

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8049

OFFICE OF  
APPELLATE COURTS

SEP 19 2014

**FILED**

**ORDER SETTING HEARING DATE AND ESTABLISHING  
DEADLINE FOR SUBMITTING COMMENTS ON PROPOSED  
PILOT PROGRAM FOR AUDIO AND VIDEO COVERAGE  
OF CERTAIN CRIMINAL PROCEEDINGS**

The Supreme Court Advisory Committee on the Rules of Criminal Procedure has recommended amendments to the General Rules of Practice to allow for audio and video coverage on a pilot basis of certain criminal proceedings. The court will consider the recommendations after soliciting and reviewing comments on the proposed amendments and pilot program. In addition, the court will hold a public hearing to provide an opportunity for further comments on the proposed amendments and pilot program. A copy of the committee's report and the proposed amendments to the General Rules of Practice are attached to this order.

**IT IS HEREBY ORDERED THAT:**

1. A hearing will be held before this court to consider the proposed amendments to the General Rules of Practice for a pilot program to allow for audio and video coverage of certain criminal proceedings. The hearing will take place in Courtroom 300, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota, on December 16, 2014, at 2:00 p.m.

2. Any person or organization desiring to make an oral presentation at the hearing in support of or in opposition to the proposed amendments and pilot program

shall file one copy of a written request to so appear, along with one copy of the material to be presented, with AnnMarie O'Neill, Clerk of Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. The request to appear and written materials shall be filed with the Clerk of Appellate Courts so as to be received no later than November 18, 2014.

3. Any person or organization wishing to provide only written comments in support of or opposition to the proposed amendments and pilot program shall submit one copy of those comments, addressed to AnnMarie O'Neill, Clerk of Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. Written comments shall be filed so as to be received no later than November 18, 2014.

Dated: September 19, 2014

BY THE COURT:

/s/

Lorie S. Gildea  
Chief Justice

**REPORT AND PROPOSED AMENDMENTS TO THE  
MINNESOTA GENERAL RULES OF PRACTICE**

**MINNESOTA SUPREME COURT ADVISORY COMMITTEE  
ON RULES OF CRIMINAL PROCEDURE**

**ADM10-8049**

**OFFICE OF  
APPELLATE COURTS**

**July 29, 2014**

**JUL 29 2014**

**FILED**

**Hon. Mark Wernick, Chair**

<b>Andrew Birrell</b>	<b>Timothy Richards</b>
<b>Helen Brosnahan</b>	<b>Prof. Ted Sampsell-Jones</b>
<b>Frederic Bruno</b>	<b>Heidi Schultz</b>
<b>Scott Christenson</b>	<b>Thomas Sieben</b>
<b>Richard Kyle</b>	<b>Hon. Robert Tiffany</b>
<b>Hon. Michelle Larkin</b>	<b>Greg Widseth</b>
<b>Daniel Lew</b>	<b>Hon. Jodi Williamson</b>
<b>Jessica Merz-Godes</b>	<b>Paul Young</b>
<b>Robert Plesha</b>	

**Hon. David Lillehaug  
Supreme Court Liaison**

**Karen Kampa Jaszewski  
Staff Attorney**

## **I. INTRODUCTION**

In an Order dated December 3, 2013 (File ADM09-8009), the Supreme Court directed the Committee to meet to “consider expanding the use of audio and video coverage without the consent of all parties to certain criminal proceedings where concerns previously expressed regarding witnesses and jurors are minimized or largely absent, such as arraignments, pretrial hearings, and sentencing proceedings.” From January through June 2014, the Committee met several times to consider the question raised by the Court. A majority of the Committee now recommends that Rule 4, Minnesota General Rules of Practice, be amended to include, on a pilot basis, audio and video coverage (without the consent of the parties) of sentencing proceedings and other proceedings that occur “after a guilty plea has been tendered or a guilty verdict has been returned.”

## **II. DISCUSSION**

### **A. The Committee’s Approach**

The Committee approached its discussion by separately addressing and voting on two questions: 1) whether or not the Committee should recommend a cameras in court pilot limited to proceedings occurring after guilt has been determined; and, 2) if the Supreme Court decides to establish a pilot, with or without Committee support, whether the Committee should recommend the particular pilot described below. By separating these issues, it was possible for Committee members to vote one way on the first question and the opposite way on the second. For example, a Committee member could vote against recommending a pilot (believing that there should be no expansion of cameras in court) but also vote in favor of the particular pilot described below in the event the Court were to implement a pilot without Committee support. One Committee member divided her votes that way. All other Committee members voted the same way on both questions.

In the end, eleven Committee members voted in favor of recommending a pilot and in favor of recommending the particular pilot described below. Four Committee members voted against recommending a pilot, three of whom also voted against recommending the particular pilot described below. As stated above, one Committee member voted against recommending a pilot, but voted in favor of the particular pilot described below (making twelve votes in favor of the proposed pilot) in the event the Court were to implement a pilot regardless of Committee support.

### **B. The Committee’s Discussion of Whether There Should be a Pilot**

At the outset of its deliberations, the Committee agreed that because detailed arguments for and against the expansion of audio and video coverage of court proceedings have already been well documented with the Court, the Committee would

not solicit further information on that subject from constituent groups or the general public. Instead, the Committee agreed that its "record" on cameras in court would consist of the following: 1) Minnesota Supreme Court Orders and attachments filed on December 3, 2013, March 11, 2011, November 19, 2010, and April 22, 2008, in File ADM09-8009, formerly CX-89-1863; 2) Marder, Nancy S., *The Conundrum of Cameras in the Courtroom*, 44 Ariz. St. L.J. 1489 (2012); and, 3) *Cameras in the Court: A State-By-State Guide*, Radio Television Digital News Association.

This report will not attempt to summarize the pros and cons of cameras in court as described in these documents. The following is a summary of the main points made by Committee members in support of or in opposition to expanding audio and video coverage of criminal proceedings.

#### 1. The Arguments against Expansion of Audio and Video Coverage

The main concerns raised by those Committee members opposed to any expansion include, but are not limited to the following:

- The public is not demanding increased coverage. The demand is coming from media companies whose goals will be more about higher ratings than public education. Because the media will utilize only snippets of the most salacious courtroom events, expanded coverage will not increase public knowledge of courtroom processes.
- Expanded coverage, even if limited to proceedings that occur after guilt has been determined, will further discourage victims and witnesses from coming forward for fear of identification and public exposure.
- Expanded coverage will increase the "public shaming" of defendants. This collateral consequence works against policies favoring rehabilitation.
- Expanded coverage will have a chilling effect on the defendant's right to allocution, especially when a defendant is seeking a downward departure or other mitigation of sentence.

#### 2. The Arguments for Expansion of Audio and Video Coverage

The Committee members who supported an expansion of audio and video coverage in criminal proceedings argued the following:

- There is a right of public access to criminal proceedings that is not adequately addressed by merely opening a courtroom door. Transparency is important, and the better public policy is to support more access to criminal proceedings. The potential for irresponsible journalism should not deter the Court from proceeding with a sounder public policy.

- “Shaming” of a defendant by the media may occur with or without audio and video coverage. Expanded audio and video coverage may diminish any such shaming because the media will more likely rely on courtroom images of the defendant rather than an unflattering booking photo.
- Because defendants are highly motivated to seek mitigation in sentencing, they will unlikely be deterred by expanded coverage of a sentencing hearing.
- Rules governing expanded coverage can fairly protect the privacy of victims and witnesses so that such coverage will not discourage them from coming forward.

### C. The Proposed Pilot

Minnesota General Rule of Practice 4 governs audio and video coverage of court proceedings in civil and criminal cases. The Committee agreed that rather than draft a proposed Rule of Criminal Procedure, any rules regarding audio and video coverage in criminal proceedings should be kept within Rule 4. This approach eliminates the need to consult both the Rules of Criminal Procedure and the General Rules of Practice on this issue, and recognizes the fact that Rule 4 already adequately addresses a number of issues, such as the technical standards that apply to audio and video coverage in criminal court proceedings. *See* Minn. Gen. R. Prac. 4.04. Thus the Committee used Rule 4 to guide its discussion, and recommends that the proposed amendments to Rule 4 outlined below be adopted on a pilot basis to test the expansion of audio and video coverage in criminal proceedings.

The contours of the proposed pilot are found in what would be a new Rule 4.02(d). This proposed rule contains the following features.

1. The pilot applies to “criminal proceeding[s] occurring after a guilty plea has been tendered or a guilty verdict has been returned.” Rule 4.02(d). This would include presentence hearings such as motions to withdraw guilty pleas and motions for a new trial. Because *Blakely* court trials often occur as part of the sentencing process, such trials are included in the proposed pilot. *Blakely* jury trials and trials that may occur after a guilty plea or guilty verdict has been vacated are excluded from the pilot. Rule 4.02(d)(i). The guilty plea/guilty verdict dividing line is designed to minimize or avoid any adverse effects that cameras in court may have on the guilt determination process.

2. Absent good cause, the trial judge must grant a media request for audio and video coverage of proceedings governed by the pilot. In determining whether good cause exists, the trial court must consider “(1) the privacy, safety, and well-being of the participants or other interested persons; (2) the likelihood that coverage will detract from the dignity of the proceeding; (3) the physical facilities of the court; and, (4) the fair administration of justice.” Rule 4.02(d). These factors require that the trial judge make a

decision based on the effect that coverage would have on a particular case rather than on the court's general views on cameras in court. The presumption favoring coverage is designed to provide the Court with sufficient data to decide future issues relating to audio and video coverage of criminal proceedings. It should be noted here that the pilot leaves unchanged the limitations on the media's and the parties' rights to appeal a trial court's decision on a media request for coverage. *See* Rule 4.03(d).

3. There can be no audio or video coverage of a crime victim's presentation to the court if the victim objects to such coverage in writing or orally on the record. Rule 4.02(d)(ii). In a case where a judge has authorized audio and video coverage, the judge may still deny coverage of any other particular participant based on factors described above. Rule 4.02(d) (the judge may deny coverage of a proceeding "or any part of it...").

4. Audio and video coverage is limited to proceedings occurring in the courtroom and only when the trial judge is presiding. Rule 4.02(d)(iii) and (iv). These limitations already apply to civil proceedings and to criminal proceedings where the parties have consented to coverage. Rule 4.02(c)(iii) and (iv).

5. There are no categorical exclusions of certain kinds of cases in proposed Rule 4.02(d). *Compare* Rule 4.02(c)(vi) (prohibiting audio and video coverage, notwithstanding the parties consent, of cases involving "police informants, relocated witnesses, sex crimes, trade secrets, [and] undercover agents . . ."). The Committee concluded that because a significant percentage of criminal cases involve police informants or sexual misconduct, too many cases would be excluded from the pilot by virtue of a categorical exclusion. Under the pilot, the trial judge has ample authority to limit coverage that would unfairly impact the privacy of the participants. That authority should be sufficient to protect the privacy interests involved.

By utilizing Minnesota General Rule of Practice 4.02 to define the pilot, it was necessary for the Committee to recommend amendments to Rule 4.03. That Rule currently governs procedural matters relating to audio and video coverage of civil proceedings. The recommended amendments to Rule 4.03 would result in the same procedures being applied to audio and video coverage of criminal proceedings under the pilot. *See* Rule 4.03(a) (and the introductory language preceding (a)). The recommended amendment to Rule 4.03(d) (governing appeals) is technical only; no substantive change is proposed.

The Committee understands that typically the Supreme Court, in consultation with the State Court Administrator, determines the scope of a pilot; and that usually a pilot will be limited to selected metro and non-metro counties and districts. The Committee respectfully recommends that in a matter as controversial as cameras in court, any pilot

should be carried out statewide so that defendants and victims throughout the state are treated the same.

The majority of the Committee believes that the proposed pilot will provide the Court with sufficient information to determine whether expanded coverage of criminal proceedings will advance a policy favoring public access without compromising the integrity of the judiciary, the privacy interests of victims, and rights of defendants.

Respectfully Submitted,

ADVISORY COMMITTEE ON  
RULES OF CRIMINAL PROCEDURE

## **PROPOSED AMENDMENTS**

The Supreme Court Advisory Committee on Rules of Criminal Procedure recommends that the following amendments be made in the Minnesota General Rules of Practice on a pilot basis to test the expansion of audio and video coverage in criminal proceedings. In the proposed amendment, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

### **GENERAL RULES OF PRACTICE**

#### **Rule 4. Pictures and Voice Recordings**

##### **Rule 4.01 General Rule**

Except as set forth in this rule, 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 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.

(Amended effective March 1, 2009.)

##### **Rule 4.02 Exceptions**

(a) A judge may authorize 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) A judge may authorize the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings.

(c) A judge may authorize, with the consent of all parties in writing or made on the record prior to the commencement of the trial in criminal proceedings, and without the consent of all parties in civil proceedings, 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 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 that take place outside the presence of the jury. Without limiting the generality of the foregoing sentence, such hearings in criminal proceedings 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. This provision does not prohibit audio or video coverage of appropriate pretrial hearings in civil proceedings, such as hearings on dispositive motions.

(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, undercover agents, and proceedings that are not accessible to the public.

(d) Notwithstanding lack of consent by the parties, upon receipt of notice from the media pursuant to Rule 4.03(a), a judge must, absent good cause, allow audio or video coverage of a criminal proceeding occurring after a guilty plea has been tendered or a guilty verdict has been returned. To determine whether there is good cause to prohibit coverage of the proceeding, or any part of it, the judge must consider (1) the privacy, safety, and well being of the participants or other interested persons; (2) the likelihood that coverage will detract from the dignity of the proceeding; (3) the physical facilities of the court; and, (4) the fair administration of justice. Coverage under this paragraph is subject to the following limitations:

(i) There must be no audio or video coverage of hearings before a jury to determine whether there are aggravating factors that would support an upward departure under the sentencing guidelines, or new pretrial and trial proceedings after a reversal on appeal or an order for a new trial.

(ii) There must be no audio or video coverage of a victim, as defined in Minn. Stat. § 611A.01(b), who objects to such coverage in writing or on the record.

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

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

**Rule 4.03 Procedures Relating to Requests for Audio or Video Coverage of Authorized District Court Civil Proceedings**

The following procedures apply to audio and video coverage of ~~civil~~district court proceedings where authorized under Rule 4.02(c) or (d):

(a) **Notice.** Unless notice is waived by the presiding judge, the media shall provide written notice of their intent to cover authorized district court ~~civil~~ proceedings by either audio or video means to the judge, all counsel of record, and any parties appearing without counsel as far in advance as practicable, and at least 10 days before the commencement of the hearing or trial. A copy of the written notice shall also be provided to the State Court Administrator's Court Information Office. The media shall also notify their respective media coordinator identified as provided under part (e) of this rule of the request to cover proceedings in advance of submitting the request to the trial judge, if possible, or as soon thereafter as possible.

(b) **Objections.** If a party opposes audio or video coverage, the party shall provide written notice of the party's objections to the presiding judge, the other parties, and the media requesting coverage as soon as practicable, and at least 3 days before the commencement of the hearing or trial in cases where the media have given at least 10 days' notice of their intent to cover the proceedings. The judge shall rule on any objections and make a decision on audio or video coverage before the commencement of the hearing or trial. However, the judge has the discretion to limit, terminate, or temporarily suspend audio or video coverage of an entire case or portions of a case at any time.

(c) **Witness Information and Objection to Coverage.** At or before the commencement of the hearing or trial in cases with audio or video coverage, each party shall inform all witnesses the party plans to call that their testimony will be subject to audio or video recording unless the witness objects in writing or on the record before testifying.

(d) **Appeals.** No ruling of the presiding judge relating to the implementation or management of audio or video coverage under this rule shall be appealable until the underlying matter becomes appealable~~trial has been completed~~, and then only by a party.

(e) **Media Coordinators.** Media coordinators for various areas of the state shall be identified on the main state court web site. The media coordinators shall facilitate interaction between the courts and the electronic media regarding audio or video coverage of authorized district court civil proceedings. Responsibilities of the media coordinators include:

(i) Compiling basic information (e.g., case identifiers, judge, parties, attorneys, dates and coverage duration) on all requests for use of audio or video coverage of authorized civil trial court proceedings for their respective court location(s) as identified on the main state court web site, and making aggregate forms of the information publicly available;

(ii) Notifying the Minnesota Court Information Office of all requests for audio and video coverage of civil trial court proceedings for their respective court location(s) as identified on the main state court web site;

(iii) Explaining to persons requesting video or audio coverage of civil trial court proceedings for their respective court location(s) the local practices, procedures, and logistical details of the court related to audio and video coverage;

(iv) Resolving all issues related to pooling of cameras and microphones related to video or audio coverage of civil trial court proceedings for their respective court location(s).