

# COURT NOTICES

## AMENDMENT OF RULE

### Rules of the Chief Administrator of the Courts

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend Part 131 of the Rules of the Chief Administrator of the Courts, relating to audio-visual coverage of judicial proceedings, to read as follows, effective March 1, 2016:

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#### PART 131. Audio-Visual Coverage of Judicial Proceedings Section 131.1 Purpose; general provisions.

[(a)] These rules are promulgated to comport with the legislative finding that an enhanced public understanding of the judicial system is important in maintaining a high level of public confidence in the Judiciary, and with the legislative concern that cameras in the courts be compatible with the fair administration of justice.

(b) These rules shall be effective for any period when audio-visual coverage in the trial courts is authorized by law and shall apply in all counties in the State. ]

*(a) In order to maintain the broadest scope of public access to the courts, to preserve public confidence in the Judiciary, and to foster public understanding of the role of the Judicial Branch in civil society, it is the policy of the Unified Court System to facilitate the audio-visual coverage of court proceedings to the fullest extent permitted by the New York Civil Rights Law and other statutes, as interpreted by New York courts, pursuant to the rules set forth below.*

*(b) Audio-visual coverage of proceedings in which the testimony of parties or witnesses by subpoena or other compulsory process is or may be taken is prohibited. (See, Civil Rights Law § 52.)*

*(c) Audio-visual coverage of party or witness testimony in any court proceeding (other than a plea at an arraignment) is prohibited.*

(d) Nothing in these rules is intended to restrict any preexisting right of the news media to appear at and to report on judicial proceedings in accordance with law.

[(d)](e) Nothing in these rules is intended to restrict the power and discretion of the presiding trial judge to control the conduct of judicial proceedings.

[(e)](f) No judicial proceeding shall be scheduled, delayed, reenacted or continued at the request of, or for the convenience of, the news media.

[(f)](g) In addition to their specific responsibilities as provided in these rules, all presiding trial judges and all administrative judges shall take whatever steps are necessary to insure that audio-visual coverage is conducted without disruption of court activities, without detracting from or interfering with the dignity or decorum of the court, courtrooms and court facilities, without compromise of the safety of persons having business before the court, and without adversely affecting the administration of justice.

#### Section 131.2 Definitions.

For purposes of this Part:

(a) “Administrative judge” shall mean the administrative judge of each judicial district; the administrative judge of Nassau County or of Suffolk County; the administrative judge of the Civil Court of the City of New York, the Criminal Court of the City of New York or the Family Court of the City of New York; or the presiding judge of the Court of Claims.

(b) “Audio-visual coverage” or “coverage” shall mean the electronic broadcasting or other transmission to the public of radio or television signals from the courtroom, *or* the recording of sound or light in the courtroom for later transmission or reproduction, or the taking of [still or] motion pictures in the courtroom by the news media. *To the extent required by law, it shall also mean the taking of still pictures.*

(c) “News media” shall mean any news-reporting or news-gathering agency and any employee or agent associated with such agency, including television, radio, radio and television networks, news services, newspapers, magazines, trade papers, in-house publications, professional journals, or any other news-reporting or news-gathering agency, the function of which is to inform the public or some segment thereof.

(d) “Presiding trial judge” shall mean the justice or judge presiding over judicial proceedings at which audio-visual coverage is authorized pursuant to this Part.

[(e)] “Covert” or “undercover capacity” shall mean law enforcement activity involving criminal investigation by peace officers or police officers who usually and customarily wear no uniform, badge or other official identification in public view.

(f)](e) “Judicial proceedings” shall mean the proceedings of a court or a judge thereof conducted in a courtroom or any other facility being used as a courtroom.

[(g)](f) “Child” shall mean a person who has not attained the age of 16 years.

[(h)](g) “Arraignment” shall have the same meaning as such term is defined in subdivision nine of section 1.20 of the Criminal Procedure Law.

(i) “Suppression hearing” shall mean a hearing on a motion made pursuant to the provisions of section 710.20 of the Criminal Procedure Law; a hearing on a motion to determine the admissibility of any prior criminal, vicious or immoral acts of a defendant; and any other hearing held to determine the admissibility of evidence.

(j) “Nonparty witness” shall mean any witness in a criminal trial proceeding who is not a party to such proceeding; except an expert or professional witness, a peace or police officer who acted in the course of his or her duties and was not acting in a covert or undercover capacity in connection with the instant court proceedings, or any government official acting in an official capacity, shall not be deemed to be a “nonparty witness”.

(k) “Visually obscured” shall mean that the face of a participant in a criminal trial proceeding shall either not be shown or shall be rendered visually unrecognizable to the viewer of such proceeding by means of special editing by the news media. ]

#### Section 131.3 Application for audio-visual coverage.

(a) Coverage of judicial proceedings shall be permitted only upon order of the presiding trial judge approving an oral or written application made by a representative of the news media for permission to conduct such coverage.

[(b)]

(1) Except as provided in paragraph (2) of this subdivision, an application for permission to conduct coverage of a judicial proceeding shall be made to the presiding trial judge not less than seven days before the scheduled commencement of that proceeding. Where circumstances are such that an applicant cannot reasonably apply more

than seven days before commencement of the proceeding, the presiding trial judge may shorten the time period. The application shall be in writing and shall specify such proceeding with sufficient particularity to assist the presiding trial judge in considering the application, and shall set forth which of the types of coverage described in subdivision (b) of section 131.2 of this Part is sought, including whether live coverage is sought. Upon receipt of any application, the presiding trial judge shall cause all parties to the proceeding to be notified thereof.

(2) An application for permission to conduct coverage of an arraignment in a criminal case or of any other proceeding after it has commenced may be made to the presiding trial judge at any time and shall be otherwise subject to the provisions of paragraph (1) hereof.

(3) Each application shall relate to one case or proceeding only, unless the presiding trial judge permits otherwise.

(c) Where more than one representative of the news media makes an application for coverage of the same judicial proceeding, such applications shall be consolidated and treated as one.

#### Section 131.4 Determination of the application.

(a)](b) Upon receipt of an application [pursuant to section 131.3], the presiding trial judge shall conduct such review as may be appropriate, including:

(1) consultation with the news media applicant;

(2) consultation with counsel to all parties to the proceeding of which coverage is sought, who shall be responsible for identifying any concerns or objections of the parties, prospective witnesses, and victims, if any, with respect to the proposed coverage, and advising the court thereof;

(3) review of all statements or affidavits presented to the presiding trial judge concerning the proposed coverage.

Where the proceedings of which coverage is sought involve a child, a victim, [a prospective witness,] or a party, any of whom object to such coverage, and in any other appropriate instance, the presiding trial judge may hold such conferences and conduct any direct inquiry as may be fitting.

[(b)](c)

[(1)] Except as otherwise provided by law [in paragraphs (2) and (3) hereof] or section 131.[8]7 of this Part, consent of the parties[, prospective witnesses, victims] or other participants in judicial proceedings of which coverage is sought is not required for approval of an application for such coverage.

[(2)] An application for audio-visual coverage of a trial proceeding in which a jury is sitting, made after commencement of such proceeding, shall not be approved unless counsel to all parties to such proceeding consent to such coverage; provided, however, this paragraph shall not apply where coverage is sought only of the verdict or sentencing, or both, in such proceeding.

(3) Counsel to each party in a criminal trial proceeding shall advise each nonparty witness that he or she has the right to request that his or her image be visually obscured during said witness' testimony, and upon such request the presiding trial judge shall order the news media to visually obscure the visual image of the witness in any all audio-visual coverage of the judicial proceeding.

(c)](d) In determining an application for coverage, the presiding trial judge shall consider all relevant factors, including but not limited to:

(1) the type of case involved;

(2) whether the coverage would cause harm to any participant;

(3) whether the coverage would interfere with the fair administration of justice, the advancement of a fair trial, or the rights of the parties;

[(4)] whether any order directing the exclusion of witnesses from the courtroom prior to their testimony could be rendered substantially ineffective by allowing audio-visual coverage that could be viewed by such witnesses to the detriment of any party;

(5)](4) whether the coverage would interfere with any law enforcement activity;

[(6)](5) whether the proceedings would involve lewd or scandalous matters;

[(7)](6) the objections of any of the parties, [prospective wit-

nesses,] victims or other participants in the proceeding of which coverage is sought;

[(8)](7) the physical structure of the courtroom and the likelihood that any equipment required to conduct coverage of proceedings can be installed and operated without disturbance to those proceedings or any other proceedings in the courthouse; and

[(9)](8) the extent to which the coverage would be barred by law in the judicial proceeding of which coverage is sought.

The presiding trial judge also shall consider and give great weight to the fact that any party, [prospective witness,] victim, or other participant in the proceeding is a child.

[(d)](e) Following review of an application for coverage of a judicial proceeding, the presiding trial judge, as soon as practicable, shall issue an order, in writing *or on the record in open court*, approving such application, in whole or in part, or denying it. Such order shall contain any restrictions imposed by the judge on the audio-visual coverage and shall contain a statement advising the parties that any violation of the order is punishable by contempt pursuant to article 19 of the Judiciary Law. Such order shall be included in the record of such proceedings and, unless it wholly approves the application and no party[, or victim [or prospective witness]] objected to coverage, it shall state the basis for its determination.

[(e)](f) Before denying an application for coverage, the presiding trial judge shall consider whether such coverage properly could be approved with the imposition of special limitations, including but not limited to:

(1) delayed broadcast of the proceedings subject to coverage provided, however, where delayed broadcast is directed, it shall be only for the purpose of assisting the news media to comply with the restrictions on coverage provided by law or by the presiding trial judge; *or*

(2) modification or prohibition of *video or* audio-visual coverage of [individual parties, witnesses, or other trial participants, or] portions of the proceedings[; or].

[(3)] modification or prohibition of video coverage of individual parties, witnesses, or other trial participants, or portions of the proceedings.]

#### Section 131.[5]4 Review.

[(a)] Any order determining an application for permission to provide coverage, rendered pursuant to section 131.4(d) of this Part, shall be subject to review by the administrative judge in such form, including telephone conference, as he or she may determine, upon the request of a person who is aggrieved thereby and who is either:

(1) a news media applicant; or

(2) a party, victim, or prospective witness who objected to coverage.

(b) Upon review of a presiding trial judge's order determining an application for permission to provide coverage, the administrative judge shall uphold such order unless it is found that the order reflects an abuse of discretion by the presiding trial judge, in which event the administrative judge may direct such modification of the presiding trial judge's order as may be deemed appropriate. Any order directing a modification or overruling a presiding trial judge's order determining an application for coverage shall be in writing.

(c) No judicial proceeding shall be delayed or continued to allow for review [by an administrative judge] of an order denying coverage in whole or in part.

[(d)] This section shall authorize review by the administrative judge only of a presiding trial judge's order pursuant to paragraph (b) of subdivision three of section 218 of the Judiciary Law, determining an application for permission to provide coverage of judicial proceedings and shall not authorize review of any other orders or decisions of the presiding trial judge relating to such coverage.]

#### Section 131.[6]5 Mandatory pretrial conference.

(a) Where a presiding trial judge has approved, in whole or in part, an application for coverage of any judicial proceeding, the judge, before any such coverage is to begin, shall conduct a pretrial conference for the purpose of reviewing, with counsel to all parties to the proceeding and with representatives of the news media who will provide such coverage, any objections to coverage that have been

raised, the scope of coverage to be permitted, the nature and extent of the technical equipment and personnel to be deployed, and the restrictions on coverage to be observed. The court may include in the conference any other person whom it deems appropriate, including prospective witnesses and their representatives. [In an appropriate case, the presiding trial judge may conduct the pretrial conference concurrently with any consultations or conferences authorized by subdivision (a) of section 131.4.]

(b) Where two or more representatives of the news media are parties to an approved application for coverage, no such coverage may begin until all such representatives have agreed upon a pooling arrangement for their respective news media prior to the pretrial conference. Such pooling arrangement shall include the designation of pool operators and replacement pool operators for the electronic and motion picture media and for the still photography media, as appropriate. It also shall include procedures for the cost-sharing and dissemination of audio-visual material and shall make due provision for educational users' needs for full coverage of entire proceedings. The presiding trial judge shall not be called upon to mediate or resolve any dispute as to such arrangement. Nothing herein shall prohibit a person or organization that was not party to an approved application for coverage from making appropriate arrangements with the pool operator to be given access to the audio-visual material produced by the pool.

(c) In determining the scope of coverage to be permitted, the presiding trial judge shall be guided by a consideration of all relevant factors, including those prescribed in subdivision [(c)](d) of section 131.4[3] of this Part. Wherever necessary or appropriate, the presiding trial judge shall, at any time before or during the proceeding, proscribe coverage or modify, expand, impose, or remove special limitations on coverage[, such as those prescribed in subdivision (e) of section 131.4].

Section 131.7[6] Use and deployment of equipment and personnel by the news media.

(a) Limitations upon use of equipment and personnel in the courtroom.

(1) No more than two electronic or motion picture cameras and two camera operators shall be permitted in any proceeding.

(2) No more than [one] *two* photographers to operate [two] *one* still camera[s] *each*[, with not more than two lenses for each camera,] shall be permitted in any proceeding.

(3) No more than one audio system for broadcast purposes shall be permitted in any proceeding. Audio pickup for all news media purposes shall be effectuated through existing audio systems in the court facility. If no technically suitable audio system is available, microphones and related wiring essential for media purposes shall be supplied by those persons providing coverage. Any microphones and sound wiring shall be unobtrusive and placed where designated by the presiding trial judge.

(4) Notwithstanding the provisions of paragraphs (1)-(3) of this subdivision, the presiding trial judge on a finding of special circumstances may modify any restriction on the amount of equipment or number of operating personnel in the courtroom, compatible with the dignity of the court or the judicial process.

(b) Sound and light criteria.

(1) Only electronic and motion picture cameras, audio equipment and still camera equipment that do not produce distracting sound or light may be employed to cover judicial proceedings. [The equipment designated in Appendix A of this Part shall be deemed acceptable.

(2) Use of equipment other than that authorized in Appendix A of this Part may be permitted by the presiding trial judge provided the judge is satisfied that the equipment sought to be utilized meets the sound and light criteria specified in paragraph (1) of this subdivision. A failure to obtain advance approval shall preclude use of such equipment in the coverage of the judicial proceeding.

(3)[2] No motorized drives, moving lights, flash attachments, or sudden lighting changes shall be permitted during coverage of judicial proceedings.

[(4)](3) No light or signal visible or audible to trial participants

shall be used on any equipment during coverage to indicate whether it is operating.

[(5)](4) With the concurrence of the presiding trial judge and the administrative judge, modifications and additions may be made in light sources existing in the court facility, provided such modifications or additions are installed and maintained at media expense and are not distracting or otherwise offensive.

(c) Location of equipment and personnel. Electronic and motion picture cameras, still cameras, and camera personnel shall be positioned in such locations as shall be designated by the presiding trial judge. The areas designated shall provide the news media with reasonable access to the persons they wish to cover while causing the least possible interference with court proceedings. Equipment that is not necessary for audio-visual coverage from inside the courtroom shall be located in an area outside the courtroom.

(d) Movement of equipment and media personnel. During the proceedings, operating personnel shall not move about, nor shall there be placement, movement or removal of equipment, or the changing of film, film magazines or lenses. All such activities shall take place each day before the proceeding begins, after it ends, or during a recess.

(e) Identifying insignia. Identifying marks, call letters, words, and symbols shall be concealed on all equipment. Persons operating such equipment shall not display any identifying insignia on their clothing.

(f) Other restrictions. The presiding trial judge may impose any other restriction on the use and deployment of equipment and personnel as may be appropriate.

Section 131.8[7] Additional restrictions on coverage.

(a) No audio pickup or audio broadcast of conferences that occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding trial judge, shall be permitted without the prior express consent of all participants in the conference.

(b) No conference in chambers shall be subject to coverage.

(c) No coverage of the selection of the prospective jury during voir dire shall be permitted.

(d) No coverage of the jury, or of any juror or alternate juror, while in the jury box, in the courtroom, in the jury deliberation room, or during recess, or while going to or from the deliberation room at any time, shall be permitted provided, however, that, upon consent of the foreperson of a jury, the presiding trial judge may, in his or her discretion, permit audio coverage of such foreperson delivering a verdict.

[(e)] No coverage shall be permitted of a witness, who as a peace officer or police officer acted in a covert or undercover capacity in connection with the proceedings being covered, without the prior written consent of such witness.

(f) No coverage shall be permitted of a witness, who as a peace officer or police officer is currently engaged in a covert or undercover capacity, without the prior written consent of such witness.

[(g)](e) No coverage shall be permitted of the victim in a prosecution for rape, sodomy, sexual abuse, or other sex offense under article 130 or section 255.25 of the Penal Law; notwithstanding the initial approval of a request for audio-visual coverage of such a proceeding, the presiding trial judge shall have discretion throughout the proceeding to limit any coverage that would identify the victim[, except that said victim can request of the presiding trial judge that audio-visual coverage be permitted of his or her testimony, or in the alternative the victim can request that coverage of his or her testimony be permitted but that his or her image shall be visually obscured by the news media, and the presiding trial judge in his or her discretion shall grant the request of the victim for the coverage specified].

[(h)](f) No coverage of any participant shall be permitted if the presiding trial judge finds that such coverage is liable to endanger the safety of any person.

[(i)](g) No coverage of any judicial proceedings that are by law closed to the public, or that may be closed to the public and that have been closed by the presiding trial judge, shall be permitted.

[(j)](h) No coverage of any [arraignment or] suppression hearing shall be permitted without the prior consent of all parties to the proceeding[; provided, however, where a party is not yet represented by counsel, consent may not be given unless the party has been ad-

vised of his or her right to the aid of counsel pursuant to subdivision 4 of section 170.10 or 180.10 of the Criminal Procedure Law and the party has affirmatively elected to proceed without counsel at such proceeding].

[(k) No audio-visual coverage shall be permitted which focuses on or features a family member of a victim or a party in the trial of a criminal case, except while such family member is testifying. Audio-visual coverage operators shall make all reasonable efforts to determine the identity of such persons, so that such coverage shall not occur. The restrictions specified in subdivisions (a) through (k) may not be waived or modified except as provided herein.]

Section 131.[9]8 Supervision of audio-visual coverage.

(a) Coverage of judicial proceedings shall be subject to the continuing supervision of the presiding trial judge. No coverage shall take place within the courtroom, whether during recesses or at any other time, when the presiding trial judge is not present and presiding.

(b) Notwithstanding the approval of an application for permission to provide coverage of judicial proceedings, the presiding trial judge shall have discretion throughout such proceedings to revoke such approval or to limit the coverage authorized in any way. [In the exercise of this discretion, the presiding trial judge shall be especially sensitive and responsive to the needs and concerns of all parties, victims, witnesses, and other participants in such proceedings, particularly where the proceedings unnecessarily threaten the privacy or sensibilities of victims, or where they involve children or sex offenses or other matters that may be lewd or scandalous. The presiding trial judge shall be under a continuing obligation to order the discontinuation or modification of coverage where necessary to shield the identity or otherwise insure the protection of any such person, party, witness, or victim, or in order to preserve the welfare of a child.]

(c) Counsel to each party in a trial proceeding that is subject to coverage shall inquire of each witness that he or she intends to call regarding any concerns or objections such witness might have with respect to coverage. Where counsel thereby is advised that a witness objects to coverage, counsel shall so notify the presiding trial judge.

Section 131.10 Cooperation with committee.

(a) All officers and employees of the Unified Court System, and all participants in proceedings where audio-visual coverage was permitted, including judges, attorneys and jurors, shall cooperate with the committee to review audio-visual coverage of court proceedings in connection with the committee's review of the impact of audio-visual coverage on such proceedings.]

Section 131.[11]9 Appellate courts.

These rules shall not apply to coverage of proceedings in appellate courts or affect the rules governing such coverage contained in Part 29 of the Rules of the Chief Judge (22 NYCRR Part 29).

Section 131.1[2]0 Forms.

The Chief Administrator will promulgate and make available forms for applications [pursuant to section 131.3] and [for] judicial orders pursuant to section 131.[4]3 of this Part.

[Section 131.13 Acceptable equipment.

The following equipment shall be deemed acceptable for use in audio-visual coverage of trial court proceedings pursuant to Part 131 of the Rules of the Chief Administrator of the Courts:

(a) Video cameras.

Sony:BVP-3, BVP-3A, BVP-3U, BVP-5, BVP-30, BVP-33Am, BVP-50J, BVP-110, BVP- 150, BVP-250, BVP-300, BVU-300, BVV-1, BVV-5, DXC-3000, M-3

Ikegami:HL-79, HL-79D, HL-79E, HL-83, HL-95, ITC-170, SP-3A, 75-D, 79-E, 95, 730, 730a, 730ap

JVC:KY-1900, KY-2000, KY-2700, BY-110

RCA:TK-76

Thompson:501, 601

NEC:SP-3A

Sharp:XC-800

Panasonic:X-100 (the recam system in a camera/recorder combination)

Ampex:Betacam

(b) Still cameras.

Leica:M

Nikon: FE, F-3, FM-2, 2000

Canon:F-1, T-90

(c) Any other audio or video equipment may be used with the permission of the presiding trial judge.]

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Administrative Order AO/325/15 is hereby rescinded and annulled.

In addition, I hereby annul and rescind the following two forms previously promulgated for use pursuant to this Part 131:

1. Application for Permission to Conduct Audio-Visual Coverage
2. Order Determining Application for Audio-Visual Coverage

## AMENDMENT OF RULE

### Uniform Rules for the Supreme and County Courts

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend Section 202.70(b)(12) of the Uniform Rules for the Supreme and County Courts (Rules of the Commercial Division), and section 202.70(c), to read as follows, effective for all cases filed in the Commercial Division on or after December 1, 2015:

Section 202.70. Rules of the Commercial Division of the Supreme Court

(a) Monetary thresholds

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(b) Commercial cases

Actions in which the principal claims involve or consist of the following will be heard in the Commercial Division provided that the monetary threshold is met or equitable or declaratory relief is sought:

\* \* \*

(12) Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues [-- without consideration of the monetary threshold ]. *Where the applicable arbitration agreement provides for the arbitration to be heard outside the United States, the monetary threshold set forth in section 202.70(a) shall not apply.*

(c) Non-commercial cases

The following will not be heard in the Commercial Division even if the monetary threshold is met:

(1) Suits to collect professional fees;

(2) Cases seeking a declaratory judgment as to insurance coverage for personal injury or property damage;

(3) Residential real estate disputes, including landlord-tenant matters, and commercial real estate disputes involving the payment of rent only;

(4) *Home improvement contracts involving residential properties consisting of one to four residential units or individual units in any residential building, including cooperative or condominium units;*

[(4)](5) Proceedings to enforce a judgment regardless of the nature of the underlying case;

[(5)](6) First-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies; and

[(6)](7) Attorney malpractice actions except as otherwise provided in paragraph (b)(8).