CX-89-1863
STATE OF MINNESOTA
IN SUPREME COURT

In re:

Supreme Court Advisory Committee
on General Rules of Practice

Recommendations of Minnesota Supreme Court Advisory Committee on General Rules of Practice

Final Report
March 31, 2008

Hon. Elizabeth Anne Hayden
Chair

Hon. G. Barry Anderson
Liaison Justice

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Hon. Joseph T. Carter, Hastings
R. Scott Davies, Minneapolis
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Reporter

Introduction

The advisory committee met five times[1] during 2007 and 2008 to consider the Court's referral to it of the issues raised by the Petition of Minnesota Joint Media Committee, Minnesota Newspaper Association, Minnesota Broadcasters Association, and Society of Professional Journalists, Minnesota Chapter ("Joint Petition"). In addition to its own research and deliberations, the committee held three meetings that amounted to public hearings, hearing from witnesses, including judges, lawyers, and representatives of organizations with an interest in these issues.

The committee's recommendations are summarized below, but the primary recommendation is that the current rules not be substantially changed, other than to consolidate them into a single rule provision. A minority of the committee would favor a relaxation of the current rule, and allow a trial judge to permit electronic media access to the courtroom without requiring consent of all parties.

Summary of Recommendations

The committee's specific recommendations are briefly summarized as follows:

1. **Majority Report.** A significant majority of the committee recommends retention of the existing rules on the availability of cameras in Minnesota courtrooms, with one non-substantive exception: the committee believes that the existing substantive rule should be contained in one place, rather than divided between the rules of practice, the code of judicial conduct, and a series of orders of this Court from the 1980's that effectively amend the code of judicial conduct. Therefore, the committee recommends that the Minnesota General Rules of Practice be amended to include portions of existing Canon 3 of the code of judicial conduct and that the Minnesota Code of Judicial Conduct be similarly shortened to include only a cross-reference to the general rules provision. The various orders amending or suspending provisions of the code should be made part of the published rule.

[1] August 1, September 21 & October 24, 2007; January 11 & February 27, 2008.

2. **Minority Report.** A minority of the committee favors a more extensive relaxing of the current rule. As now written, the rules effectively require consent of all parties before a court proceeding can be covered by media using still, video, or audio recording; and since adoption in the early 1980s, very few proceedings have been open to the electronic media. The minority would favor a rule that commits the decision about media access to the discretion of the trial court, with specific limitations. Because of the majority's conclusion that the availability to courtrooms should remain substantially unchanged, a specific minority proposal is not set forth.

The majority comprised 16 of the advisory committee's 19 voting members; the minority included three voting members.

Subsumed within both of the foregoing recommendations is an implicit further recommendation: that the Joint Petition should not be granted. Even if the Court were to conclude that the current rules should be relaxed, the committee believes the proposals in the Joint Petition are overbroad and not appropriate for adoption as submitted.

Committee Process

The history of this Court's consideration of electronic media access to courtrooms is relatively extended. The most important historical artifact is its 1983 order that established a two-year experimental process to permit, but not require, trial judges to allow cameras into courtrooms upon the consent of all interested parties. *See In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, Order (Minn. Sup. Ct. April 18, 1983). That order was extended by subsequent orders and appears to govern this issue today. The current Joint Petition would dramatically change the rules, creating a presumption of media access without regard to consent of parties or witnesses, and would permit exceptions only in limited circumstances and with findings by the trial court.

The committee spent considerable time and energy in an effort to gain a full understanding of the issues raised in the Joint Petition. It reviewed the Joint Petition that the Court referred to the advisory committee and invited Petitioners and their counsel to an initial meeting of the committee. The committee actively sought information from

interested parties and the public. The committee sent to parties known to have an interest in these issues, and published the notice on the Minnesota Judicial Branch website, a request that specifically sought information as follows:

> The committee welcomes comments on any aspect of these issues, but is particularly interested in obtaining objective or anecdotal evidence that helps answer the following questions:
>
> 1. How do cameras in criminal proceedings impact the fair trial rights of criminal defendants or the state's interests?
>
> 2. How does the use of camera coverage of court proceedings assist, if it does, in the administration of justice or improving public access to information about the courts?
>
> 3. Does camera coverage either advance or hinder the rights of litigants, including crime victims, civil litigants, and others? If so, how should these interests be balanced?
>
> 4. How does camera coverage impact non-party witnesses?
>
> 5. How have advances in technology changed the impact cameras, microphones, and related recording equipment have on court proceedings? What limits are appropriate to minimize the negative effects of this equipment?
>
> 6. In those jurisdictions where video or audio coverage of court proceedings is allowed, what impact has that coverage had on the conduct of the attorneys, judges, witnesses, or others in those matters?
>
> 7. In those jurisdictions where video or audio coverage of court proceedings is allowed:
>
>   a. Are there groups other than television stations, radio stations, and newspapers that have requested and/or obtained either audio or video coverage of courtroom proceedings:
>
>   b. Who provides the necessary camera and/or audio equipment?
>
>   c. Does it lengthen, shorten, improve, or affect trials?
>
>   d. How much advance notice does the judge receive?
>
>   e. What constitutes good cause for not permitting use of cameras or audio recordings?
>
> 8. What different concerns are there, if any, for proceedings in Minnesota appellate courts (the Minnesota Court of Appeals and Minnesota Supreme Court)?

9. If the committee were to recommend the adoption of broader use of cameras in Minnesota court proceedings, what limitations or other protections should be adopted?

The committee received numerous responses to this request for information.

The committee also conducted research into, and collected, the rules of other states dealing with media access to court proceedings. These rules provided the committee with useful insights into the issues other states have addressed and the issues of media access.

The committee met with representatives of the Petitioners, and heard from witnesses produced by interested parties, as well as those responding to the committee's notices of hearings. The following witnesses addressed the committee in person; in addition the committee received written comments from these and other interested persons, including written comments addressing each of the foregoing nine questions from Chief Justice Thomas J. Moyer, Chief Justice of the Supreme Court of Ohio.

The committee heard live "testimony" or presentations from the following witnesses:

1. Mark Anfinson, Attorney for Petitioners
2. Rick Kupchella, KARE 11 Investigative Reporter, representative of MN Chapter of the Society of Professional Journalists
3. Hon. Patrick Grady, Sixth District Court, Cedar Rapids, IA
4. Hon. Norman Yackel, Circuit Court, Sawyer County, WI
5. Lolita Ulloa (Racial Fairness Committee)
6. Jeffrey Degree (MN Association of Criminal Defense Attorneys)
7. Marna Anderson (WATCH)
8. Hon. Michael Kirk (MN Seventh Judicial District)
9. Hon. Lucy Wieland (MN Fourth Judicial District)
10. James Backstrom (Dakota County Attorney)
11. Janelle Kendall (Stearns County Attorney)
12. Charles Glasrud (Stevens County Attorney)
13. John Stuart (State Public Defender)
14. Donna Dunn (MN Coalition Against Sexual Assault)
15. Charles T. Hvass, Jr. (attorney, civil practice, Minneapolis)

16. Tom Frost (former prosecutor and Executive Director, CornerHouse Interagency Child Abuse Evaluation and Training Center, Minneapolis)
17. Olga Trujillo (Casa de Esperanza)
18. Diana Villella (Centro Legal, Inc.)
19. Carla M. Ferrucci (MN Coalition for Battered Women)
20. Earl Maus (appointee MN Ninth Judicial District; Cass County Attorney at time of appearance)
21. Ann Gustafson (Victim-Witness Assistance Program, St. Croix County, WI)
22. Mark Biller (former county attorney, Polk County, WI)

The committee reviewed the approaches of other states and the federal courts to the issues surrounding cameras in the courtroom and did not find a lot of directly helpful information. Clearly, it is possible to draft rules that allow cameras to be used while still protecting against many of the problems that concern the committee; it is not possible to solve some of the problems by rule-drafting, however.

The committee found the following publications of some value to it in its deliberations:

- Wendy Brewer & Thomas W. Pogorzelski, *Cameras in Court: How Television News Media Use Courtroom Footage*, 91 JUDICATURE 124 (2007).
- AMERICAN COLLEGE OF TRIAL LAWYERS, REPORT ON CAMERAS IN THE COURTROOM (March 2006).
- KNOWLEDGE AND INFORMATION SERVICES, NATIONAL CENTER FOR STATE COURTS, CAMERAS IN THE COURTS: SUMMARY OF STATE COURT RULES (2001).
- NATIONAL CENTER FOR STATE COURTS, USE OF CAMERAS IN TRIAL COURTS – 2007.

These studies do not, however, shed a lot of light on the issue the Court faces.

Reasons for Committee Recommendations

The committee members approached with open and inquiring minds the question of whether the rules on cameras in Minnesota courtrooms should be relaxed. The

committee received substantial information about the role cameras have played in Minnesota court proceedings following this Court's orders in the early 1980's and about how other states have dealt with these issues. Ultimately, the committee found that there was insufficient evidence to support relaxation of the current rules.

The evidence received by the committee was hardly unequivocal. Among the conclusions a majority of the committee would draw and that would militate in favor of relaxing the current rule are the following:

1. A significant majority of states have implemented more liberal access to camera and voice devices in courtrooms, and the judges and litigants from those states have not reported particular problems caused by cameras and media access. The committee did not hear about any of the problems feared by the opponents in Minnesota, such as victim and witness reticence, disruption of the pretrial process, or grandstanding by lawyers.
2. Other things being equal, greater access to courtrooms by electronic media would advance to some degree the interests of the public in having access to information about judicial proceedings. The importance of this factor is not always clear in many aspects of media coverage, however. The committee did not receive information suggesting that greater access yields greater coverage that really provides a realistic view of the administration of justice; the majority of the coverage is short in duration and skewed towards sensational stories and trials.
3. Technology has advanced in the past decades to permit cameras to be placed in courtrooms in ways that are not very obtrusive from a physical standpoint and court rules can effectively control issues of obtrusiveness and physical interference with proceedings.
4. Any relaxation of the current rules should be limited to prevent use of cameras in certain proceedings, including family law, juvenile, probate, and other categories of cases and in any case where depiction of child witnesses, jurors, or confidential sidebar or attorney-client communications would be shown.

Major concerns that militate in favor of retaining the procedural limitations of the current rule include:

1. The committee did not see any benefit to the core mission of the courts: the search for truth and the administration of justice. Cameras do not help the courts get cases tried fairly, and sometimes interfere with that goal.
2. Balanced against the absence of benefit is a clear cost of allowing camera access. Some judge time, some prosecutor time, and some defense counsel time is inevitably expended dealing with concerns about whether camera coverage should be allowed, hearing disputes over this issue, and monitoring media compliance with any court-imposed guidelines. A majority of the committee concludes that these costs outweigh any benefits of changing the current rule.
3. The committee heard from only one representative of the broader "public" suggesting that the current rules should be changed. That submission argued that family law matters should be opened to camera coverage in order to foster "more fact-based and child-centered decisions." The request for change comes most prominently from the organized news media.
4. The majority of the participants in the Minnesota court system opposed changing the current practice. This opposition transcended the predictable resistance to change, and came particularly strongly from the participants in the criminal justice system. Representatives of prosecutors, public defenders, and victim advocates fairly consistently opposed relaxation of the current rules.
5. The committee was concerned about the chilling effects cameras would have in several types of cases, including criminal, juvenile, family, and order-for-protection proceedings. Even if cameras were limited to prevent their use in particular categories of cases, the committee heard and credited the views of numerous participants in those proceedings that crime victims and witnesses, and other interested parties, would be deterred from reporting crimes or from agreeing to testify. This is a significant problem that cannot be readily mitigated; the mere fact that camera coverage of court proceedings is generally known to exist is, according to witnesses before the committee, likely to cause crime and domestic abuse victims and witnesses to decline to

report crimes and to refuse to come forward to testify. This chilling effect on victims and witnesses occurs even in types of cases where cameras are not likely to be allowed, as the victims or witnesses would have the impression that being in court subjects one to camera scrutiny.

6. The committee was not convinced that the vast majority of cases warrant coverage for the purpose of improving public understanding of the operation of the judiciary. There does not appear to be empirical evidence that supports the conclusion that relaxing the rules on media access would result in better public understanding. The committee did not hear of a single example from a state with greater media access where advancement of the public understanding of the judicial role was appreciably advanced.
7. The reality of media coverage in states that allow access "on request" is that the stories tend to be short "sound-bites" that focus on sensational cases involving famous or notorious litigants. The committee did not conclude that this type of coverage would generally foster greater public confidence in the judicial system. The cable channel "Court TV" has changed its name and no longer provides extensive coverage of trial court proceedings.
8. Some committee members are concerned about the use that may be made of images from courtroom coverage. In the modern age, images are susceptible to distortion and misuse, and this has particularly dire consequences for court proceedings. The committee is concerned that camera access will result in "trial by YouTube," and that neither the public interest nor that of litigants would be served in the process.
9. Although not a major factor, the committee also notes concern about who should have access if a relaxed rule were adopted. Given the proliferation of media channels and outlets, including a significant question of the status of web-logging (blogging), the committee has concerns about the feasibility of managing media access. *See generally* Jessi Hempel, *Are Bloggers Journalists?*, Business Week, *Mar. 7, 2005, available at http://www.businessweek.com/technology/content/mar2005/tc2005037_7877_*

tc024.htm (last visited March 2, 2008) (reporting on decision relating to question of whether journalist privilege applies to work of bloggers).

One of the concerns raised was the impact of expanded use of cameras on minorities. Ultimately, it was not something that the committee spent a great deal of time on, in part because the early consensus seemed to be that no change was recommended.

Another issue that was raised was the possibility of a pilot project. Several chief judges expressed to the committee an interest in participating in a pilot project, while other participants in those same districts uniformly opposed the concept.

The majority view represents a total of sixteen (16) committee members.[2] The minority view, set forth following the majority rule draft below, represents a total of three committee members.

Style of Report

The specific recommendations are reprinted in traditional legislative format, with new wording underscored and deleted words ~~struck through~~.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

[2] The committee liaison, reporter and staff are non-voting members.

RECOMMENDATIONS: **Retain the existing rules, but move the substantive provisions regulating cameras in courtrooms to a single place, in Rule 4 of the General Rules of Practice.**

The committee's only recommended rule amendment requires related changes to several existing rules provisions: Canon 3A(11) of the Minnesota Code of Judicial Conduct, this Court's series of orders modifying former Canon 3A(7) (later 3A(10) and now 3A(11)) of the Code of Judicial Conduct, and Rule 4 of the Minnesota General Rules of Practice. These changes should be made (or not made) together, as they are directly related and dependent on each other.

1. Amend Canon 3 of the Minnesota Code of Judicial Conduct as follows:

MINNESOTA CODE OF JUDICIAL CONDUCT

Canon 3A(11):

(11) ~~Except in the Supreme Court and the Court of Appeals, a~~ A judge shall prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto ~~during sessions of court or recess between sessions. A judge may, however, authorize:~~ except as permitted by order or court rule adopted by the Minnesota Supreme Court.

~~(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration;~~

~~(b) the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings;~~

~~(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:~~

~~(i) the means of recording will not distract participants or impair the dignity of the proceedings;~~

~~(ii) the parties have consented, and the consent to be depicted or recorded has been obtained from each witness appearing in the recording and reproduction;~~

~~(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and~~

~~(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.~~

General Rules Advisory Committee Comment—2008

This rule is amended to delete the specific standards to be followed in considering whether electronic recording and transmission should be allowed of Minnesota court proceedings. The material deleted is adopted in part in Rule 4 of the Minnesota General Rules of Practice, applicable in all court proceedings other than appeals or similar proceedings in the Minnesota Court of Appeals and Minnesota Supreme Court. Rule 4 is modified, however, to incorporate salient provisions of a series of orders dealing with a multi-decade experiment to permit some recording or broadcast of court proceedings with the agreement of all parties. *See In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, Order re: Audio and Video Coverage of Trial Court Proceedings, No. C7-81-300 (Minn. Sup. Ct. April 18, 1983); *Order Permitting Audio and Video Coverage of Supreme Court Proceedings*, No. C6-78-47193 (Minn. Sup. Ct. April 20, 1983); *Amended Order Permitting Audio and Video Coverage of Appellate Court Proceedings*, No. C7-81-3000 (Minn. Sup. Ct. Sept. 28, 1983); *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct to Conduct and Extend the Period of Experimental Audio and Video Coverage of Certain Trial Court Proceedings*, Order, C7-81-300 (Minn. Sup. Ct. Aug. 21, 1985); *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, Order re: Audio and Video Coverage of Trial Court Proceedings (Minn. Sup. Ct. May 22, 1989); and *In re Modification of Canon 3A(10) of the Minnesota Code of Judicial Conduct*, Order, No. C7-81-3000 (Minn. Sup. Ct. Jan. 11, 1996)(reinstating April 18, 1983, program and extending until further order of Court).

The reason for amendment of Canon 3A(11) is to state in the Code of Judicial Conduct the simple requirement that judges adhere to the Minnesota Supreme Court's orders and rules relating to recording and broadcast of court proceedings, and that the actual substantive requirements be contained in a single place. Rule 4 of the Minnesota General Rules of Practice, adopted at the same time as the amendment of Canon 3A(11) now sets forth all the surviving portions of this canon and the intervening orders that have modified it. All of these provisions were updated to reflect current recording technologies.

2. Terminate the temporary suspension of the rules as established by a series of orders of this Court.

The Order adopting these recommended rule changes should end the "temporary" suspension of Canon 3A(7) (now Canon 3A(11)) as mandated by the following orders of this court:

1. *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct,* Order re: Audio and Video Coverage of Trial Court Proceedings, No. C7-81-300 (Minn. Sup. Ct. April 18, 1983);
2. *Order Permitting Audio and Video Coverage of Supreme Court Proceedings*, No. C6-78-47193 (Minn. Sup. Ct. April 20, 1983);
3. *Amended Order Permitting Audio and Video Coverage of Appellate Court Proceedings*, No. C7-81-3000 (Minn. Sup. Ct. Sept. 28, 1983);
4. *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct to Conduct and Extend the Period of Experimental Audio and Video Coverage of Certain Trial Court Proceedings*, Order, C7-81-300 (Minn. Sup. Ct. Aug. 21, 1985);
5. *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, Order re: Audio and Video Coverage of Trial Court Proceedings (Minn. Sup. Ct. May 22, 1989); and
6. *In re Modification of Canon 3A(10) of the Minnesota Code of Judicial Conduct,* Order, No. C7-81-3000 (Minn. Sup. Ct. Jan. 11, 1996)(reinstating April 18, 1983, program and extending until further order of Court).

The subject matter of these orders, to the extent still relevant and necessary for inclusion in a rule of court, is incorporated into the recommended amendment of Rule 4 of the Minnesota General Rules of Practice, set forth in Recommendation 3, below.

3. Amend Rule 4 of the Minnesota General Rules of Practice as follows:

MINNESOTA GENERAL RULES OF PRACTICE

Rule 4. Pictures and Voice Recordings

Rule 4.01 General Rule. Except as set forth in this rule, ~~N~~no pictures or voice recordings, except the recording made as the official court record, shall be taken in any courtroom, area of a courthouse where courtrooms are located, or other area designated by order of the chief judge made available in the office of the court administrator in the county, during a trial or hearing of any case or special proceeding incident to a trial or

hearing, or in connection with any grand jury proceedings. This rule ~~shall~~ may be superseded by specific rules of the Minnesota Supreme Court relating to use of cameras in the courtroom for courtroom security purposes, for use of videotaped recording of proceedings to create the official recording of the case, or for interactive video hearings pursuant to rule or order of the supreme court. This Rule 4 does not supersede the provisions of the Minnesota Rules of Public Access to Records of the Judicial Branch.

Rule 4.02 Exceptions. A judge may, however, authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings;

(c) upon the consent of the trial judge and all parties in writing or made on the record prior to the commencement of the trial, the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) There shall be no audio or video coverage of jurors at any time during the trial, including *voir dire*.

(ii) There shall be no audio or video coverage of any witness who objects thereto in writing or on the record before testifying.

(iii) Audio or video coverage of judicial proceedings shall be limited to proceedings conducted within the courtroom, and shall not extend to activities or events substantially related to judicial proceedings ~~which~~ that occur in other areas of the court building.

(iv) There shall be no audio or video coverage within the courtroom during recesses or at any other time the trial judge is not present and presiding.

(v) During or preceding a jury trial, there shall be no audio or video coverage of hearings ~~which~~ that take place outside

the presence of the jury. Without limiting the generality of the foregoing sentence, such hearings would include those to determine the admissibility of evidence, and those to determine various motions, such as motions to suppress evidence, for judgment of acquittal, *in limine* and to dismiss.

(vi) There shall be no audio or video coverage in cases involving child custody, marriage dissolution, juvenile proceedings, child protection proceedings, paternity proceedings, petitions for orders for protection, motions to suppress evidence, police informants, relocated witnesses, sex crimes, trade secrets, ~~and~~ undercover agents, and proceedings that are not accessible to the public. No ruling of the trial court relating to the implementation or management ~~of this experimental program~~ of audio or video coverage under this rule shall be appealable until the trial has been completed, and then only by a party.

Rule 4.03. Technical Standards for Photography, Electronic and Broadcast Coverage of Judicial Proceedings. The trial court may regulate any aspect of the proceedings to ensure that the means of recording will not distract participants or impair the dignity of the proceedings. In the absence of specific order imposing additional or different conditions, the following provisions apply to all proceedings.

(a) Equipment and personnel.

(1) Not more than one portable television or movie camera ~~[film camera 16 mm sound on film (self blimped) or videotape electronic camera]~~, operated by not more than one person, shall be permitted in any trial court proceeding.

(2) Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment for print purposes, shall be permitted in any proceeding in any trial court.

(3) Not more than one audio system for radio broadcast purposes shall be permitted in any proceeding in any trial court. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court. If no technically suitable audio system exists in the court, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the trial judge.

(4) Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the trial judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the trial judge shall exclude from a proceeding all media personnel who have contested the pooling arrangement.

(b) Sound and light.

(1) Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. Excepting modifications and additions made pursuant to Paragraph (e) below, no artificial, mobile lighting device of any kind shall be employed with the television camera.

(2) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. Specifically, such still camera equipment shall produce no greater sound or light than a 35 mm Leica "M" Series Rangefinder camera, and no artificial lighting device of any kind shall be employed in connection with a still camera.

(3) ~~It shall be the affirmative duty of m~~Media personnel ~~to~~ must demonstrate to the trial judge adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light ~~criteria enunciated herein~~ requirements of this rule.

A failure to demonstrate that these criteria have been met for specific equipment shall preclude its use in any proceeding. ~~If these Guidelines should include a list of equipment approved for use, such equipment need not be the object of such a demonstration.~~

(c) Location of equipment and personnel.

(1) Television camera equipment shall be positioned in such location in the court as shall be designated by the trial judge. The area designated shall provide reasonable access to coverage. When areas ~~which~~ that permit reasonable access to coverage are provided, all television camera and audio equipment ~~shall~~ must be located in an area remote from the court.

(2) A still camera photographer shall position himself or herself in such location in the court as shall be designated by the trial judge. The area designated shall provide reasonable access to coverage. Still camera photographers shall assume a fixed position within the designated area and, once a photographer has established himself or herself in a shooting position, he or she shall act so as not to ~~call attention to himself or herself through~~ attract attention by distracting movement. Still camera photographers shall not be permitted to move about in order to obtain photographs of court proceedings.

(3) Broadcast media representatives shall not move about the court facility while proceedings are in session.

(d) Movement of equipment during proceedings. News media photographic or audio equipment shall not be placed in, or removed from, the court except ~~prior to~~ before commencement or after adjournment of proceedings each day, or during a recess. Microphones or taping equipment, once positioned as required by (a)(3) above, ~~shall~~ may not be moved from their position during the pendency of the proceeding. Neither television film magazines nor still camera film or lenses ~~shall~~ may be changed within a court except during a recess in the proceedings.

(e) **Courtroom light sources.** When necessary to allow news coverage to proceed, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions do not produce distracting light and are installed and maintained without public expense. Such modifications or additions are to be presented to the trial judge for review prior to their implementation.

(f) **Conferences of counsel.** To protect the attorney-client privilege and the effective right to counsel, there shall be no video or audio pickup or broadcast of the conferences which occur in a court between attorneys and their client, co-counsel of a client, opposing counsel, or between counsel and the trial judge held at the bench. In addition, there shall be no video pickup or broadcast of work papers of such persons.

(g) **Impermissible use of media material.** None of the film, videotape, still photographs or audio reproductions developed during, or by virtue of, coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any retrial or appeal of such proceedings.

Rule 4.04. Camera Access in Appellate Court Proceedings.

(a) Unless notice is waived by the Chief Justice of the Supreme Court or the Chief Judge of the Court of Appeals, notice of intent to cover appellate court proceedings by either audio or video means shall be given by the media to the Clerk of the Appellate Courts at least 24 hours prior to the time of the intended coverage.

(b) *Camera~~men~~ operators, technicians, and photographers covering a* proceeding ~~shall~~ must:

- avoid activity which might distract participants or impair the dignity of the proceedings;
- remain seated within the restricted areas designated by the Court;
- observe the customs of the Court;
- conduct themselves in keeping with courtroom decorum; and
- not dress in a manner ~~which~~ that sets them apart unduly from the participants in the proceeding.

(c) All broadcast and photographic coverage shall be on a pool basis, the arrangements for which must be made by the pooling parties in advance of the hearing.

Not more than one (1) electronic news gathering ("ENG") camera producing the single video pool-feed shall be permitted in the courtroom. Not more than two (2) still-photographic cameras shall be permitted in the courtroom at any one time. Motor-driven still cameras ~~shall~~ may not be used.

(d) Exact locations for all camera and audio equipment within the courtroom shall be determined by the Court. All equipment ~~shall~~ must be in place and tested 15 minutes in advance of the time the Court is called to order and ~~shall~~ must be unobtrusive. All wiring, until made permanent, ~~shall~~ must be safely and securely taped to the floor along the walls.

(e) Only existing courtroom lighting ~~shall~~ may be used.

Advisory Committee Comment—~~1994~~2008 Amendments

This rule ~~is~~was initially derived from the ~~current~~ local rules of three districts.

~~It appears that this rule is desired by the benches of three districts and it may be useful to have an articulated standard for the guidance of lawyers, litigants, the press, and the public.~~

The Supreme Court adopted rules allowing cameras in the courtrooms in limited circumstances, and it is inappropriate to have a written rule that does not accurately state the standards which lawyers are expected to follow. *See In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, No. C7-81-300 (Minn. Sup. Ct. May 22, 1989). The court has ordered an experimental program for videotaped recording of proceedings for the official record in the Third, Fifth and Seventh Judicial Districts. In re Videotaped Records of Court Proceedings in the Third, Fifth, and Seventh Judicial Districts, No. C4-89-2099 (Minn. Sup. Ct. Nov. 17, 1989) (order). The proposed local rule is intended to allow the local courts to comply with the broader provisions of the Supreme Court Orders, but to prevent unauthorized use of cameras in the courthouse where there is no right to access with cameras.

~~This rule is amended in 1994 to make it unnecessary for local courthouses to obtain Supreme Court approval.~~ The rule was amended in 2008 to add Rule 4.02, comprising provisions that theretofore were part of the Minnesota Rules of Judicial Conduct. This change is not intended to be substantive in nature, but the provisions are moved to the court rules so they are more likely to be known to litigants. Canon 3(A)(11) of the Minnesota Code of Judicial Conduct is amended to state the current obligation of judges to adhere to the rules relating to court access for cameras and other electronic reporting equipment.

The extensive amendment of Rule 4 in 2008 reflects decades of experience under a series of court orders dealing with the use of cameras in Minnesota courts. *See In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, Order re: Audio and Video Coverage of Trial Court Proceedings, No. C7-81-300 (Minn. Sup. Ct. April 18, 1983); *Order Permitting Audio and Video Coverage of Supreme Court Proceedings*, No. C6-78-47193 (Minn. Sup. Ct. April 20, 1983); *Amended Order Permitting Audio and Video Coverage of Appellate Court Proceedings*, No. C7-81-3000 (Minn. Sup. Ct. Sept. 28, 1983); *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct to Conduct and Extend the Period of Experimental Audio and Video Coverage of Certain Trial Court Proceedings*, Order, C7-81-300 (Minn. Sup. Ct. Aug. 21, 1985); *In re Modification of Canon 3A(7) of the Minnesota*

Code of Judicial Conduct, Order re: Audio and Video Coverage of Trial Court Proceedings (Minn. Sup. Ct. May 22, 1989); and *In re Modification of Canon 3A(10) of the Minnesota Code of Judicial Conduct*, Order, No. C7-81-3000 (Minn. Sup. Ct. Jan. 11, 1996)(reinstating April 18, 1983, program and extending until further order of Court). The operative provisions of those orders, to the extent still applicable and appropriate for inclusion in a court rule, are now found in Rule 4.

Amended Rule 4.01 defines how this rule dovetails with other court rules that address issues of recording or display of recorded information. The primary thrust of Rule 4 is to define when media access is allowed for the recording or broadcast of court proceedings. Other rules establish limits on access to or use of court-generated recordings, such as court-reporter tapes and security tapes. *See, e.g.*, Minnesota Rules of Public Access to Records of the Judicial Branch.

Amended Rules 4.02(a) & (b) are drawn from Canon 3A(11)(a) & (b) of the Minnesota Code of Judicial Conduct prior to its amendment in 2008. Rule 4.02(c) and the following sections (i) through (vii) are taken directly from the Standards of Conduct and Technology Governing Still Photography, Electronic and Broadcast Coverage of Judicial Proceedings, Exhibit A to *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, Order re: Audio and Video Coverage of Trial Court Proceedings, No. C7-81-300 (Minn. Sup. Ct. April 18, 1983)

Amended Rule 4.04 establishes rules applicable to the appellate courts, and is drawn directly from *Amended Order Permitting Audio and Video Coverage of Appellate Court Proceedings*, No. C7-81-3000 (Minn. Sup. Ct. Sept. 28, 1983).

MINORITY REPORT AND RECOMMENDATION

The majority argues that the proponents of a more liberal rule regarding cameras in the courtroom (*i.e.*, permitting them in certain cases without the unanimous consent of the parties and the judge) have not met their burden of proving that doing so will improve the administration of justice. If that is the burden which must be met, they may be correct.

The minority, however, challenges the proposition that those proposing a more liberal rule have such a burden. We approach the problem with a frame of mind that a more liberal rule should be adopted unless it can be shown that doing so is likely to degrade the administration of justice by our trial courts. Approaching it from that perspective, we submit that opponents of a more liberal rule have failed to meet their burden of showing that such will degrade or detract from the quality of administration of justice in Minnesota's trial courts.

The First Amendment to the United States Constitution and Article I, Section 3 of the Minnesota Constitution guarantee freedom and liberty of the press. No one argues that the press, as representatives of the people in a sense, should not be allowed to observe trial court proceedings, report them, or to publish sketches of the participants. At the same time, no one argues that the courts cannot, at least for good cause, prohibit the use of cameras in the courtrooms. In the past many courts have done so, and some still do. The justifications for doing so have traditionally been to protect the privacy of some litigants, *e.g.*, juveniles, and to prevent disruption of court proceedings.

The rule which we propose, and which is essentially the rule that has been in effect in Minnesota since 1983, (minus the parties' veto power), prohibits camera coverage in every conceivable case where privacy is a concern, such as in juvenile and children in need of protection (CHIPS) cases, family law cases, domestic abuse and sexual abuse cases, and in certain other kinds of proceedings. *See* proposed Rule 4.02(c)(vi). It gives the trial judge discretion to prohibit photography of a witness who requests not to be photographed. It prohibits camera coverage of *voir dire*, and of the jury at any time. It gives the trial judge discretion to prohibit camera coverage entirely for good cause, on a case-by-case basis.

The minority's proposed rule would adopt the majority proposal with two substantively important, although not extensive, changes. The first change is in Rule 4.02(c), beginning on line 75 of the majority report (minority report changes are shown in ***bold italicized*** text compared to the majority report language):

(c) upon the consent of the trial judge ~~***and all parties***~~ in writing or made on the record prior to the commencement of the trial, the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

The second change is in Rule 4.02(c)(ii) beginning on line 81 of the majority report (minority report changes are shown in ***bold italicized*** text compared to the majority report language):

(ii) ***At the discretion of the trial judge, t***~~T~~here shall be no audio or video coverage of any witness who objects thereto in writing or on the record before testifying.

Disruption of proceedings and distraction are no longer an issue. Gone are the large, noisy cameras, still and motion picture, of days gone by. Today's cameras are small, quiet and unobtrusive.

We believe that since the courts do the public's business, the public should have as great an opportunity as possible to see and know of what their courts are doing. Certainly any member of the public can come down to the courthouse any time to personally observe most proceedings. Realistically, it is not possible or feasible for most people to do so. Most have to rely on the media to know what is going on in the courts.

The public is accustomed to getting, as an important part of its news, photographs and video as an aid to understanding the news – what is going on in the world and in their community. Photographs and video clips of courtroom scenes which are of interest to the

public will enhance their understanding of the proceedings and, we think, enhance their appreciation for what their courts are doing.

The committee received objections, oral and written, to a change in the rule from almost every conceivable quarter: prosecutors, public defenders, criminal defense lawyers, civil trial lawyers and victim's rights advocates. Many of those objections dealt with such things as protections for juveniles, sexual abuse victims and domestic abuse victims. Those concerns are met in the proposed rule. As for general objections to the basic concept of cameras, no evidence at all was provided to show that the presence of cameras in the courtroom is likely to be a distraction or that images broadcast by the media were likely to cause any harm to the courts or the litigants. The objectors offered nothing but unsubstantiated fear of change and fear of the unknown.

Were we to have employed a *Frye-Mack* test (*see State v. Mack*, 292 N.W.2d 764 (Minn. 1980) to those who spoke against a liberalization of the rule and warned of dire consequences, none would have been permitted to offer their opinions because none had any experience whatsoever with cameras in courtrooms; and clearly the proposition that cameras in courtrooms are undesirable has not gained general acceptance in the courts of the several states, since a large majority of the states permit cameras in their trial courts, and many have done so for many years.

Significantly, what the committee did *not* hear were comments from persons experienced with cameras in the courtroom who believed it was a bad idea, or who had experienced problems.

We are told that 35 states permit cameras in their courtrooms on a more liberal basis than does Minnesota. Our neighbors Wisconsin, Iowa and North Dakota routinely permit use of cameras in their courtrooms and have done so for many years. In March 2008 our last remaining camera-less neighbor, South Dakota, repealed a law that has prohibited radio and television broadcasting and the taking of photographs in trial-level courtrooms.

No judge from any state where cameras have been permitted in the trial courts addressed the committee, either in person or in writing, to express any reservations about the concept or to tell us of any problems encountered in their states.

No prosecutor or prosecutor's association, no public defender or criminal defense lawyer or association of them, no victim's rights advocate or victim's rights advocates group, no civil litigation attorneys or associations of them from any state which permits cameras in their courtrooms appeared before the committee to lend credence to the concerns expressed by Minnesota prosecutors, criminal defense lawyers, civil litigators or victim's rights advocates. If, indeed, problems are likely to arise in Minnesota as a result of the introduction of cameras in the courtrooms, one would expect that such problems would have arisen in other states and that those opposed to cameras would have arranged for the committee to be made aware of the existence of such problems.

The committee was addressed by the Hon. Norman Yackel of Sawyer County, Wisconsin, and the Hon. Patrick Grady of Cedar Rapids, Iowa, both trial court judges. Each told us that cameras have been allowed in the trial courts of their states for many years and that there have been no problems with them. In fact, they found it somewhat curious that Minnesota is engaged in a debate over the concept which has been so well accepted and considered to be mundane and routine in their court systems.

Judge Yackel presided over the trial of Chai Vang of Saint Paul, who was charged with the murder of six hunters in Wisconsin in 2004. There was considerable public and media interest in the Twin Cities. Twin Cities media covered the trial, held in Hayward, Wisconsin, and no doubt broadcast still photos and video footage of courtroom proceedings, since cameras are allowed in Wisconsin courtrooms. Judge Yackel told the committee that the presence of cameras during that trial created no problems whatsoever. No one brought to the attention of the committee any complaints or concerns with the way the Twin Cities television media reported on that trial.

Persons opposed to cameras in courtrooms typically cite the O.J. Simpson trial and the Florida judge in the Anna Nicole Smith case as examples of why cameras should be prohibited. When one considers the many thousands of trials and other courtroom proceedings which have likely been covered by media with cameras in the courtrooms in 35 states, and the fact that only two of them appear to have shown the court system in a bad light, it seems that the chances of anything of a similar nature happening in a Minnesota courtroom are slim, indeed.

The Rule adopted by the Minnesota Supreme Court on April 18, 1983, and appended to Canon 3 of the Code of Judicial Conduct was well thought out and is essentially the Rule which the Minority proposes with only one significant difference. The veto power of the parties and witnesses to the presence of cameras in the courtroom has been eliminated, and has been entrusted to the discretion of the trial judge. The many restrictions contained in the current rule are continued in the proposed rule.

The 1983 Rule was a good one, but unfortunately never used, insofar as we can tell. There have been no reports of any Minnesota trial proceedings at which cameras have been authorized since the rule was adopted, apparently because there has never been a case in which both sides agreed to it.

We urge the Court to adopt the Minority's proposed amendment to Rule 4, General Rules of Practice.

Respectfully submitted,

Hon. Steven J. Cahill
Hon. Elizabeth Anne Hayden
Linda M. Ojala