
10 strengthen our State’s judiciary as a result.

11 Argument

12 I. AS AMENDED BY THE MARICOPA COUNTY SUPERIOR COURT,
13 KPNX’S PROPOSED RULE ADOPTS BASIC PROCEDURAL
14 SAFEGUARDS THAT WILL RESULT IN BETTER DECISIONS
15 ABOUT CAMERA COVERAGE.

16 KPNX supports the amendments proposed by the Maricopa County
17 Superior Court, as set forth in Presiding Judge Barbara Rodriguez Mundell’s
18 April 8, 2008 Comment.¹ Judge Mundell’s proposed changes: (1) clarify that
19 Rule 122 applies only to court proceedings conducted by a judicial officer, and
20 that camera coverage is generally prohibited in the court building where no
21 proceeding is in progress; (2) re-insert the term “discretion” into Section (b) of the
22 Rule; (3) clarify that camera coverage may be limited or denied if the harm
23 arising from any of the factors set out in the Rule outweighs the benefit to the
24 public of camera coverage; and (4) require requests for camera coverage to be

25 ¹ KPNX also supports the technical changes to Rule 122 suggested by the First
26 Amendment Coalition of Arizona, Inc. (the “Coalition”). For the Court’s
27 convenience, KPNX has attached as Exhibit A a comprehensive version of its
28 proposed amendments, which incorporates the recommended changes of Judge
Mundell and the Coalition.

1 submitted at least two days before the proceeding, and add untimeliness as a basis
2 for denial of a request for camera coverage.

3 The other comments submitted in support of KPNX’s Petition
4 demonstrate the wide range of support for a new camera coverage rule. More
5 specifically, Justice Gordon, State Representative Jonathan Paton (R-Tucson), two
6 editors of major Arizona newspapers, representatives from three Tucson
7 television stations and another Phoenix station, the Arizona Broadcasters
8 Association, the First Amendment Coalition and the Reporters Committee for
9 Freedom of the Press filed comments in favor of KPNX’s proposal. Several of
10 the comments establish the need to revisit Rule 122, given the “unique role
11 camera technology plays in conveying information to the public.” [*E.g.*, May 19,
12 2008 Comment of Randy Lovely] Despite the increased role cameras play in
13 delivering information to the public, some courts “routinely deny requests for
14 photographic coverage without hearing or explanation.” [May 20, 2008 Comment
15 of Michelle Germano]

16 KPNX’s proposal, as amended, strikes a better balance between
17 protecting the interests outlined in Rule 122(b) and the modern reality that many
18 people depend on video images and information as a primary source of news.
19 [See May 15, 2008 Comment of Art Brooks (citing 2006 study commissioned by
20 the Radio Television News Directors Foundation finding that 65 percent of
21 Americans rely on local television stations as their primary source of news); May
22 20, 2008 Comment of Michael A. Chihak (“KPNX’s proposed amendment . . .
23 strikes a workable balance between the public’s need for information about the
24 legal system, on the one hand, and reasonable concerns about the potentially
25 harmful effects of camera coverage, on the other.”)] The centerpiece of KPNX’s
26 amendment – requiring judges to articulate which of the Rule 122 factors justifies
27 closing a hearing or portion of a hearing to cameras – is a “basic procedural
28 safeguard[.]” already observed by Arizona courts when considering requests to

1 close court proceedings or records to the public. [May 20, 2008 Comment of the
2 Reporters Committee for Freedom of the Press, at 5] *E.g., Phoenix Newspapers,*
3 *Inc. v. Jennings*, 107 Ariz. 557, 490 P.2d 563 (1971) (recognizing a constitutional
4 right of access to criminal court proceedings several years before the U.S.
5 Supreme Court confirmed a similar right under the First Amendment). As such,
6 the proposal does not depart radically from existing law or practice.

7 Requiring judicial findings will improve Rule 122 in three ways.
8 First, articulating findings focuses judges on valid bases to restrict camera
9 coverage, allowing courts to prohibit or limit cameras in the courtroom when
10 harm to any of the Rule 122 factors outweighs the benefit of camera coverage to
11 the public. Second, requiring findings will ensure decisions on camera coverage
12 are narrowly-tailored, restricting only those portions of proceedings in which
13 cameras pose a “substantial likelihood of harm” to one or more of the Rule 122
14 factors. Third, findings will end the increasingly common practice of trial courts
15 banning cameras without any explanation, or in rulings that offer “no rhyme or
16 reason” regarding which, if any, of the Rule 122 factors weigh against allowing
17 camera coverage. [See May 20, 2008 Comment of Kathleen Choal]

18 The result will be better-reasoned, more fair and ultimately
19 transparent decisions by courts. *WMUR*, 813 A.2d at 461. *Cf. Phoenix*
20 *Newspapers, Inc. v. District Court*, 156 F.3d 940, 950 (9th Cir. 1998) (“entry of
21 specific findings [in support of an order sealing court records] allows fair
22 assessment of the trial judge’s reasoning by the public and the appellate courts”).
23 As amended, KPNX’s proposed Rule change will also improve the process of
24 media requests for camera coverage and addresses many of the issues cited by
25 opponents to the Petition.

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1 II. THE CONCERNS RAISED BY COMMENTS IN OPPOSITION TO THE
2 PETITION ARE UNFOUNDED.

3 A. The “Substantial Likelihood of Harm” Standard is Appropriate.

4 Several opponents assert that the standard proposed by KPNX is too
5 stringent. Yet the amendment proposed by Judge Mundell addresses these
6 concerns by balancing the risk of harm to any of the Rule 122 factors against the
7 value of camera coverage to the public. [See Mundell Comment, Exhibit A at 4
8 (“The Judge may limit or prohibit [camera coverage] only after making specific,
9 on-the-record findings that there is a substantial likelihood of harm arising from
10 one or more of the above factors that outweighs the benefit to the public of
11 camera coverage.”)] This standard provides ample discretion to trial courts to
12 limit or prohibit photographic coverage where appropriate while incorporating
13 basic procedural safeguards.

14 The proposed standard allows trial judges to weigh the likelihood of
15 harm to *any* of the seven Rule 122 factors against the public interest in camera
16 coverage. This necessarily involves an evaluation by the judge of the benefits of
17 camera coverage. While the value of public access to court proceedings is
18 weighty in itself, the public interest in camera access may weigh even more
19 heavily in cases involving a public official accused of corruption, a murder
20 prosecution that attracts widespread public attention or a case of child abuse or
21 neglect that raises questions about whether public agencies took steps to protect
22 the victim. *E.g., Richmond Newspapers*, 488 U.S. at 570 (noting that open justice
23 has a “significant community therapeutic value” because it allows for public
24 observation and participation in the process of administering justice); *cf. Phoenix*
25 *Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351, 35 P.3d 105, 112 (Ct. App.
26 2001) (recognizing that “[t]he public’s right to know any public document is
27 weighty in itself,” and that the “core purpose” of the Arizona Public Records Law
28 is to allow the public to “monitor the performance of government officials”).

1 Contrary to many of the comments submitted in opposition to
2 KPNX’s Petition, the proposed amendment maintains discretion with the trial
3 judge to limit or prohibit camera coverage where there is a “substantial likelihood
4 of harm” to any of the Rule 122 factors. Upon a finding that there is a substantial
5 likelihood of harm to (1) fair trial rights, (2) the privacy of any party or witness,
6 (3) the impact upon safety of parties, witnesses or jurors, (4) the likelihood that
7 coverage would cause distractions, (5) the adequacy of the physical facilities, (6)
8 other factors affecting the fair administration of justice, and (7) the timely
9 schedule of the proceeding, the judge may limit or prohibit camera coverage
10 where the harm outweighs the public interest in coverage. In sum, the new
11 standard will require what most courts already do: evaluate camera coverage
12 requests “giving due consideration” to the Rule 122 factors. Ariz. R. Sup. Ct.
13 122(b).

14 The Pima County Bar Association erroneously asserts that the
15 proposed standard would somehow require judges to ignore the Rule 122 factors
16 described above. [May 14, 2008 Comments of Pima County Bar Association, at 2
17 (“Examples of considerations the Judge may need to apply could be the size of the
18 courtroom, distraction that cameras may cause . . . identity of witnesses, time
19 restrictions, the effect on the parties, the jury and witnesses, the prejudice that
20 might ensue.”)] These concerns *are* addressed by the Rule. Indeed, if a judge
21 believes that the likelihood of harm to any of these concerns outweighs the public
22 benefits of camera coverage, she could limit or prohibit coverage upon
23 articulating such a finding. Simply put, KPNX’s proposal does not weaken the
24 Rule 122 factors in any way.²

25
26 _____
27 ² As the Department of Economic Security correctly notes in its May 20,
28 2008 Comment, KPNX’s Petition does *not* impact the restrictions in Ariz. R. Sup.
Ct. 122(a) regarding camera coverage of juvenile court proceedings.

1 The Pima County Bar Association also speculates that requiring
2 judicial findings could somehow “influence the jury pool.” [*Id.* at 3] This has not
3 occurred when courts have held hearings on camera coverage under the current
4 Rule, and it is highly unlikely that the public will be saturated with reports about
5 judicial findings regarding camera coverage. If ever valid, these concerns may be
6 addressed through *voir dire* and other less-restrictive alternatives. *See, e.g.,*
7 *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 15 (1986) (“*Press-Enterprise*
8 *II*”) (holding that the risk of prejudice caused by open preliminary hearings in
9 criminal cases can be adequately addressed through *voir dire*).

10 B. KPNX’s Proposed Rule Will Not Cause Delay.

11 The proposed amendments include provisions that will *expedite*
12 camera coverage requests. Judge Mundell’s proposed revision requires camera
13 requests to be submitted at least two days in advance of a hearing. [*See* Mundell
14 Comment, Attachment A at 5 (“Unless the judicial proceeding is scheduled on
15 less than three days notice, the request to tape or photograph a proceeding must be
16 made no less than two days in advance of the hearing.”)] Moreover, the proposal
17 adds the “timeliness of the request” to the list of factors in Ariz. R. Sup. Ct.
18 122(b) that a court may consider in determining whether to allow camera
19 coverage of a hearing. [*Id.* at 4] These changes improve the process of camera
20 coverage requests by (1) encouraging the media to submit requests well in
21 advance of hearings, and (2) providing judges an additional tool to keep
22 proceedings on time by allowing denial of last-minute camera coverage requests.
23 This is a significant improvement over the current Rule, which often results in
24 belated requests for camera coverage.

25 While Pima County Superior Court Presiding Judge Jan E. Kearney
26 asserts that allowing special action appeals of camera decisions will delay cases
27 “for unspecified times in almost every case where cameras are precluded,” there is
28 no provision in the proposed amendment – as Presiding Judge Kearney

1 acknowledges – that *requires* a stay of proceedings if the media seeks special
2 action relief. [May 13, 2008 Comment of Jan E. Kearney, Presiding Judge,
3 Superior Court in Pima County, at 2] Indeed, the absence of a stay requirement in
4 the proposed rule is by design. In proposing the amendments, KPNX has no
5 desire to delay proceedings. Given the emphasis in the proposal on early
6 submission of requests, KPNX believes that most camera issues can be resolved
7 well in advance of hearings or trials. Moreover, the only avenue for appeal – a
8 special action – generally receives expedited consideration, and trial courts are
9 free to proceed until a higher court overturns or alters the trial judge’s ruling.

10 In any event, special actions will be a rarity. They are costly and
11 likely would be filed only in cases of especially acute public interest involving a
12 trial court’s utter failure to follow Rule 122. By way of comparison, the media
13 file very few special actions annually in cases involving public access to court
14 records and proceedings. Indeed, the media submit requests for camera coverage
15 in only a tiny fraction of cases. “Delay” offers no sound basis to frustrate these
16 few but important (and long overdue) procedural reforms.

17 C. The Proposal Will Not Hamper Control of the Courtroom or Cause
18 Distractions.

19 Numerous studies have concluded that camera coverage rarely
20 distracts trial participants or causes disruptions in the courtroom. *See WMUR*,
21 813 A.2d at 460 (observing that studies have found “minimal, if any, physical
22 disturbance to the trial process”); *Chandler v. Florida*, 499 U.S. 560, 578-79
23 (1981) (noting the dearth of empirical support for the notion that the mere
24 presence of cameras in the courtroom “has an adverse effect” on the judicial
25 process). Indeed, this Court gathered empirical data on its initial experiment with
26 cameras in the courts from March 1982 to March 1983. [Rob Raker, *Cameras and*
27 *Recorders in Arizona’s Trial Courts [-] An Evaluation of the Experiment*]
28 According to that survey, which included responses to survey questionnaires from

1 324 individuals, including 230 jurors and witnesses, 39 court personnel and 55
2 judges or attorneys, few participants were distracted by camera coverage. [*Id.* at
3 20-21 (noting that 93 percent of jurors/witnesses, 81 percent of court personnel,
4 91 percent of judges and 84 percent of the attorneys said media equipment did not
5 distract them)]

6 As the comments in support of KPNX’s Petition demonstrate, camera
7 technology has improved considerably since the early 1980s. Journalists now use
8 silent cameras that require no external lights, cables or bulky equipment. [*See,*
9 *e.g.,* Brooks Comment] Additionally, people are more comfortable and familiar
10 with video cameras than in the past, making distractions less likely.

11 Contrary to the assertions by Pima County Superior Court, the
12 proposal does not prevent trial judges from addressing problems that arise once a
13 proceeding is underway. [*See* Kearney Comment, at 2] Nothing in the proposal
14 prohibits a judge from revisiting findings about camera coverage if harm arises to
15 any of the Rule 122 factors during a proceeding. The judge would need only
16 issue findings and close the relevant portion of the proceeding to cameras. As a
17 matter of First Amendment law, courts already observe similar procedures when
18 the need to close proceedings to the public arises. *E.g., Press-Enterprise Co. v.*
19 *Superior Court*, 464 U.S. 501, 510 (1984) (“*Press-Enterprise I*”). Necessarily,
20 trial judges retain wide discretion to control the courtroom as appropriate under
21 the proposal.

22 D. The Proposal Will Enhance Public Perceptions of the Court System.

23 Contrary to the explicit finding of the United States Supreme Court
24 that public access to the courts “heighten[s] public respect for the judicial
25 process,” the comment submitted by the Presiding Judges in Mohave and
26 Greenlee Counties suggests that the revised Rule will harm the public’s
27 impression of the judiciary. *Globe Newspaper Co. v. Superior Court*, 457 U.S.
28 596, 606 (1982). In their May 19, 2008 Comment, Hon. Randolph A. Bartlett and

1 Hon. Monica Stauffer write that “[s]ome of our non-lawyer JPs and Magistrates
2 may not truly reflect the highest levels of professionalism or knowledge, which
3 would reflect poorly upon the judiciary as a whole.” Yet improved openness of
4 court proceedings – including camera coverage – will *encourage* professionalism
5 and better performance by judicial officers and attorneys. *Cf. Press-Enterprise I*,
6 464 U.S. at 508 (“The value of openness lies in the fact that . . . established
7 procedures are being followed and that deviations will become known.”); *Globe*
8 *Newspaper*, 457 U.S. at 606 (“[P]ublic access to criminal trials permits the public
9 to participate in and serve as a check on the judicial process – an essential
10 component in our structure of self-government.”).

11 Contrary to other comments that deride the increasing transmission
12 of camera coverage on the Internet, providing the public with as transparent a
13 picture as possible of what happens in the courtroom provides even greater
14 opportunities for the public to understand the workings of the judicial system. As
15 the Comment submitted by the Coalition points out, the combination of camera
16 access and Internet technology allowed azcentral.com to transmit the entire
17 testimony of Bishop Thomas O’Brien during his trial for leaving the scene of a
18 fatal accident, and allowed KTVK-TV to carry the entire rape trial of Mark
19 Goudeau on its website, azfamily.com. [First Amendment Coalition Comment, at
20 3-4] Moreover, allowing the public to see for itself the conduct of courtroom
21 participants may provide the best response to attempts to undermine judicial
22 independence. *Cf.* Editorial, “Thomas’ pet bully,” *The Arizona Republic*, Oct. 18,
23 2007, [http://www.azcentral.com/arizonarepublic/opinions/articles/1018thur1-](http://www.azcentral.com/arizonarepublic/opinions/articles/1018thur1-18.html)
24 [18.html](http://www.azcentral.com/arizonarepublic/opinions/articles/1018thur1-18.html) (last visited June 18, 2008) (commenting on the conduct of a special
25 prosecutor, shown in a YouTube posting, in proposing a motion to disqualify
26 Judge Timothy Ryan from hearing all criminal cases involving the Maricopa
27 County Attorney’s Office).

28

1 E. There is No Need to Delay Adoption of the Proposed Rule.

2 Some opponents suggest the need for an extended comment period
3 before amending Rule 122. Yet KPNX filed its Petition to Amend Rule 122 on
4 November 1, 2007, and the Petition has been open for public comment since
5 November 9, 2007 – a period of more than six months. Ariz. R. Sup. Ct. 28.
6 Twenty-one individuals or entities submitted comments in response to the
7 Petition, including comments from Cochise, Greenlee, Maricopa, Mohave and
8 Pima Counties. There has been ample time for public comment about KPNX’s
9 proposal, which has garnered widespread support. In sum, the Court should
10 follow the timeline provided in Rule 28 and adopt the revisions to Rule 122 as
11 promptly as possible.

12 III. THE REVISED RULE WILL IMPROVE THE DISSEMINATION OF
13 NEWS TO THE PUBLIC ABOUT ARIZONA COURTS.

14 This Court recognized the unique role cameras play in informing the
15 public during the 2006 murder trial of a popular Tucson children’s
16 ophthalmologist, observing that camera coverage fosters public understanding of
17 “the justice system, and the courts in particular.” Admin Order No. 2006-9. With
18 the public increasingly reliant on cameras as a source of news – whether through
19 television or the Internet – camera coverage plays an even more important role in
20 the public’s understanding of the courts. [*E.g.*, Brooks Comment] For this
21 reason, claims by opponents that the rule change is unnecessary because
22 courtrooms remain open to the public and print media miss the mark. First,
23 members of the public rarely have time to attend trials in person: they learn about
24 judicial proceedings “chiefly through the print and electronic media.” *Richmond*
25 *Newspapers*, 448 U.S. at 572-73. Second, the press is increasingly using cameras
26 as an alternative to written articles to convey news to the public. [*See* Lovely
27 Comment; Chihak Comment]

1 The irony of the experience under Rule 122, as Michael Chihak,
2 Editor and Publisher of the *Tucson Citizen* commented, is that in practice courts
3 have grown more reluctant to permit camera coverage at a time when the
4 technological capacity to cover judicial proceedings has improved dramatically.
5 Internet coverage of two cases of immense public interest – the criminal
6 prosecutions of Bishop Thomas O’Brien and accused “Baseline Killer” Mark
7 Goudeau – highlight the unique platform that the Internet provides for both print
8 and television media to broadcast uninterrupted, complete coverage of court
9 proceedings. As the Arizona Legislature has demonstrated, Internet webcasts of
10 proceedings have proven to be an invaluable tool for the public to monitor directly
11 the performance of its lawmakers. [May 13, 2008 Comment of Rep. Jonathan
12 Paton] Increasing the availability of such webcasts will advance this Court’s goal
13 of improving the public’s knowledge and understanding of the judiciary. *See*
14 *WMUR*, 813 A.2d at 460 (noting studies finding that allowing cameras in the
15 courtroom “improves public perceptions of the judiciary and its processes,
16 improves the trial process for all participants, and educates the public about the
17 judicial branch of government”).

18 Finally, KPNX did not submit its Petition to Amend Rule 122, as
19 some opponents suggested, to further its “commercial interests.” Similar
20 suggestions about efforts to gather and report the news have been explicitly
21 rejected by the courts of this state. *See, e.g., Star Publ’g Co. v. Parks*, 178 Ariz.
22 604, 605, 875 P.2d 837, 838 (Ct. App. 1993) (public records requests by the
23 media as part of its newsgathering function are not done for a “commercial
24 purpose”). The Station proposed the amendment because it believes strongly in
25 its duty to inform the public on issues of public concern such as judicial
26 proceedings. [*E.g.,* May 15, 2008 Comment of David W. Giles (“The media owes
27 the public a solemn obligation to fairly and accurately address community
28 concerns in its reporting.”)] As applied, the current Rule has hampered reporters’

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RESPECTFULLY SUBMITTED this 30th day of June, 2008.

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559779

EXHIBIT A

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

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

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

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

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

24 **(c) THE JUDGE MAY LIMIT OR PROHIBIT ELECTRONIC OR STILL**
25 **PHOTOGRAPHIC COVERAGE ONLY AFTER MAKING SPECIFIC, ON-THE-**
26 **RECORD FINDINGS THAT THERE IS A SUBSTANTIAL LIKELIHOOD OF**
27 **HARM ARISING FROM ONE OR MORE OF THE ABOVE FACTORS THAT**
28 **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 discretion in limiting or precluding such coverage shall not be subject to
judicial review.

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

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

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

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

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

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

(k) Coverage of jurors in a manner that will permit recognition of individual jurors by the public 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, ~~T~~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 necessary the media representatives shall elect a spokesperson to confer with the court.

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

(o) The judge of a particular proceeding shall, in a manner which preserves the dignity of the proceeding, designate the placement of equipment and personnel for electronic and still photographic coverage of that proceeding, and all equipment and personnel shall be restricted to the area so designated. Whenever possible, media equipment and personnel

shall be placed outside the courtroom. Videotape recording equipment not a component part of a television camera shall be placed outside the courtroom. To the extent possible, wiring shall be hidden, and in any event shall not be obtrusive or cause inconvenience or hazard. While court is in session, equipment shall not be installed, moved or taken from the courtroom, nor shall photographers or camera operators move about the courtroom.

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

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

(r) Television or still cameras which produce distracting sound shall not be permitted. In this regard, the presiding judge may consider a **NON-DIGITAL** still camera acceptable so long as it is contained in a "blimp" system or is the type of camera such as a Nikon F4 with a Nikon CS-13 camera blimp (otherwise known as a "corduroy sock") which **IF IT IS ACCOMPANIED BY A DEVICE THAT** 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 appoint an advisory committee to make recommendations regarding improvements affecting media coverage of judicial proceedings.

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