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July 23, 2015

The Honorable James Hivner
Clerk, Tennessee Supreme Court
Supreme Court Building, Room 100
401 7th Avenue North
Nashville, TN 37219

IN RE: RULE 30
RULES OF THE TENNESSEE
SUPREME COURT
NO. ADM2015-00451

Dear James:

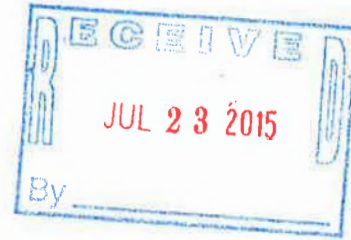
Attached please find an original and one copy of the Comment of the Tennessee Bar Association in reference to the above matter.

As always, thank you for your cooperation. I remain,

Very truly yours,

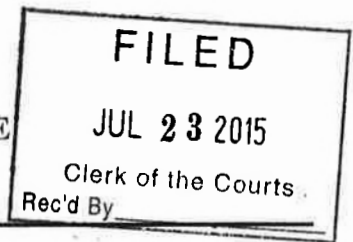
Allan F. Ramsaur
Executive Director

cc: Bill Harbison, President, Tennessee Bar Association
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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE:)
)
AMENDMENT OF RULE 30,)
RULES OF THE)
TENNESSEE SUPREME COURT)

No. ADMIN2015-00451

COMMENT OF TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association ("TBA"), in response to this Court's March 13, 2015, Order soliciting comments concerning its published proposed revision to Tennessee Supreme Court Rule 30, urges the Court to adopt as a replacement for current Rule 30 the TBA's proposed draft revision of Rule 30 attached as Exhibit A. (Exhibit A shows a version of the TBA's proposed Rule 30 that reflects changes to and differences from the Court's published proposed revision of Rule 30. Exhibit B shows a clean version of the TBA's proposed new Rule 30.) In further support of the adoption of the TBA's proposed revision, the TBA submits as follows:

BACKGROUND AND OVERVIEW

Tennessee courts have allowed cameras in court for over fifty years. This right generally has been argued to exist under the First Amendment's free speech guarantees and the Sixth Amendment's guarantee of public trials, as well as the Tennessee Constitution's Law of the Land Clause found at Art. 1, Section 8, the Open Courts Clause of Art. 1, Section 17, and the Free Press guarantees of Art. 1, Section 19.

For most of the last two decades, this Court's Rule 30 has carried forward this Tennessee tradition and provided a stable and workable framework for cameras in Tennessee courtrooms. Rule 30 was first enacted by this Court in 1996, and the first case construing the Rule came that

same year with *State v. Morrow*, No. 02C01-9601-CC-00022, 1996 WL 170679 (Tenn. Crim. App. April 12, 1996), in which this Court found that Rule 30 “creates a presumption in favor of in-court media coverage, including the presence of television camera, in accordance with the procedures set forth in the rule.”

For the last nineteen years, Rule 30 has successfully permitted Tennessee citizens to have fuller access to video and audio coverage of what goes on in their courts, with few significant problems and many successes. In the TBA’s view, with rare exceptions, Rule 30 has worked well. The media have been diligent in observing its restrictions and in using it to the public’s benefit in reporting on judicial proceedings; courts have been able, with little difficulty, to apply the standards of the Rule; and parties and lawyers have been able to voice their concerns about video and audio coverage and to have those concerns addressed by the courts.

In those two decades, however, the media environment and technology used to cover Tennessee courts have changed dramatically. In 1996, recording and transmitting video of a court proceeding usually required expensive and (by today’s standards) bulky equipment. Today, the very same functions can be performed by a smartphone, tablet computer, or laptop of the kind that virtually any journalist carries in her pocket or briefcase. As importantly, most journalists – indeed, most members of the public – today routinely carry just such devices with them every day. These new devices can often not only record, but transmit, video, audio, and text, from almost any remote location, to anywhere in the world, almost instantly. Thus, while the basic framework of Rule 30 remains valid, as the Court has noted, it is time for the Rule to be updated so that courts across Tennessee have the tools to address today’s technology in today’s courtrooms. The TBA applauds the Court’s initiative to update Rule 30.

With the help of its recently-organized Communication Law Section, the TBA has

closely reviewed the Court's proposed revision of Rule 30 and attaches a proposed version of Rule 30 as Exhibit A to this comment. Respectfully, the TBA believes that its attached draft better accomplishes the goal of updating Rule 30 to accommodate current technology. The TBA also believes that its proposed revision avoids the negative effect of some parts of the Court's published proposal that have received significant negative comment, particularly by practicing journalists who cover Tennessee courts. The TBA has discussed the Court's proposed revisions with numerous Tennessee journalists and media organizations and their counsel and explored their concerns in depth. The TBA submits that its proposed draft reasonably addresses these concerns, while still providing a strong framework for Tennessee courts to reasonably regulate cameras in the courts.

The most important change in the Court's proposed revision was a reasonable attempt to sweep within its coverage all the varied devices on which video or audio of courtroom proceedings can now be recorded in or broadcast from a courtroom, including smartphones, tablet computers, and laptop computers. For this reason, the Court's proposed new definition of "electronic device" is quite broad:

(6) **"Electronic Device"** means any device capable of capturing, recording, and/or transmitting video images, still images, or audio of a court proceeding and any device capable of transmitting real-time textual descriptions of a court proceeding. Electronic devices include, without limitation: film, digital, video, and any other type of cameras, cellular telephones, tape recorders, digital voice recorders, and any other type of audio recorders; laptop computers, electronic tablets, and any other similar technological device with the ability to capture, record and/or transmit video or still images, audio, text, or other electronic communication data.

This definition includes virtually every "smartphone" or other device that has the ability to take a photograph, record a video, or record audio.

The Court's proposed definition of the term "coverage" would also extend the reach of the Rule by including the media's use of an electronic device to post information on a website or

send email or text messages from inside a courtroom during a court proceeding, regardless of how silently and discreetly this is done:

(1) **“Coverage”** means any recording, broadcasting, transmitting, or webcasting of a court proceeding by the media using television, radio, photographic, or recording equipment, or any other electronic device. “Coverage” also means media personnel’s posting on an internet website, communicating via social media, text messaging, or otherwise communicating via an electronic device about a court proceeding from inside the courtroom while court is in session. This definition of “coverage” is subject to the prohibitions listed in section C.

This sweeping proposed breadth of the Court’s proposed revisions has led, however, to many concerns on the part of working journalists that the Court’s proposed language would enact a new and unintended ban on the use of such devices for their ordinary work covering courtrooms, rather than merely regulating video and audio coverage of courts. Specifically, the Court’s proposed language could easily be interpreted to require that any journalist who wanted to use their smartphone, tablet, or laptop to take notes or draft a story about a trial or hearing they were attending, or email those notes or that draft story to their editor, would be required to get specific approval, two days in advance, in order to use many current electronic devices to do so. This would be true under the Court’s proposed revisions regardless of whether these uses of electronic devices were perfectly silent and non-distracting to others in the courtroom. In the TBA’s view, this type of requirement will often be unworkable as a practical matter (many journalists do not know two days in advance what courtroom proceedings they will be covering). It is also unnecessary to accomplish the stated purposes of Rule 30’s regulation of cameras in the courtroom. Indeed, some journalists have correctly pointed out that such a rule would unfairly – and perhaps unconstitutionally – discriminate between journalists based on whether they worked with a pencil and paper or a laptop.

These concerns are legitimate, and the TBA has no doubt that no such result was intended

by the drafters of the Court's proposed language. Today, in courtrooms all across Tennessee, lawyers (and judges) use all manner of new devices in the courtroom to do their work, and so do journalists. These uses of new technology and devices are routinely accomplished silently and without any distraction to anyone. And, just as use by lawyers (and judges) of these devices in the courtroom can and does enhance their productivity and accuracy, among other goals, there can be no doubt that the use by journalists of these devices allows them to work more efficiently, while also almost certainly increasing the accuracy and quality of their reporting of courtroom proceedings.

The TBA believes that the Court's valid interests in preserving decorum and good order in Tennessee courtrooms, and in fairly and thoroughly regulating the recording and transmission of video and audio of court proceedings, can be fully accomplished while more narrowly regulating the use of new technology. That is what the TBA's attached draft accomplishes.

In addition to addressing this concern, the TBA's draft also proposes other somewhat different approaches, discussed below, that the TBA believes better update Rule 30 to provide a framework for regulating cameras in Tennessee courts in the modern media and technology environment.

PARTICULAR SECTIONS OF TBA DRAFT RULE

The following is a brief review of a number of the more important provisions in the TBA's attached proposed revisions to Rule 30:

1. **Preamble.** A proposed Preamble explains that Rule 30 is a part of the tradition of open courts in Tennessee and throughout the United States. Several existing rules of the Supreme Court (Rules 7, 8, 9, 10, 38, 41) have a Preamble. The TBA believes that the Rule is improved by a clear statement of its purpose and the principles underlying the Rule.

2. **Rule 30A(2)**. The minor revision of the second sentence clarifies the burden and the standard for waiver of the two-day advance-approval requirement.

3. **Rule 30A(3)**. The proposed addition of the words “if practicable” establishes a standard for use by a court in deciding whether to waive the Clerk’s notification of the attorneys of record in a case of a request for media coverage.

4. **Rule 30A(4)**. This proposed new language is intended to emphasize that Rule 30 does not limit the use of an electronic device to write about a court proceeding while in the courtroom, so long as this is done silently and does not create a distraction. The transmission of data communications in the form of text only would be allowed without prior authorization from the court.

5. **Rule 30B(1)**. This proposed change limits the definition of “coverage” to the recording or transmitting of any video or audio of a court proceeding from within the courtroom. The TBA believes that limiting the definition of “coverage” in this way is consistent with the original purpose and spirit of Rule 30. Other forms of electronic communication from a courtroom, where performed silently and without distraction to the proceeding or its participants, pose no risk to the decorum and order within a courtroom that Rule 30 is intended to preserve.

6. **Rule 30B(2)**. The definition of “media” would be revised to include “persons who are independently engaged in gathering information for publication or broadcast,” a formulation borrowed from the Tennessee statute establishing a journalist’s limited privilege. *See* Tenn. Code Ann. § 24-1-208

7. **Rule 30B(3)**. This proposed change would eliminate from the scope of Rule 30 the words “any activity in the building in which the judicial proceeding is being held.” Rule 30 has not previously been extended outside the courtroom, and the TBA sees no need for any such

extension. If the proposed change is not made, this language could be interpreted to bring within the scope of Rule 30 a press conference being held on the first floor or in the hallway of a courthouse.

8. **Rule 30B(6)**. This proposed change limits the electronic devices subject to the requirements of Rule 30 to those that are intended to be used to capture, record, and transmit video, audio, or still images of a court proceeding. This reformulation would exclude from regulation under Rule 30 electronic devices used for the purpose of transmitting text-only message or email or posting messages to a website. Extending the reach of Rule 30 to include such devices is, in the TBA's view, unnecessary to accomplish the purposes of Rule 30.

9. **Rule 30C(5)**. The proposed change conforms the language of the Rule to other Tennessee rules concerning juvenile proceedings.

CONCLUSION

For the foregoing reasons, the TBA urges the Court to adopt as a replacement for current Tennessee Supreme Court Rule 30 the TBA's proposed revision of Rule 30 attached as Rule 30.

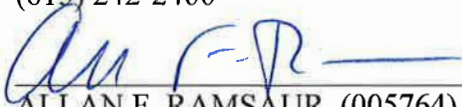
Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "C" by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.



EXHIBIT A

**Proposed Revisions to
Tennessee Supreme Court Proposal for Changes to Tenn. Sup. Ct. R. 30
(as approved by the TBA House of Delegates and Board of Governors)**

[As proposed by the Tennessee Supreme Court, Tenn. Sup. Ct. R. 30 would be amended as indicated below by underlining (new text) and ~~overstriking~~ (deleted text).

The TBA's proposed additions and changes are shown in green.]

Rule 30. Media Guidelines.

Preamble

The Tennessee and United States Constitutions, as well as Tennessee common law, grant to the public and the media the right to attend and view proceedings in Tennessee courts, subject to certain limited restrictions, and place the burden of proof upon any party seeking closure. This right of access is critical to preserving the trust of the public in Tennessee's judicial system. This Rule is intended to provide a framework within which Tennessee courts shall maintain this tradition of open courts.

A. Media Access.

(1) **Coverage Generally.** Media coverage of public judicial proceedings in the courts of this State shall be allowed in accordance with the provisions of this rule. The coverage shall be subject, at all times, to the authority of the presiding judge to: (i) control the conduct of the proceedings before the court; (ii) maintain decorum and prevent distractions; (iii) guarantee the safety of any party, witness, or juror; and (iv) ensure the fair and impartial administration of justice in the pending cause.

(2) **Requests for Media Coverage.** Requests by representatives of the media for such coverage must be made in writing to the presiding judge not less than two (2) business days before the proceeding is scheduled to begin. For good cause shown, The presiding judge may waive the two-day requirement ~~at his or her discretion.~~

(3) **Notification of Request.** Notification that the media has requested such coverage shall if practicable, be provided by the Clerk of the particular court to the attorneys of record in the case. Such notification may be waived by the judge at the clerk's request if the request is made for media coverage of all or part of a docket. If the judge waives notification, the clerk shall post a notice with the docket in a conspicuous place outside the courtroom. The notice must state that the proceedings will be covered by the media, and that any person may request a continuance when the docket is called. Such continuance shall be granted only if the person can show that he or she was prejudiced by the lack of notice, and that there is good cause to refuse, limit, terminate or temporarily suspend media coverage pursuant to section D(2).

(4) Scope of Rule. This Rule is not intended to limit or regulate the right of any member

of the public or the media to observe, write about, comment upon, or report upon any court proceeding while present in the courtroom during a court proceeding, so long as such conduct does not interfere with the court proceeding by threatening the decorum of the proceeding or creating a distraction in the proceeding. Members of the public and the media may use electronic devices in the courtroom for the purpose of writing, taking notes, and transmitting or receiving data communications in the form of text only, without obtaining prior authorization from the court.

B. Definitions.

(1) **“Coverage”** means any ~~recording or broadcasting~~ recording, broadcasting, transmitting, or webcasting of a court proceeding by the media using television, radio, photographic, or recording equipment, ~~or any other electronic device.~~ “Coverage” also means media personnel’s posting on an internet website, communicating via social media, text messaging, or otherwise communicating via an electronic device about a court proceeding from inside the courtroom while court is in session. This definition of “coverage” is subject to the prohibitions listed in section C. ~~“Coverage” does not mean an activity that does not include the recording or transmitting of any video or audio of a court proceeding within a courtroom.~~

(2) **“Media”** means legitimate news gathering and reporting agencies and their representatives whose function is to inform the public, or persons engaged in the preparation of educational films or recordings ~~or documentaries.~~ “Media” shall include persons who are independently engaged in gathering information for publication or broadcast.

(3) **“Proceeding”** means any trial, hearing, motion, argument on appeal, or other matter held in open court that the public is entitled to attend. For the purposes of section C of this rule, a “proceeding” includes ~~any activity in the building in which the judicial proceeding is being held or any official duty performed in any location as part of the judicial proceeding.~~

(4) **“Presiding Judge”** means the judge, justice, master, referee or other judicial officer who is scheduled to preside, or is presiding, over the proceedings.

(5) **“Minor”** means any person under eighteen (18) years of age.

(6) **“Electronic Device”** means any device ~~intended to be used in a court proceeding to capture, record, or transmit capable of capturing, recording, and/or transmitting~~ video images, still images, or audio of a court proceeding, ~~and any capable of transmitting real time textual descriptions of a court proceeding.~~ Electronic devices include, without limitation, film, digital, video, and any other type of cameras; cellular telephones; tape recorders, digital voice recorders, and any other type of audio recorders; laptop computers; electronic tablets; and any other similar technological device with the ability to capture, record and/or transmit video or still images, or audio, text, or other electronic communication data.

C. Prohibitions.

(1) **Minor Participants.** Media coverage of a witness, party, or victim who is a minor is

prohibited in any judicial proceeding, except when a minor is being tried for a criminal offense as an adult.

(2) **Jury Selection.** Media coverage of jury selection is prohibited.

(3) **Jurors.** Media coverage of jurors during the judicial proceeding is also prohibited.

(4) **Closed Proceedings.** Media coverage of proceedings which are otherwise closed to the public by law is prohibited.

(5) **Juvenile Court Proceedings.** In juvenile court proceedings, if the court receives a request for media coverage, the court will notify the parties and their counsel of the request, and prior to the beginning of the proceedings, the court will advise the juvenile accused, the parties, and the witnesses of their personal right to object, and that if consent is given, it must be in writing. Objections by a witness will suspend media coverage as to that person only during the proceeding, whereas objections by the juvenile accused in a delinquency proceeding, criminal case or any party to a juvenile proceeding civil action will prohibit media coverage of the entire proceeding.

(6) **Conferences of Counsel.** There shall be no audio pickup, recording, broadcast, or video closeup of conferences, which occur in a court facility, between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge held at the bench or in chambers, or between judges in an appellate proceeding.

D. Limitations.

(1) **Discretion of Presiding Judge.** The presiding judge has the discretion to refuse, limit, terminate, or temporarily suspend, media coverage of an entire case or portions thereof, in order to: (i) control the conduct of the proceedings before the court; (ii) maintain decorum and prevent distractions; (iii) guarantee the safety of any party, witness, or juror; and (iv) ensure the fair administration of justice in the pending cause. Such exercise of the presiding judge's discretion shall be made following the procedures established in section D(2).

(2) **Evidentiary Hearing.** Before denying, limiting, suspending, or terminating media coverage, the presiding judge shall hold an evidentiary hearing, if such a hearing will not delay or disrupt the judicial proceeding. In the event that an evidentiary hearing is not possible, affidavits may be used. The burden of proof shall be on the party seeking limits on media coverage. If there is no opposition to media coverage, the presiding judge may consider matters that are properly the subject of judicial notice. Media requesting coverage shall be allowed to present proof, either at the evidentiary hearing or by affidavit. Any finding that media coverage should be denied, limited, suspended or terminated must be supported by substantial evidence that at least one of the four interests in section D(1) is involved, and that such denial, limitation, suspension, or termination is necessary to adequately reach an accommodation of such interest. The presiding judge shall enter written findings of fact detailing the substantial evidence required to support his or her order.

E. Appellate Review. Appellate review of a presiding judge's decision to terminate, suspend, limit, or exclude media coverage shall be in accordance with Rule 10 of the Tennessee Rules of Appellate Procedure.

F. Equipment and Personnel.

(1) **Limitations.** ~~At least one, but no~~ No more than two television cameras with one ~~operator~~ photographer each will be permitted in any judicial proceeding. ~~two still~~ No more than two non-television photographers using not more than two cameras or other electronic devices each, and one audio system for radio broadcast purposes, will be permitted in any judicial proceeding. The use of any electronic device for other coverage of a proceeding is limited to two devices per media representative.

(2) **Pooling Arrangements.** When more than one request for media coverage is made, the media shall select a representative to serve as a liaison and be responsible for arranging "pooling" among the media that may be required by these limitations on equipment and personnel. The identity of the person selected, including name, business address, phone and fax number, shall be filed with the clerk of the court in which the proceeding is to be held. Pooling arrangements shall be reached when the court is not in session and shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. Such pooling arrangements shall include the designation of pool operators, procedures for cost sharing, access to and dissemination of material, and selection of a pool representative if appropriate. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding.

(3) **Personal Recorders.** Media personnel may use hand-held ~~cassette-tape~~ audio recorders that are no more sensitive than the human ear without complying with section A(2) of this rule. Such recorders are to be used for the making of sound recordings as personal notes of the proceedings, and shall not be used for any other purpose, including broadcast or other audio transmission. Usage shall not be obtrusive or distracting, and no change of tape or other electronic storage medium shall be made during court sessions.

(4) ~~Print Media~~ Other Coverage. This rule does not govern the coverage of a proceeding by a news reporter or other person who is not using a camera, audio ~~or electronic~~ equipment, or other electronic device.

G. ~~Sound and Light~~ Equipment Criteria.

(1) **Distractions.** Only television, photographic and audio equipment and other electronic devices ~~which does that do~~ not produce distracting sound or light shall be employed to cover proceedings in a court facility. Signal lights or devices to show when equipment is operating shall not be visible. Moving lights, flash attachments, or sudden light changes shall not be used.

(2) **Courtroom Light Source.** If possible, lighting for all purposes shall be accomplished from existing court facility light sources. If no technically suitable lighting exists in the court

facility, modifications and additions may be made in light sources existing in the facility, provided such modifications and additions are unobtrusive, located in places designated in advance of any proceeding by the presiding judge, and without public expense.

(3) **Audio Pickup.** Audio pickup for all purposes shall be accomplished from existing audio systems present in the court facility or from ~~a television camera's~~ an electronic device's built-in microphone. If no technically suitable audio system exists in the court facility, 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 presiding judge.

(4) **Technical Difficulties.** Court proceedings shall not be interrupted by media personnel because of a technical or equipment problem. If any problem occurs, that piece of equipment shall be turned off while the proceeding is in session. No attempt shall be made to correct the technical or equipment problem until the proceeding is in recess or has concluded.

H. Location of Equipment and Conduct of Media Personnel.

(1) **Location of Equipment and Personnel.** The presiding judge shall designate the location in the courtroom for media equipment and operators to permit reasonable coverage without disruption of proceedings.

(2) **Alterations.** No permanent installation shall be made nor shall any court facility be altered, unless approved in advance by the presiding judge. Expenses for alterations shall be borne by the media.

(3) **Movement During Proceedings.** During proceedings, operating personnel shall not move about nor make any adjustment or change of any equipment or electronic devices ~~which~~ that disrupts or distracts from the proceeding. Media broadcast, photographic or audio equipment shall not be placed in or removed from the court facility except prior to commencement or after adjournment of proceedings each day, or during a recess in the proceeding.

(4) **Conduct of Media Personnel.** Media personnel assigned to cover a judicial proceeding shall attire and deport themselves in such a way that will not detract from the proceeding.

I. Impermissible Use of Media Material. None of the film, ~~videotape, still photographs,~~ ~~or~~ video or still images, audio recordings, or other electronic coverage of proceedings under this rule shall be admissible as evidence in the proceeding out of which it arose, any proceedings subsequent and collateral thereto, or upon any retrial or appeal of such proceeding.

J. Ceremonial Proceedings. This rule shall not limit media coverage of investiture, ceremonial, or nonjudicial proceedings conducted in court facilities under such terms and conditions as may be established by prior consent of the presiding judge.

K. Compliance. Media personnel who fail to comply with this rule shall be subject to an appropriate sanction as determined by the presiding judge.

EXHIBIT B

Proposed New Tenn. Sup. Ct. R. 30
(as proposed by the Tennessee Bar Association)

Rule 30. Media Guidelines.

Preamble

The Tennessee and United States Constitutions, as well as Tennessee common law, grant to the public and the media the right to attend and view proceedings in Tennessee courts, subject to certain limited restrictions, and place the burden of proof upon any party seeking closure. This right of access is critical to preserving the trust of the public in Tennessee's judicial system. This Rule is intended to provide a framework within which Tennessee courts shall maintain this tradition of open courts.

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(2) **Requests for Media Coverage.** Requests by representatives of the media for such coverage must be made in writing to the presiding judge not less than two (2) business days before the proceeding is scheduled to begin. For good cause shown, the presiding judge may waive the two-day requirement.

(3) **Notification of Request.** Notification that the media has requested such coverage shall, if practicable, be provided by the clerk of the particular court to the attorneys of record in the case. Such notification may be waived by the judge at the clerk's request if the request is made for media coverage of all or part of a docket. If the judge waives notification, the clerk shall post a notice with the docket in a conspicuous place outside the courtroom. The notice must state that the proceedings will be covered by the media, and that any person may request a continuance when the docket is called. Such continuance shall be granted only if the person can show that he or she was prejudiced by the lack of notice, and that there is good cause to refuse, limit, terminate or temporarily suspend media coverage pursuant to section D(2).

(4) **Scope of Rule.** This Rule is not intended to limit or regulate the right of any member of the public or the media to observe, write about, comment upon, or report upon any court proceeding while present in the courtroom during a court proceeding, so long as such conduct does not interfere with the court proceeding by threatening the decorum of the proceeding or creating a distraction in the proceeding. Members of the public and the media may use electronic devices in the courtroom for the purpose of writing, taking notes, and transmitting or receiving

data communications in the form of text only, without obtaining prior authorization from the court.

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(2) **“Media”** means legitimate news gathering and reporting agencies and their representatives whose function is to inform the public, or persons engaged in the preparation of educational films or recordings or documentaries. “Media” shall include persons who are independently engaged in gathering information for publication or broadcast.

(3) **“Proceeding”** means any trial, hearing, motion, argument on appeal, or other matter held in open court that the public is entitled to attend. For the purposes of section C of this rule, a “proceeding” includes any official duty performed in any location as part of the judicial proceeding.

(4) **“Presiding Judge”** means the judge, justice, master, referee or other judicial officer who is scheduled to preside, or is presiding, over the proceedings.

(5) **“Minor”** means any person under eighteen (18) years of age.

(6) **“Electronic Device”** means any device intended to be used in a court proceeding to capture, record, or transmit video images, still images, or audio of a court proceeding. Electronic devices include, without limitation, film, digital, video, and any other type of cameras; cellular telephones; tape recorders, digital voice recorders, and any other type of audio recorders; laptop computers; electronic tablets; and any other similar technological device with the ability to capture, record and/or transmit video or still images, or audio.

C. Prohibitions.

(1) **Minor Participants.** Media coverage of a witness, party, or victim who is a minor is prohibited in any judicial proceeding, except when a minor is being tried for a criminal offense as an adult.

(2) **Jury Selection.** Media coverage of jury selection is prohibited.

(3) **Jurors.** Media coverage of jurors during the judicial proceeding is also prohibited.

(4) **Closed Proceedings.** Media coverage of proceedings which are otherwise closed to the public by law is prohibited.

(5) **Juvenile Court Proceedings.** In juvenile court proceedings, if the court receives a

request for media coverage, the court will notify the parties and their counsel of the request, and prior to the beginning of the proceedings, the court will advise the juvenile, the parties, and the witnesses of their personal right to object, and that if consent is given, it must be in writing. Objections by a witness will suspend media coverage as to that person only during the proceeding, whereas objections by the juvenile in a delinquency proceeding or any party to a juvenile proceeding will prohibit media coverage of the entire proceeding.

(6) Conferences of Counsel. There shall be no audio pickup, recording, broadcast, or video closeup of conferences, which occur in a court facility, between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge held at the bench or in chambers, or between judges in an appellate proceeding.

D. Limitations.

(1) Discretion of Presiding Judge. The presiding judge has the discretion to refuse, limit, terminate, or temporarily suspend, media coverage of an entire case or portions thereof, in order to: (i) control the conduct of the proceedings before the court; (ii) maintain decorum and prevent distractions; (iii) guarantee the safety of any party, witness, or juror; and (iv) ensure the fair administration of justice in the pending cause. Such exercise of the presiding judge's discretion shall be made following the procedures established in section D(2).

(2) Evidentiary Hearing. Before denying, limiting, suspending, or terminating media coverage, the presiding judge shall hold an evidentiary hearing, if such a hearing will not delay or disrupt the judicial proceeding. In the event that an evidentiary hearing is not possible, affidavits may be used. The burden of proof shall be on the party seeking limits on media coverage. If there is no opposition to media coverage, the presiding judge may consider matters that are properly the subject of judicial notice. Media requesting coverage shall be allowed to present proof, either at the evidentiary hearing or by affidavit. Any finding that media coverage should be denied, limited, suspended or terminated must be supported by substantial evidence that at least one of the four interests in section D(1) is involved, and that such denial, limitation, suspension, or termination is necessary to adequately reach an accommodation of such interest. The presiding judge shall enter written findings of fact detailing the substantial evidence required to support his or her order.

E. Appellate Review. Appellate review of a presiding judge's decision to terminate, suspend, limit, or exclude media coverage shall be in accordance with Rule 10 of the Tennessee Rules of Appellate Procedure.

F. Equipment and Personnel.

(1) Limitations. No more than two television cameras, with one photographer each, will be permitted in any judicial proceeding. No more than two non-television photographers using not more than two cameras or other electronic devices each, and one audio system for radio broadcast purposes, will be permitted in any judicial proceeding.

(2) Pooling Arrangements. When more than one request for media coverage is made,

the media shall select a representative to serve as a liaison and be responsible for arranging "pooling" among the media that may be required by these limitations on equipment and personnel. The identity of the person selected, including name, business address, phone and fax number, shall be filed with the clerk of the court in which the proceeding is to be held. Pooling arrangements shall be reached when the court is not in session and shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. Such pooling arrangements shall include the designation of pool operators, procedures for cost sharing, access to and dissemination of material, and selection of a pool representative if appropriate. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding.

(3) **Personal Recorders.** Media personnel may use hand-held audio recorders that are no more sensitive than the human ear without complying with section A(2) of this rule. Such recorders are to be used for the making of sound recordings as personal notes of the proceedings, and shall not be used for any other purpose, including broadcast or other audio transmission. Usage shall not be obtrusive or distracting, and no change of tape or other electronic storage medium shall be made during court sessions.

(4) **Other Coverage.** This rule does not govern the coverage of a proceeding by a news reporter or other person who is not using a camera, audio equipment, or other electronic device.

G. Equipment Criteria.

(1) **Distractions.** Only television, photographic and audio equipment and other electronic devices that do not produce distracting sound or light shall be employed to cover proceedings in a court facility. Signal lights or devices to show when equipment is operating shall not be visible. Moving lights, flash attachments, or sudden light changes shall not be used.

(2) **Courtroom Light Source.** If possible, lighting for all purposes shall be accomplished from existing court facility light sources. If no technically suitable lighting exists in the court facility, modifications and additions may be made in light sources existing in the facility, provided such modifications and additions are unobtrusive, located in places designated in advance of any proceeding by the presiding judge, and without public expense.

(3) **Audio Pickup.** Audio pickup for all purposes shall be accomplished from existing audio systems present in the court facility or from an electronic device's built-in microphone. If no technically suitable audio system exists in the court facility, 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 presiding judge.

(4) **Technical Difficulties.** Court proceedings shall not be interrupted by media personnel because of a technical or equipment problem. If any problem occurs, that piece of equipment shall be turned off while the proceeding is in session. No attempt shall be made to correct the technical or equipment problem until the proceeding is in recess or has concluded.

H. Location of Equipment and Conduct of Media Personnel.

(1) **Location of Equipment and Personnel.** The presiding judge shall designate the location in the courtroom for media equipment and operators to permit reasonable coverage without disruption of proceedings.

(2) **Alterations.** No permanent installation shall be made nor shall any court facility be altered, unless approved in advance by the presiding judge. Expenses for alterations shall be borne by the media.

(3) **Movement During Proceedings.** During proceedings, operating personnel shall not move about nor make any adjustment or change of any equipment or electronic devices that disrupts or distracts from the proceeding. Media broadcast, photographic or audio equipment shall not be placed in or removed from the court facility except prior to commencement or after adjournment of proceedings each day, or during a recess in the proceeding.

(4) **Conduct of Media Personnel.** Media personnel assigned to cover a judicial proceeding shall attire and deport themselves in such a way that will not detract from the proceeding.

I. Impermissible Use of Media Material. None of the film, video or still images, audio recordings, or other electronic coverage of proceedings under this rule shall be admissible as evidence in the proceeding out of which it arose, any proceedings subsequent and collateral thereto, or upon any retrial or appeal of such proceeding.

J. Ceremonial Proceedings. This rule shall not limit media coverage of investiture, ceremonial, or nonjudicial proceedings conducted in court facilities under such terms and conditions as may be established by prior consent of the presiding judge.

K. Compliance. Media personnel who fail to comply with this rule shall be subject to an appropriate sanction as determined by the presiding judge.

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