

**PROPOSED UNIFORM COURT RULES FOR COVERAGE
OF JUDICIAL PROCEEDING IN TEXAS
TRIAL AND APPELLATE COURTS**

FOR THE
SUPREME COURT
ADVISORY COMMITTEE

(November 8, 2002 draft)

PREAMBLE¹

These guidelines are intended to recognize the public interest in court proceedings and standardize the use of electronic media coverage in civil² proceedings in Texas courts, while preserving the independence of the judiciary, maintaining the dignity, decorum and impartiality of court proceedings, and protecting the rights of participants.³ Nothing in these rules is intended to restrict any pre-existing right of the news media to appear at and to report on judicial proceedings in accordance with law.⁴

POLICY

The policy of these rules is to allow electronic media coverage of public court proceedings to facilitate the free flow of information to the public concerning the judicial system, to foster better public understanding about the administration of justice, and to encourage continuing legal education and professionalism by lawyers⁵, *consistent with a just, fair, equitable and impartial adjudication of the rights of the litigants*.⁶ These rules are to be construed to provide the greatest

¹This paragraph was contained in the Committee on Media and the Courts ["CMC"]'s proposed Uniform Rules for Coverage of Judicial Proceedings in Texas Trial and Appellate Courts ["CMC draft"], in the "Policy" section. However, the sentiment is more in the nature of a comment on the drafters' intent rather than the underlying policy reflected in the rules. The language has been put in a "preamble," and the policy statement used in this draft is taken from the rules in effect in Dallas, Harris and Travis Counties.

²These guidelines will not apply to criminal courts.

³This draft uses the word "participants" rather than "litigants" included in the CMC's draft, since not only litigants but also witnesses, potential jurors, and jurors, are involved in the process and should be considered.

⁴This sentence is from Bexar County Rules, ¶ A, second subdivision.

⁵Phrase between "+" is in the Travis County Rules, but not Dallas or Harris County Rules.

⁶Phrase between "*" is in Harris County Rules, but not Dallas or Travis County Rules.

access possible while at the same time maintaining the dignity decorum and impartiality of the court proceeding.⁷

DEFINITIONS

“Audio-visual coverage” or “electronic media coverage” or “coverage” shall mean (1) electronic broadcasting or other transmission ~~to the public~~⁸ of sound or visual images⁹ from the courtroom, (2) electronic recording of sound or visual images in the courtroom for later transmission or reproduction,¹⁰ and (3) still photography in the courtroom. In the use of each of these terms, such coverage may refer to that by news or educational media.

“Media” or “media agency” mean any news reporting or news-gathering entity and any associated agents or employees thereof, including television, radio and television networks, news services, newspapers, magazines, trade papers, in-house publications, professional journals, or any educational media the function of which is to inform the public. Educational media coverage includes but is not limited to reproduction of court proceedings for public or private school classroom use or for legal training.

“Judicial proceeding” means the public¹¹ proceeding of a court wherever conducted, but not investitures and ceremonial events.¹²

⁷This sentence is contained in the Dallas County Rules, ¶ 1; the Harris County Rules, ¶ 1; and the Travis County Rules, ¶ 1.

⁸Coverage should include transmission that is not to “the public,” such as transmission for private use. For this reason, “to the public” is stricken from the CMC’s draft.

⁹“Sound or visual images” is substituted for the CMC draft’s “radio or television.” That way we can avoid answering the question of whether internet broadcast is included in radio or television. And the unforeseen technology that appears next year, will it be radio or television?

¹⁰Note that this clause does not prohibit an observer or participant from recording the proceeding for his or her own use, with no intent to retransmit or reproduce.

¹¹The word “public” is added before “proceeding” to recognize that some courts conduct business in private (such as appellate court deliberations). TRAP 14.1 handles that issue now by permitting media coverage of “courtroom proceedings,” although it also uses the terms “proceeding” and “argument.”

¹²This definition of “judicial proceeding” excludes investitures and ceremonial events. Such events are explicitly excluded under Dallas and Travis County Rules, ¶ 3.2. TRCP 18c(c) permits media coverage of such events at the trial court’s discretion without the requirement of consent from participants. On a different point, groups of judges sometimes have administrative meetings, and the question arises whether these types of meetings should be defined out of the scope of coverage, or just not be mentioned.

“Court”¹³ means the judge¹⁴, associate judge, or master, who is presiding over the judicial proceeding in question. “Court” also means an appellate court where the judicial proceeding will take place.¹⁵

“Pool” means an arrangement among several media agencies for joint production of video, audio and still photographic coverage of a judicial proceeding.

PROCEDURE FOR APPLICATION AND APPROVAL

Application; Notification of Parties. Coverage of judicial proceedings may be granted only to members of the news or educational media and only by the court’s approval of a written¹⁶ application¹⁷ for coverage by a news or educational media representative with the applicable clerk of the court without cost. The application shall be signed by an authorized media representative and acknowledge receipt of a copy of these rules and that these rules are binding upon it. The application shall be served¹⁸ on the parties to the proceeding no later than the day before the scheduled proceeding, unless the proceeding is set on less than a day's notice, in which case the notice should be served as soon as practicable.

The request should state as much identifying information as practical to inform the court, such as the case style and number and the date and time the proceeding is scheduled to begin. The request must state the name of the requesting person or organization; the type of coverage requested (for example, televising or photographing); and the type and extent of equipment to be used. Upon the filing of such notice and before the commencement of the proceeding, any party may request a hearing on objections to such coverage. Objections to media coverage should state the specific and

¹³The CMC’s definition of “court” involves a person and not a place. The Travis County rules define “court” as a place “in which the proceeding will be held.” Travis County Rules, ¶ 2.1.

¹⁴We should make clear whether these rules apply to Justices of the Peace. The Dallas County Rules specify that they apply to district courts, county courts at law, probate courts, and justice of the peace courts. Dallas County Rules, unnumbered introductory paragraph.

¹⁵The CMC draft provides for all appellate courts to act by majority vote. Tex. R. App. P. 14, which presently governs cameras in appellate court proceedings, provides that “an appellate court may permit” coverage, without getting into whether it is by majority vote or otherwise. Since some appellate courts may want to adopt rules for the court as a whole, while others may want each panel to decide, and since some appellate courts operate with some decisions being made by the Chief Justice while others operate by majority vote of the justices, it seems wiser to let each appellate court decide how the decision will be made, rather than dictating the procedure in this rule.

¹⁶Should a written application be required in all instances, even for a 30-second spot for the evening news?

¹⁷The Travis County Rules require that a form provided by the court be used to request permission. If a written application will be required, attaching a sample form to the uniform rules could help to standardize the practice across the state.

¹⁸The Travis County Rules are more specific, requiring delivery to the court, the court administrator, all counsel of record, and where possible all parties not represented by attorneys. Travis County Rules, ¶ 3.3. Bexar County Rule ¶ D requires the “presiding trial judge” to notify counsel for all parties.

demonstrable injury alleged from media coverage. The hearing shall be at a time that will not substantially delay the proceedings.

Time for filing a request.¹⁹ A request to cover a court proceeding must be filed no later than three days before²⁰ the proceeding to be covered. The court may, in the interest of justice, shorten the time for filing a document under this rule if no party or interested person would be unduly prejudiced.

Decision of Court. The granting of a coverage request shall be made at the court's discretion. The court shall, by written²¹ order, either allow, deny or limit coverage. The court has the discretion to allow, deny, limit or terminate electronic media coverage of a proceeding when the interests of justice demand protecting the rights of the parties, witnesses,²² or the dignity of the court, or assuring the orderly conduct of the proceedings, or for any other reason considered necessary or appropriate by the court. In granting a request, the court shall consider all relevant factors, including but not limited to:

- (a) the type of case involved;
 - (b) the importance of, and degree of public interest in, the court proceeding;²³
 - (c) whether the coverage would harm any participants;
 - (d) whether the coverage would interfere with the fair administration of justice, provision of a fair trial, or the rights of the parties;
 - (e) whether the coverage would interfere with any law enforcement activity;
 - (f) the objections of any of the parties, prospective witnesses, victims,²⁴ or other participants in the proceeding of which coverage is sought;
 - (g) the physical structure of the courtroom and the likelihood that any equipment required to conduct coverage of proceedings can be installed and operated without disturbance to those proceedings or any other proceedings in the courthouse;
 - (h) the extent to which the coverage would be barred by law in the judicial proceeding;
- and

¹⁹Some thought should be given to coordinating the deadline for filing and the minimum notice required to parties.

²⁰The Dallas County Rules provided for filing the day prior to. Dallas County Rules, ¶ 3.3. The Bexar, Harris and Nueces County Rules have no prescribed filing deadline. The Travis County rules require the request to be made "in time to afford the attorneys and parties sufficient time to confer, to contact their witnesses and to be fully heard by the court on the questions of whether media coverage should be allowed and, if so, what conditions, if any, should be imposed on such coverage." Travis County Rules, ¶ 3.3.

²¹Dallas County and Travis County Rules ¶ 3.3 require a written order to permit coverage. The Bexar, Harris and Nueces County Rules do not require a written order.

²²Jurors and potential jurors are not mentioned here, but could be.

²³This factor has been added to the CMC draft to cause the court to reflect on the public interest.

²⁴Is the reference to "victims" necessary when these guidelines apply only to civil proceedings?

- (i) the fact that any party, prospective witness, victim, or other participant in the proceeding is a child, to which fact the court shall give great weight.²⁵

The court may²⁶ grant a request, subject to limitations suggested by these rules, unless coverage would clearly deprive a participant in the proceedings of a right protected by the constitutions or other laws of the United States or of Texas. Whenever coverage would impair the rights of a participant, coverage may be allowed subject to narrowly designed limitations that safeguard the protected interest.²⁷ Technological techniques that safeguard the protected interest are to be preferred over prohibiting all coverage of the proceeding or any part thereof. For example, in instances where the identity of a witness should not be made public, requiring the media to electronically obscure the face and/or disguise the voice of the witness is preferable to prohibiting coverage of the witness' testimony. Likewise, precluding or restricting coverage of part of a witness' testimony is preferable to barring coverage of the witness' entire testimony.²⁸

COVERAGE LIMITATIONS

Equipment and Personnel. Coverage in general should be by a pool system established by the news organizations and administered by those organizations, subject to the following limitations:

(a) No more than one video camera, one voice recorder, and two still cameras²⁹ operated by one photographer, shall be permitted in any proceeding at any time. Only video cameras, audio equipment and still camera equipment that do not produce disruptive sound or light may be employed to cover judicial proceedings. In the event the electronic media intends to cover any entire or lengthy proceeding, and informs the court, or in other appropriate circumstances, the court may allow an unmanned second camera into the courtroom.

(B) No more than one audio system for broadcast purposes shall be permitted in any proceeding at any time. Audio pickup for all news media purposes shall be through existing audio systems in the court, if possible. If no technically suitable audio system is available, microphones

²⁵These factors are very similar to those adopted in Travis County Rule ¶ 3.5. Bexar, Dallas, Harris, and Nueces Counties do not list factors to consider.

²⁶Bexar County Rule ¶ E provides that "[a] request should be granted, subject to limitations imposed by these rules, unless coverage would clearly deprive a participant in the proceedings of a right protected by the constitutions or other laws of the United States or Texas." The CMC draft uses the word "may." The word "shall" or "should" could also be used here.

²⁷Bexar County Rule ¶ E adds to this sentence "with the minimum possible restriction of coverage."

²⁸The three preceding sentences are identical to Bexar County Rule ¶ E.

²⁹No mention is made in the CMC draft of a person operating a voice recorder. Harris County Rule ¶ 5.1 counts devices, not persons, and includes "one audio recording machine." Dallas County Rule ¶ 5.1 permits "one television camera and one still camera, with a combined crew of no more than three persons." Travis County Rule ¶ 5.1 permits "One television camera and one still photographers, with not more than two cameras and four lenses."

and related wiring essential for media purposes shall be unobtrusive and placed in the courtroom at the court's direction, preferably only at the bench, witness stand and counsel tables.

(c) No moving lights, flash attachments or sudden lighting changes shall be permitted during the coverage of judicial proceedings. No light or signal visible to trial participants shall be used on any equipment during coverage to indicate whether it is operating. The court may, in its discretion, approve modifications and additions in light sources existing in the courtroom, provided such modifications or additions are installed and maintained at media expense and are not distracting or otherwise offensive.

(d) Video cameras, still cameras, voice recorders and personnel shall be positioned in such locations as shall be designated by the presiding judge. The areas designated shall provide the news media with reasonable access to cover the proceedings with the least possible interference with court proceedings. During the proceedings, operating personnel shall not move about, nor shall equipment be placed, moved or removed. All such activities shall take place each day before the proceeding. All equipment shall be in place in advance of the commencement of the proceeding.

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

Specific restrictions on coverage. No coverage of the jury or of any juror or alternate juror in the jury deliberation room³⁰ or during recess shall be permitted.³¹ Coverage of the jury, including alternate jurors, while in the jury box or elsewhere in the courtroom, may be disallowed, but in any event shall not focus on, involve close-ups of, or otherwise emphasize any individual juror or alternate juror.³² Electronic media coverage of proceedings held in chambers, proceedings closed to the public, and jury selection is prohibited. Audio coverage of conferences between an attorney and client, witness or aide, between attorneys, or between counsel and the court at the bench is prohibited.

Because of the routine occurrence of sensitive matters occurring in the courts, juvenile and family courts may establish and publish additional policies regarding electronic media coverage of

³⁰The next sentence makes plain that coverage of the jury in the courtroom is in the discretion of the court. Dallas County Rule ¶ 4.2 flatly prohibits coverage of the jury or alternate jurors in the courtroom. Travis County Rule ¶ 4.2 prohibits *visual* coverage of potential jurors and jurors in the courthouse, except where the physical layout of the courtroom makes that unavoidable, and then only background shots where individual jurors are not identifiable.

³¹The CMC draft does not mention potential jurors.

³²The two preceding sentences are identical to Bexar County Rule ¶ G.

certain types of proceedings in their courts.³³

Supervision of audio-visual coverage. Coverage of judicial proceedings shall be subject to the continuing supervision of the court. Violations of these rules, or of the specific order governing coverage entered by the court, shall be punishable by the court's contempt powers. Notwithstanding the approval of a request for permission to provide coverage of judicial proceedings, the court shall have discretion throughout such proceedings to revoke such approval or to limit the coverage authorized.

Ceremonial coverage. If electronic media coverage is of investiture or ceremonial proceedings as allowed by Rule 18c(c) of the Texas Rules of Civil Procedure, permission for, and the manner of such coverage, are determined solely by the court, with or without guidance from these rules.

Official Record. Films, videotapes, photographs or audio reproductions made in court proceedings shall not be considered part of the official court record.

POOLING

If more than one media agency applies for the same type of coverage of a judicial proceeding, they shall make pool arrangements. If they are unable to agree, the court may deny all coverage by that type of media agency, or may designate one agency or one representative as pool coordinator, specifying such other conditions of pool coverage as may be necessary. A pool will be declared when any media agency seeks camera or sound access to courtroom proceedings being covered by other media agencies.³⁴ It will be the responsibility of the media agency inside the courtroom to provide either instant electronic distribution of all the audio and video of the court proceedings through use of a distribution amplifier ("DA,") or a "dub copy" of all the court proceedings recorded by the media agency that is allowed camera and microphone access to the courtroom.

Eligibility. The only media agencies eligible for access to the pool will be those media agencies that have a representative covering the proceeding during the time the pool camera and microphone are inside the courtroom. Each media agency present should notify the pool provider of its interest in receiving the audio and video feed or dub in a timely fashion, preferably at the time of the proceeding. In the case of instant electronic distribution the audio and video signals will be made available to all media agencies present. No dubs will be made. In the case of no signal distribution, only media agencies present during the pooled proceedings will be eligible for a dub of those proceedings.

³³This provision is identical to Dallas County Rule ¶ 4.3, except that Rule ¶ 4.3 goes on to suggest that coverage not be allowed in child delinquency cases.

³⁴The purpose of this sentence in the CMC draft is unclear, but has been included for discussion.

Pool Responsibilities. The media agency that makes an initial agreement with the court where the proceedings are to take place becomes the pool camera, by virtue of the fact that until others express an interest, the coverage is "exclusive." If, however, more than one media agency expresses an interest in coverage of the proceeding 24 hours before the start of coverage of that proceeding, the media agencies will determine which of them will provide the pool coverage through an agreement, drawing of lots, or flip of a coin.

Notification. Media agencies that gain access to court proceedings on their own have no obligation to notify other media agencies of their intent to record those proceedings. If, however, other media agencies express an interest in similar coverage during the time the initial media agency is covering the inside courtroom proceedings, then a pool is declared but no requirement for other media agencies to be notified of the pool arrangement exists.