

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 1st day of May, 2013, the following order was made and entered:

RE: Request for Comment on Proposed Amendments to the West Virginia Trial Court Rules, Rule 8 Governing Cameras, Audio Equipment, and Media in the Courtroom

On a former day, to-wit, April 24, 2013, came the Court on its own motion and proceeded to consider amendments to Rule 8 of the West Virginia Trial Court Rules.

Upon Consideration whereof, the Court is of the opinion to and does hereby approve a period of public comment on the proposed amendments, to conclude on May 31, 2013, with comments to be filed in writing with the Clerk of this Court. Additions are indicated by underlining, deletions are indicated by strikethrough as follows:

WEST VIRGINIA TRIAL COURT RULES

Rule 8. Cameras, Audio Equipment, and Media in the Courtroom.

Rule 8.01. Permission of the Court Required.

Cameras and audio equipment may be permitted in and around the courtrooms at the discretion of each presiding circuit judge or magistrate (hereafter in this Rule 8, presiding officer).

Rule 8.02. Procedure to Obtain Permission.

The presiding officer, based upon requests made by a party or any other person at least one day in advance of the proceedings, shall decide whether to allow camera and/or audio coverage of proceedings in and around the courtroom in a given case. A party, witness, or counsel may object to such coverage of any case or of any portion of the proceedings, and the presiding officer shall rule upon such an objection. The presiding officer shall give priority to Federal Communications Commission licensed broadcast media personnel agreeing to act as a pool for multiple television or radio broadcast stations. The decision whether to cover judicial proceedings shall be left to the discretion of the individual media organization for which coverage has been approved.

It shall be the affirmative duty of the media personnel to affirm that they have read these rules and will abide by the same and further to demonstrate to the presiding officer sufficiently and in advance of any proceeding that the equipment sought to be used does not produce a distracting

sound or light. A failure to obtain such advance approval may preclude the use of such equipment in any proceeding.

Rule 8.03. Termination of Coverage.

After the proceedings have commenced, the presiding officer shall terminate coverage of any portion of the proceedings or of the remainder of the proceedings if the presiding officer determines that coverage will impede justice or deny any party a fair trial.

Rule. 8.04 Scope of Coverage.

Camera coverage shall be limited to those proceedings open to the public. In order to protect the attorney-client privilege and the right to effective assistance of counsel, there shall not be audio coverage or broadcast of any conferences occurring between or among attorneys and their clients; or between and among attorneys, clients, and the presiding officer.

Rule 8.05. Nonjudicial Meetings.

Coverage of any nonjudicial meeting or other gathering in the courtrooms shall be determined by the concurrence of the sponsoring group and the presiding officer and shall be conducted in accordance with these rules. These rules shall not limit media coverage of ceremonial proceedings conducted in court facilities under such terms and conditions as may be established by the prior consent of the presiding officer.

Rule 8.06. Equipment and Personnel.

The following equipment and persons shall be the maximum equipment and broadcast personnel permitted in the courtroom at any one time:

(a) One portable television camera or film camera with not more than one person operating the same.

(b) One still photographer with one camera and not more than two lenses and necessary related equipment.

(c) As used in these rules, "television equipment" includes both film and videotape cameras. Only television equipment which does not produce distracting sound or light shall be employed in the courtroom. No artificial lighting (other than that normally present in the courtroom) shall be employed in the courtroom except that, with the concurrence of the presiding officer, modifications and additions may be made to lighting in the courtroom, provided that such modifications or additions are installed and maintained without public expense.

~~(d) Only film and video cameras without working audio pickup, unless otherwise approved by the presiding officer, shall be employed in the courtroom. Only still camera equipment that does not produce distracting sound or light shall be employed in the courtroom.~~

(e) ~~(d)~~ Audio equipment of any type shall not be permitted in the courtroom at any time, without prior permission of the presiding officer. If permission is given, not more than one audio system for radio broadcast shall be permitted in any proceeding. If a technically suitable audio system exists in the court facility, audio pickup for both radio and television shall be accomplished from such system. If a technically suitable audio system does not exist in the court facility, microphones and related wiring shall be unobtrusive and shall be located in places designated in advance of the proceeding by the presiding officer.

Rule 8.07. Location of Equipment.

The equipment as designated above shall be located in the courtroom as follows:

(a) Television equipment shall be positioned in such location in the courtroom as shall be designated by the presiding officer. All camera equipment shall be positioned only in such area. Television equipment shall be positioned in an area outside the courtroom if that is technically possible. Cables and wiring will be placed in a safe and unobtrusive manner.

(b) A still camera photographer shall position himself or herself in such location in the courtroom as shall be designated by the presiding officer. The photographer shall assume a fixed position within the designated area and shall act so as not to create a disturbance or call attention to himself or herself through further movement. The photographer shall not move about the courtroom.

(c) Audio equipment shall be positioned in such location in the courtroom as shall be designated by the presiding officer. Cables and wiring will be placed in a safe and unobtrusive manner.

(d) Representatives of the media shall not move about the courtroom while a proceeding is in progress, and equipment, once positioned, shall not be moved during a proceeding.

Rule 8.08. Pooling Arrangements.

Any pooling arrangements among those seeking to provide camera coverage that are required by these limitations on equipment and personnel shall be the sole responsibility of Federal Communications Commission licensed broadcast media personnel ~~media persons~~. ~~The presiding officer will not resolve any dispute regarding the same.~~ In the absence of an advance agreement on pooling by multiple broadcast media representatives, the presiding officer may exclude all contesting video media equipment from the courtroom.

Rule 8.09. Admissibility in Evidence.

None of the film, videotape, photograph, or audiotape developed during any 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 proceeding, unless the presiding officer has designated it as part of the official record of the proceeding.

Rule 8.10. Prior Approval to Identify or Show Jurors.

Without prior approval by the presiding officer, no person shall broadcast or publish any written report, film, videotape, photograph, audio tape, or other report of any kind or character, taken or made in or out of the courtroom where the face of a juror is shown or the identity of any juror is stated or is otherwise discernible. Nothing herein shall be interpreted to prohibit a juror from voluntarily disclosing his or her identity to the media, after the completion of such juror's term of service.

A True Copy



Attest:

//s// Rory L. Perry II
Clerk, Supreme Court of Appeals