

FILED

July 2, 2018

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009

**ORDER PROMULGATING AMENDMENTS TO THE
GENERAL RULES OF PRACTICE FOR
THE DISTRICT COURTS**

By order filed August 12, 2015, we approved amendments to Rule 4 of the General Rules of Practice, establishing a pilot project that permits, without the consent of the parties, limited audio and video coverage of certain criminal proceedings in the district court. *Promulgation of Amendments to the Minn. Gen. R. Prac.*, No. ADM09-8009, Order at 1–2 (Minn. filed Aug. 12, 2015). Specifically, the pilot project permits coverage in criminal proceedings after a guilty plea has been tendered or a guilty verdict returned, without party consent. *See* Minn. R. Gen. Prac. 4.02(d). We directed the Advisory Committee on the Rules of Criminal Procedure to monitor the pilot project and make recommendations regarding further rule amendments, and recommendations regarding continuation, abandonment, or modification of the pilot, or permanent codification of the rules governing the pilot project.

On December 20, 2017, the Advisory Committee filed its report and recommendations, proposing to permanently codify, with some revisions, the rules that govern the pilot project. *Report & Proposed Amendments to the Minn. Rules*, Nos. ADM 10-8049, ADM 09-8009 (filed Dec. 20, 2017). The committee's report included an evaluation of the pilot project based on survey responses gathered from over 50

proceedings in which coverage requests were granted. On January 24, 2018, we opened a public-comment period and scheduled a public hearing for April 25, 2018. Written comments were submitted on behalf of nine organizations and by one individual. The Chair of the Advisory Committee, the Honorable Michelle Larkin, and representatives of six organizations spoke at the April 25 hearing.

We have carefully considered the committee's recommendations and evaluation of the permitted coverage in certain criminal cases, the oral and written comments, and the overall implementation and operation of the pilot project. After careful review, we have concluded that the rules that govern the pilot project should be permanently codified.

Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the attached amendments to the General Rules of Practice for the District Courts be, and the same are, prescribed and promulgated to be effective as of September 1, 2018. The rules as promulgated will be effective in all cases pending on, or filed on or after, the effective date.

Dated: July 2, 2018

BY THE COURT



Lorie S. Gildea
Chief Justice

THISSEN, J., not having been a member at the time of submission, took no part in the consideration or decision of this matter.

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009

MEMORANDUM

PER CURIAM.

In 2015, we adopted the recommendation of the Advisory Committee for the Rules of Criminal Procedure to establish a pilot project, through rule amendments, to evaluate the permitted use of audio or video coverage in certain criminal proceedings. Specifically, we authorized a pilot project in certain “cases and proceedings” with “additional safeguards and conditions” to govern the permitted coverage. *Promulgation of Amendments to the Minn. Gen. Rules of Prac.*, No. ADM 09-8009, Order at 2 (Minn. filed Aug. 12, 2015) (“2015 Pilot Order”). Coverage was permitted only at a certain stage in the proceedings: “after a guilty plea has been accepted or a guilty verdict has been returned.” Minn. Gen. R. Prac. 4.02(d). Coverage was prohibited in several instances: in treatment courts; in cases involving charges of criminal sexual conduct, or family or domestic violence; of testifying victims; and outside of the presence of the presiding judge. *See* Minn. Gen. R. Prac. 4.02(d)(i)-(vi).

The pilot project has been in place since November 10, 2015. During that time, the criminal rules committee, with assistance from State Court Administration, monitored the requests to cover proceedings, requested input regarding the impact of coverage that occurred in certain proceedings, and reviewed information—comments and other

responses—from courtroom participants and attendees, including parties, attorneys, judges, victims, media representatives, court staff, and other courtroom participants. The committee evaluated data drawn from the requests by media representatives to cover proceedings in 79 different cases. The committee also reviewed clips of media coverage from almost 50 cases. Coverage was permitted in 53 cases. Based on the data reviewed and evaluated, a majority of the committee concluded that the overall impact of permitted coverage on the proceedings ranged from neutral to positive. There was, in other words, minimal disruption of the proceedings and no instances of coverage outside the conditions established for the pilot project. *See* 2015 Pilot Order, Mem. at 18 (noting that among the goals of the pilot project was to evaluate whether the conditions imposed led to “balanced coverage while protecting the interests of all participants, including the defendant.”).

We agree with the conclusions reached by the majority of the committee. Proceedings in Minnesota’s courts, including criminal proceedings, are public. *See Minneapolis Star & Tribune Co. v. Kammeyer*, 341 N.W.2d 550, 559 (Minn. 1983); *State v. Schmit*, 139 N.W.2d 800, 802–03 (Minn. 1966). The results of the pilot project, in particular the input from courtroom participants and attendees about the permitted coverage, allow us to conclude that the conditions that govern the coverage of these public proceedings provide the appropriate balance between the fundamental right of a defendant to a fair trial and the judicial branch’s commitment to the fair, open, and impartial administration of justice. We thus turn to the committee’s specific recommendations.

First, the committee recommends that the rules governing the pilot project be permanently codified to govern media requests to cover post-guilt criminal proceedings.¹ We agree. We recognize that some committee members preferred continuation of the pilot project, based on a concern that fewer than expected requests to cover proceedings were made and granted. But without substantial changes to the structure of the pilot, we do not see that extending the pilot project will garner a significantly greater number of coverage requests. Even with the conditions in place, requests to cover proceedings were made and granted within days of the effective date of the pilot project. Nothing in the conditions that governed the pilot project suggests that media requests to cover proceedings were stymied by factors that would come to light, and could be addressed, if the pilot is continued without changes, and the committee does not recommend these sort of changes as a means to increase media coverage of criminal proceedings generally or post-guilt proceedings specifically. Thus, we can only conclude that the limited number of coverage requests during the pilot project may be wholly unrelated to the pilot project, i.e., the possibility that media resources were dedicated to news events other than post-guilt proceedings in Minnesota's district courts. In summary, we can identify no benefit to extending the pilot

¹ The committee also recommended that additional training be provided to district court judges and staff to address the logistics that came up during the pilot, i.e., questions regarding equipment placement, security screening, and the adequacy of pre-coverage communications among relevant participants. We agree, and we refer this recommendation to the appropriate personnel in State Court Administration. We also take this opportunity to express our sincere appreciation for the participation and work of the court staff and judges whose input proved crucial to the operation of the pilot project.

project in its current form because we do not see that a longer pilot will result in a significantly increased number of coverage requests.

Second, the committee recommends amendments to clarify and refine the category of domestic-violence proceedings in which coverage is generally prohibited, by confining the category of excluded cases to those in which the victim is defined as a family or household member under Minn. Stat. § 518B.01, subd. 2(b) (2016). The committee also recommends that cases with charges of murder committed while committing or attempting to commit criminal sexual conduct in the first or second degree be included in the category of *prohibited* coverage. See Minn. Stat. § 609.185(a)(2) (2016). We agree with both recommendations. These refinements to the language of the rule are consistent with the interests of privacy and safety that led to the exclusion of similar cases from the scope of permitted coverage.

But we do not accept the committee's recommendation to permit coverage of cases involving charges of domestic violence in which the victim is deceased. Victim concerns may be different in these cases, as the committee noted, but this difference does not change the fact that, as with other domestic-violence and sexual-misconduct cases, these cases often involve egregious and salacious facts. In addition, we are reluctant to establish divisions within this specific category of cases because to do so risks undermining the effort to foster balanced, fair, and open coverage that adequately protects the interests of victims and victims' family members. For similar reasons, we reject the request of some commenters to permit coverage in all criminal cases, regardless of the nature of the charges.

Third, the committee recommends amendments to clarify the circumstances in which a coverage request can be denied. Specifically, the committee recommends language that **establishes, clearly, that lack of consent to a coverage request is not good cause to deny that request, and that coverage is permitted in post-guilt proceedings even if a guilty plea is not accepted until the sentencing hearing. We agree that these recommended amendments will provide greater certainty and guidance for all participants, including media representatives.**

Fourth, the committee recommends amendments to Rule 4 to promote consistency in the permitted coverage between civil and criminal proceedings; to clarify when and how notices of intent to cover should be filed and provided to the parties; and to make revisions to the rule that are mostly in the nature of housekeeping. These amendments will assist court staff and courtroom participants in anticipating and adjusting to media requests to cover proceedings and therefore are approved.

We next consider requests by media representatives to shorten the time for notice of intent to cover proceedings. Currently, the rule requires at least 10 days' notice. Commenters noted that a shorter time frame could "simplify" the process for all involved, and would allow participants to better anticipate when coverage will actually occur, based on late-developing circumstances. The notice period is necessary to allow for appropriate planning and arrangements. As we have said, "a trial court must have control of its courtroom," *Kammeyer*, 341 N.W.2d at 559, and trial courts are responsible for "overseeing and regulating courtroom conduct and procedures during . . . criminal trials." *State v. Lindsey*, 632 N.W.2d 652, 658 (Minn. 2001). Having considered the input gathered

from the pilot, in particular the input of court staff regarding the logistics that often accompany a coverage request, we conclude that a decrease in the notice deadline—to 7 days—can be accommodated.

We approve the amendments with the changes explained here. We acknowledge the substantial work of the Advisory Committee on the Criminal Rules of Procedure, the contributions of the Communications Office of State Court Administration, and the court staff and judges who accommodated these requests and provided thoughtful and insightful feedback.

**AMENDMENTS TO THE MINNESOTA GENERAL RULES OF PRACTICE FOR THE
DISTRICT COURTS**

[Note: Deletions are indicated by a line drawn through the text; additions are underlined.]

RULE 4. ~~PICTURES AND VOICE~~ VISUAL AND AUDIO RECORDINGS

Rule 4.01. General Rule

Except as set forth in this rule, no ~~pictures or voice~~ visual or audio 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. Visual coverage or recording includes film, video, and still photography.

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 or audio 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) 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) In civil proceedings, ~~A~~ 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 visual or audio ~~photographic or electronic~~ recording and reproduction of appropriate court proceedings under the following conditions:

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

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

(iii) Visual or audio ~~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 visual or ~~audio or video~~ coverage within the courtroom during recesses or at any other time the trial judge is not present and presiding.

(v) ~~Preceding or During or preceding~~ a jury trial, there shall be no visual or 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 visual or audio or video coverage of appropriate pretrial hearings in civil proceedings, such as hearings on dispositive motions.

(vi) There shall be no visual or audio or video coverage in cases involving child custody, marriage dissolution, juvenile proceedings, child protection proceedings, paternity proceedings, civil commitment 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) In criminal proceedings occurring before a guilty plea has been accepted or a guilty verdict has been returned, a judge may authorize, with the consent of all parties in writing or made on the record prior to the commencement of the trial, the visual or audio recording and reproduction of appropriate court proceedings. Coverage under this paragraph is subject to the following limitations:

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

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

(iii) Visual or audio 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 visual or audio coverage within the courtroom during recesses or at any other time the trial judge is not present and presiding.

(v) Preceding or during a jury trial, there shall be no visual or audio coverage of hearings 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.

~~(ed) Criminal proceedings pilot project. Notwithstanding the lack of consent by the parties, for purposes of the pilot project authorized by order of the supreme court, upon~~ In criminal proceedings occurring after a guilty plea has been accepted or a guilty verdict has been returned, a judge must, absent good cause, allow visual or audio coverage receipt of notice from the media pursuant to Rule 4.03(e), a judge must, absent good cause, allow audio or video coverage of a criminal proceeding occurring after a guilty plea has been accepted or a guilty verdict has been returned. The fact that a guilty plea will be accepted or a guilty verdict returned at the same hearing when sentencing will occur is not a basis to deny coverage of a sentencing proceeding. The consent

of the parties is not required for coverage under this paragraph and lack of consent is not good cause to deny coverage. 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) No visual or audio or video coverage is permitted when a jury is present, including for hearings 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) No coverage is permitted at any proceeding held in a problem-solving treatment court, including drug courts, mental health courts, veterans courts, and DWI courts.
- (iii) No coverage is permitted in cases involving charges of criminal sexual conduct brought pursuant to under Minn. Stat. §§ 609.293-.352 or 609.185(a)(2), or in any case in which a victim is a family or household member as defined in Minn. Stat. § 518B.01, subd. 2(b), and the charges include an offense listed ~~cases involving charges of family or "domestic" violence as defined in Minnesota Statutes section~~ Minn. Stat. § 609.02, subdivision 16.
- (iv) No visual or audio or video coverage is permitted of a testifying victim, as defined in Minn. Stat. § 611A.01(b), or a person giving a statement on behalf of the victim as the victim's proxy, unless that person the victim and when applicable the victim's proxy, affirmatively acknowledges and agrees in writing before testifying to the proposed coverage.
- (v) Visual or audio ~~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.
- (vi) No visual or audio or video coverage within the courtroom is permitted during recesses or at any other time the trial judge is not present and presiding.

Rule 4.03. Procedures Relating to Requests for Visual and ~~Audio or Video~~ Coverage of Authorized District Court Proceedings

The following procedures apply to visual and ~~audio and video~~ coverage of ~~civil~~ district court proceedings where authorized under Rule 4.02(e), ~~or in criminal proceedings subject to the pilot project authorized by supreme court order and Rule 4.02(d)~~:

- (a) **Notice.** Unless notice is waived by the trial judge, as far in advance as practicable, and at least 7 days before the commencement of the hearing or trial, the media shall provide written notice of their intent to cover authorized district court proceedings by either visual or audio or video means to the trial judge, and to the court administrator, who shall promptly provide a copy of the notice to 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~~. The media shall also provide a ~~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 visual or 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 ~~10-7~~ days' notice of their intent to cover the proceedings. The media is not a party and is not entitled to file a written response to any objections. The judge shall rule on any objections and make a decision on visual or audio ~~or video~~ coverage before the commencement of the hearing or trial. However, the judge has the discretion to limit, terminate, or temporarily suspend visual or 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 visual or audio ~~or video~~ coverage, each party shall inform all witnesses the party plans to call that their testimony will be subject to visual or audio ~~or video~~ recording unless the witness objects in writing or on the record before testifying. This provision does not apply to victims giving a statement at a sentencing hearing, which is governed by Rule 4.02 (e)(iv).

(d) **Appeals.** No ruling of the trial judge relating to the implementation or management of visual or audio ~~or video~~ coverage under this rule shall be appealable until the underlying matter becomes appealable, 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 visual or audio ~~or video~~ coverage of authorized district court 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 visual or audio ~~and video~~ coverage of authorized 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 trial court proceedings for their respective court location(s) as identified on the main state court web site;~~

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

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

Rule 4.04. Technical Standards for ~~Photography, Electronic~~ Visual, Audio, 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, including limiting coverage of non-parties present in the courtroom. In the absence of a 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, 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 camera 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 equipment.

(2) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings.

(3) Media personnel must demonstrate to the trial judge adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light requirements of this rule. A failure to demonstrate that these criteria have been met for specific equipment shall preclude its use in any proceeding.

(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 that permit reasonable access to

coverage are provided, all television camera and audio equipment must be located in an area remote from the court.

(2) A still camera photographer shall be positioned 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 that himself or herself in a shooting position, the photographer he or she shall act so as not to 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 before commencement or after adjournment of proceedings each day, or during a recess. Microphones or ~~taping-recording~~ equipment, once positioned as required by (a)(3) above, may not be moved from their position during the pendency of the proceeding. Neither television film magazines nor still camera film or lenses 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-documents~~ 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.