

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE ADOPTION )  
OF A NEW RULE RELATING TO ) RULE 10-09  
EXPANDED MEDIA COVERAGE OF )  
TRIAL COURT PROCEEDINGS )

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A hearing was held on October 7, 2010, at Pierre, South Dakota, relating to the adoption of a new rule relating to expanded media coverage of trial court proceedings, and the Court having considered the proposed adoption, correspondence and the oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule relating to expanded media coverage of trial court proceedings, be and it is hereby adopted to read in its entirety as follows:

EXPANDED MEDIA COVERAGE OF TRIAL COURT PROCEEDINGS.

1. Definitions

As used in these rules, the following terms mean:

- (a) "Judicial proceeding" or "proceeding" includes all public arguments, hearings, trials, or other proceedings before a trial court, except those specifically excluded by these rules. These rules do not apply to coverage of ceremonial or nonjudicial proceedings.
- (b) "Expanded media coverage" includes audio or video recording or broadcasting, televising, electronic recording, or photographing of judicial proceedings for the purpose of gathering and disseminating news and educational or instructional information to the public. Any other use, absent express written permission of the court is prohibited.
- (c) "Audio media coverage" includes audio recording or broadcasting or electronic recording of judicial proceedings for the purpose of gathering and disseminating news and educational or instructional information to the public. Any other use, absent express written permission of the court is prohibited.

Rule 10-09

- (d) "Trial court" or the "court" means a South Dakota circuit or magistrate court in which a judicial proceeding is taking place.
- (e) "Media coordinator" means the circuit court administrator for the circuit in which judicial proceedings are taking place.

2. General

- (a) Expanded media coverage or audio media coverage must be conducted in conformity with applicable statutes, rules, and caselaw.
- (b) Nothing herein shall alter the obligation of any attorney to comply with the provisions of the Rules of Professional Conduct governing trial publicity.
- (c) Except as otherwise provided by these rules, electronic recording by moving camera, still camera, and audio device, and broadcasting is prohibited as to all judicial proceedings in a courtroom during sessions of a trial court. This prohibition does not apply to the use of cameras in a courtroom for courtroom security purposes, the videotaped or audio recording of proceedings to create the official record of a case, or to interactive video hearings.
- (d) If the court and all parties consent in writing or on the record at least one week prior to the commencement of a judicial proceeding, the court may authorize expanded media coverage of the proceeding under the conditions and standards set forth in these rules.
- (e) If the court consents in writing or on the record at least one week prior to the commencement of a judicial proceeding, it may authorize audio media coverage of the proceeding, or a portion thereof, under the conditions and standards set forth in these rules that are applicable to audio coverage.

3. Conditions

- (a) There shall be no audio or video recording or broadcast in cases or proceedings not accessible to the public.



Rule 10-09

- (b) Audio or video recording or broadcast of judicial proceedings shall be limited to proceedings conducted within the courtroom and shall not extend to activities or events substantially related to the judicial proceedings that occur in other areas of the courthouse.
- (c) There shall be no audio or video recording or broadcast of jurors at any time during any judicial proceeding, including voir dire.
- (d) During or preceding a jury trial, there shall be no audio or video recording or broadcast of hearings that take place outside the presence of the jury unless the court and parties consent to coverage of such hearings. Such hearings include, but are not limited to, hearings to determine the admissibility of evidence and hearings to determine various motions such as motions to suppress evidence, for judgment of acquittal, in limine, and to dismiss.
- (e) There shall be no audio or video recording or broadcast of in-chambers conferences.
- (f) There shall be no audio or video recording or broadcast of conferences between the attorneys and their clients or co-counsel, or of sidebar conferences between the attorneys and the court.
- (g) There shall be no audio or video recording or broadcast within or from the courtroom during recesses or any other time the trial judge is not present and presiding.
- (h) There shall be no focusing on and photographing of materials on counsel or clerk tables or the judicial bench.
- (i) The courtroom shall not be used to conduct interviews before or after the judicial proceedings.
- (j) No media film, videotape, still photograph or audio reproduction of a judicial proceeding shall be admissible as evidence in any subsequent or collateral proceeding, including any retrial or appeal thereof, except by order of the court.
- (k) The quantity and type of equipment permitted in the courtroom shall be subject to the discretion of the court within the guidelines set out in these rules.

Rule 10-09

- (l) Notwithstanding the provisions of these rules, the court, upon written application, may permit the use of equipment or techniques at variance with these rules, provided the application for variance is made at least three days prior to the scheduled judicial proceeding. Variances may be allowed by the court without advance application or notice if all counsel and parties consent.
- (m) It shall be the responsibility of the media to settle disputes among media representatives, facilitate pooling where necessary, and implement procedures that meet the approval of the court prior to any coverage and without disruption to the court. The media coordinator will coordinate media coverage and act as liaison between the media and the court.
- (n) The court reserves the right to obtain, for historical purposes, a copy of any audio recordings, visual tape or film recordings or published photographs made of its proceedings. The media coordinator will be responsible for providing the court with this duplicate copy.
- (o) All expenses incurred in expanded media coverage of the judicial proceedings, including duplication of materials to provide to the court, shall be the responsibility of the news media.
- (p) Expanded media coverage or audio media coverage may be provided only by persons or organizations that are part of the news media.
- (q) Under all circumstances, the court retains the discretion to exclude or terminate electronic coverage or broadcast of its proceedings. This discretion is not to be exercised in an effort to edit the proceedings, but where deemed necessary in the interests of justice or where these rules have been violated. This rule does not otherwise limit or restrict the first amendment rights of the news media to cover and report judicial proceedings.
- (r) The court shall retain ultimate control of the application of these rules over the broadcasting, recording or photographing of its proceedings. Any decision made by the court under these rules is final and not subject to appeal, except as provided in Section 7.



Rule 10-09

- (s) These rules are designed primarily to provide guidance to media and courtroom participants and are subject to modification by the court at any time.
- (t) Failure to comply with the court's rules or orders regarding coverage and broadcast is punishable by sanction or contempt proceedings pursuant to South Dakota law.

4. Media Coordinator

The court and all interested members of the media shall work, whenever possible, with and through the media coordinator regarding all arrangements for expanded media coverage or audio media coverage.

5. Standards

Media representatives providing expanded media coverage or audio media coverage of a judicial proceeding shall comply with the standards for conduct and attire, technical standards and standards for equipment and pooling set forth in §§ 15-24-9, 15-24-11 and 15-24-12 with the following modifications:

- (a) Where those rules require approval of a matter by "the court" or the "Chief Justice," approval shall be obtained from the circuit or magistrate judge presiding over the judicial proceeding.
- (b) Video cameras, still cameras, and other equipment to be used by the media in the courtroom during judicial proceedings must not produce distracting light or noise. No artificial lighting device of any kind shall be employed with a video camera or still camera.
- (c) Notwithstanding § 15-24-12(a), the number of video cameras in the courtroom shall be limited to one operated by not more than one cameraperson.
- (d) Notwithstanding § 15-24-12(b), the number of still camera photographers in the courtroom shall be limited to one who is allowed two camera bodies.
- (d) In addition to the pooling provisions in § 15-24-12(e), if there is no advance media agreement as to pooling

arrangements, the court shall prohibit the media from the audio or video recording or broadcast of the judicial proceeding.

6. Hearing.

Before limiting, suspending, or terminating expanded media coverage as previously consented to by all the parties or audio media coverage as previously consented to by the judge, the judge presiding in the case may hold an on-the-record hearing, if such hearing will not delay or disrupt the judicial proceeding. In the event that a hearing is not possible, affidavits may be used. Following a hearing or ruling based on affidavits, a written order must be issued.

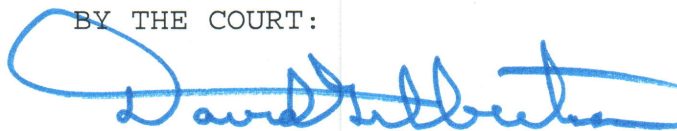
7. Appellate review of a judge's order to deny, terminate, suspend, limit, or exclude expanded media coverage or audio media coverage must be in accordance with the South Dakota Rules of Appellate Procedure.

There will be no stay of a judicial proceeding pending an appeal or other request for relief from a judge's order denying, limiting, suspending, or terminating media coverage. If a judicial proceeding has ended before completion of an appeal or other request for relief, the Supreme Court may nonetheless issue a ruling for future guidance on similar issues.

IT IS FURTHER ORDERED that the rule shall become effective July 1, 2011.

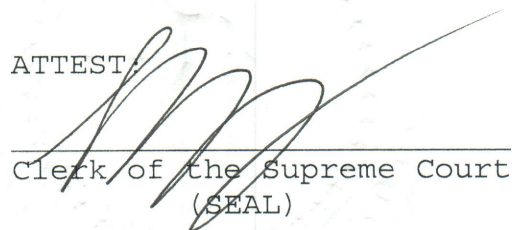
DATED at Pierre, South Dakota, this 28th day of February, 2011.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST



Clerk of the Supreme Court  
(SEAL)

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

FEB 28 2011



Sheryl A. Johnson Legal  
Clerk