



CHAMBERS OF
DALE V. SANDSTROM
JUSTICE

20140208

State of North Dakota
SUPREME COURT

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

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STATE OF NORTH DAKOTA
STATE CAPITOL
BISMARCK, NORTH DAKOTA 58505
(701) 328-4212

June 6, 2014

The Honorable Gerald W. VandeWalle
Chief Justice
North Dakota Supreme Court
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0530

Re: Proposed Amendments to N.D. Sup. Ct. Admin. R. 21

Dear Chief Justice:

The Advisory Commission on Cameras in the Courtroom has met three times to develop and review proposed amendments to Administrative Rule 21, Electronic and Photographic Media Coverage of Court Proceedings. The Commission recommends that the amendments be approved by the Supreme Court.

The commission proposes that section 2e be amended to expand the definition of "media personnel" to include any person or entity regularly engaged in the gathering and dissemination of news. The commission recommends that "news" be expanded to include any person or entity regularly engaged in the gathering and dissemination of "news, information, photos, or videos."

The commission proposes that section 3 be amended to require that media personnel designate a representative for each administrative unit and for the supreme court.

The commission proposes that section 4 be amended to remove the following language: "This rule does not apply to electronic recording of the official record of a judicial proceeding."

The commission proposes that section 5 be amended to change the manner in which a media representative requests expanded media coverage.

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In the Supreme Court, media coverage must be requested 2 business days before the scheduled proceeding and must be made by electronic means. In trial court proceedings, a media representative must request media coverage through the Odyssey case management system. In both the Supreme Court and trial court proceedings, media representatives must set forth which type of coverage is sought, including whether live coverage is sought.

The commission proposes that section 7 be amended to allow two professional-quality video cameras, two audio systems for radio broadcasts, and two still photographers to be used during a judicial proceeding. It is also proposed that section 7 be amended to require that media pooling be the sole and mandatory responsibility of the media. Finally, it is proposed that section 7 be amended to provide that all forms of media must be given equal access to proceedings.

The commission proposes that section 8e be amended to prohibit media personnel from recording interviews in the hallways immediately adjacent to the entrances to the courtroom and to prohibit photographing through windows or open doors of the courtroom.

The commission proposes that section 9 be amended to ensure that judges take necessary steps to ensure expanded media coverage is conducted without compromising the safety of persons having business before the court.

The commission proposes that section 10 be amended to rename the commission the "North Dakota Advisory Commission on Electronic Media in the Courtroom." The commission also proposes to amend the membership of the commission, omitting the Dakota Press Photographers Association representative (because that association no longer exists) and replacing that member with a person representing news photographers; and, because the North Dakota Trial Lawyers Association changed its name to North Dakota Association for Justice, the commission proposes amending section 10 to reflect that change. The commission also proposes that the following language be deleted from section 10: "The Commission shall conduct a continuing evaluation of the operation of this rule and shall submit its findings and recommendations to the Supreme Court."

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A copy of the proposed amendments to Rule 21 is attached.

In addition, after the meeting at which the commission voted to transmit the proposal to the Court, two other comments were received. I recommend that they be docketed as comments on the proposed rule changes for consideration by the Court.

The commission respectfully submits these proposed rule changes to the Court for its consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dale Sandstrom". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke at the end.

Dale V. Sandstrom, Chair
Advisory Commission on Cameras in the
Courtroom

RULE 21. ELECTRONIC AND PHOTOGRAPHIC MEDIA COVERAGE OF COURT
PROCEEDINGS

Section 1. Authority.

This rule is adopted under the authority of Article VI, Section 3 of the North Dakota Constitution.

Section 2. Definitions.

As used in this rule:

a. "Good cause," for exclusion under Section 21(4) (b) (2), means expanded media coverage having a substantial effect on the objector which would be qualitatively different from the effect on members of the general public and from coverage by other types of media.

b. "Judge" means the presiding officer in a judicial proceeding.

c. "Judicial proceeding" or "proceeding" includes any civil or criminal trial, hearing, or other matter conducted before a court.

d. "Expanded media coverage" includes broadcasting, televising, electronic recording, or photographing of a judicial proceeding for the purpose of gathering and disseminating information to the public by media personnel.

e. "Media personnel" includes ~~broadcasters, photographers, recorders, and any other bona fide member of the news media who gathers or disseminates information to the public~~ any person or entity regularly engaged in the gathering and dissemination of news, information, photos, or videos.

22 Section 3. Media Representative.

23 ~~Broadcasters and photographers~~ Media personnel shall must designate a person for
24 each administrative unit and for the supreme court with whom the court may consult as a
25 ~~representative of them~~ their representative.

26 Section 4. General.

27 The court may permit expanded media coverage of a judicial proceeding in the
28 courtroom while the judge is present, and in adjacent areas as the court may direct. Expanded
29 media coverage provided for in this rule may be exercised only by media personnel. ~~This rule~~
30 ~~does not apply to electronic recording of the official record of a judicial proceeding.~~

31 a. Coverage allowed. Media personnel may request the court before which a judicial
32 proceeding is pending to authorize coverage of the proceeding or of all proceedings relating
33 to a case. Expanded media coverage may be permitted of all judicial proceedings, except
34 proceedings specifically excluded by statute, this rule, or in the exercise of the judge's
35 discretion.

36 b. Judge's authority to deny expanded media coverage. The judge may deny expanded
37 media coverage of any proceeding or portion of a proceeding in which the judge determines
38 on the record, or by written findings:

39 1. Expanded media coverage would materially interfere with a party's right to a fair
40 trial;

41 2. A witness or party has objected and shown good cause why expanded media
42 coverage should not be permitted;

43 3. Expanded media coverage would include testimony of an adult victim or witness
44 in a prosecution under N.D.C.C. ch. 12.1-20, or for charges in which an offense under that
45 chapter is an included offense or an essential element of the charge, unless the victim or
46 witness consents;

47 4. Expanded media coverage would include testimony of a juvenile victim or witness
48 in a proceeding in which illegal sexual activity is an element of the evidence; or

49 5. Expanded media coverage would include undercover agents or relocated witnesses.

50 c. Judge's authority to limit or end media coverage. The judge may limit or end
51 expanded media coverage at any time during a proceeding, if the judge determines on the
52 record, or by written findings:

53 1. The requirements of this rule or additional guidelines imposed by the judge have
54 been violated; or

55 2. The substantial rights of an individual participant, or rights to a fair trial will be
56 prejudiced by the expanded media coverage if it is allowed to continue.

57 d. Coverage prohibited. Proceedings held in chambers, proceedings closed to the
58 public, and jury selection may not be photographed, recorded, or broadcast. Conferences
59 between an attorney and client, witness or aide, between attorneys, or between counsel and
60 the court at the bench may not be recorded or received by sound equipment. Close-up
61 photography of jurors is prohibited.

62 e. No appeal of expanded media coverage decision. A judge's ruling on expanded
63 media coverage is not appealable.

64 Section 5. Requests.

65 Expanded media coverage must be requested as provided in this Section:

66 a. Appellate court proceeding. A media representative must request expanded media
67 coverage from the Supreme Court at least ~~seventy-two hours~~ 2 business days before the
68 scheduled proceeding: and must set forth which type of coverage is sought, including
69 whether live coverage is sought. The request must be ~~by regular mail and, if possible, by~~
70 ~~facsimile~~ made by electronic means, with copies to counsel of record. The Court may
71 determine the coverage of any proceeding.

72 b. Trial court proceeding. A media representative must request media coverage
73 through the Odyssey case management system from the judge of the trial court before which
74 the proceeding is scheduled at least seven days before the proceeding: and must set forth
75 which type of coverage is sought, including whether live coverage is sought. Notice of the
76 request for coverage must be given to all counsel of record and any ~~pro se parties~~ self-
77 represented litigants. ~~A copy of the notice of request must be sent by the fastest reasonable~~
78 ~~means to all counsel of record, any pro se parties, and the judge.~~ The notice must be in
79 writing and filed with proof of service with the clerk of the appropriate court. If the
80 proceeding is scheduled less than seven days in advance, a request for coverage and notice
81 of request must be given as soon as practicable.

82 c. Single request for all proceedings. Following the procedures in subsection (b), a
83 media representative may make a single request to cover all proceedings in a case. The judge
84 may not grant the request for all proceedings if a criminal defendant is not represented by

85 counsel.

86 d. Equipment and technical variance. Upon application of media personnel, the judge
87 may permit the use of equipment or technology not provided for in this rule. An objection
88 to any variance in equipment or technology must be made as provided in Section 6. The
89 judge may rule on a variance without advance application or notice, if all parties and counsel
90 consent.

91 e. Deadlines may be extended or reduced by court order.

92 Section 6. Objections to Coverage in Trial Court Proceeding.

93 A party to a proceeding objecting to expanded media coverage in a trial court must
94 file a written objection with the court, stating the grounds for the objection at least three days
95 before the scheduled proceeding. Notice of the objection must be sent to the media
96 representative who requested the coverage.

97 The judge ~~shall~~ must rule on an objection before the scheduled proceeding or at the
98 time the objection is raised. The judge may rule on the written objection and timely filed
99 responses or the judge may give counsel, parties, witnesses, and requesting media personnel
100 and opportunity to present additional evidence by affidavit or by other means as the judge
101 may direct. The judge may extend or reduce the time for filing an objection. The judge may
102 extend the right of objection to a person not specifically provided for in this rule.

103 Section 7. Equipment and Media Personnel.

104 Unless the court directs otherwise, equipment used in a judicial proceeding is limited
105 to ~~a single television camera~~ two professional-quality video cameras operated by one person

106 ~~each~~ and ~~one~~ two audio ~~system~~ systems for radio broadcasts. ~~Only one~~ Two still
107 ~~photographer is~~ photographers are allowed in a judicial proceeding. ~~Any~~ If media pooling
108 ~~needed~~ is necessary because of these limitations on equipment and personnel, it is the sole
109 mandatory responsibility of the media and must be arranged before coverage without calling
110 on the court to mediate. Every effort must be made for the joint use of broadcasting
111 equipment within the courtroom. Wires, microphones, and similar equipment must be placed
112 as unobtrusively as possible within the courtroom at least fifteen minutes before the
113 proceeding and must be secured or taped down when appropriate. Artificial lighting and
114 flashbulbs are not permitted. Only equipment that does not produce distracting noises is
115 allowed in the courtroom. Media coverage outside the courtroom must be handled with care
116 and discretion, but need not be pooled or held to the restrictions of this rule: , except as
117 provided in section 8.

118 The quantity and types of equipment permitted in the courtroom is in the discretion
119 of the judge. All forms of media must be given equal access to proceedings.

120 Section 8. Technical.

121 a. All equipment, including ~~television~~ video cameras, is to be designed or modified
122 so participants in the judicial proceeding being covered are unable to determine when
123 recording is occurring. Still cameras must be selected for quietness, and be operated
124 unobtrusively and as quietly as possible.

125 b. Microphones for counsel and judges must be equipped with off and on switches to
126 facilitate compliance with Section 4(d).

127 c. With the judge's approval, existing courtroom light sources may be modified (e.g.,
128 higher wattage light bulbs), if the modifications are made and maintained without public
129 expense.

130 d. Audio pickup for expanded media coverage must use any existing audio system in
131 the courtroom, if the pickup would be technically suitable for broadcast. If possible,
132 electronic audio recording equipment and any media personnel must be located outside of
133 the courtroom.

134 e. Media personnel must be located in, and coverage of the proceedings must take
135 place from, an area or areas designated by the judge. The area or areas designated must
136 provide reasonable access to the proceeding to be covered. Even if expanded media coverage
137 of a proceeding is granted, media personnel may not record interviews for broadcast in the
138 hallways immediately adjacent to the entrances to the courtroom. Photographing through the
139 windows or open doors of the courtroom is prohibited.

140 f. ~~Television~~ Video cameras and audio equipment may be installed or removed from
141 the courtroom only when the court is not in session.

142 Section 9. Decorum.

143 The decorum and dignity of the court, the courtroom, and the proceedings must be
144 maintained at all times. Court customs must be followed. Media personnel ~~shall~~ must dress
145 appropriately for the proceedings. Movement about the courtroom is limited, and efforts must
146 be made not to leave the courtroom while proceedings are in progress. Loud talking is not
147 permitted while proceedings are in progress.

148 In addition to specific responsibilities provided in this rule, judges must take whatever
149 steps are necessary to ensure that expanded media coverage is conducted without
150 compromising the safety of persons having business before the court.

151 Section 10. North Dakota Advisory Commission on ~~Cameras~~ Electronic Media in the
152 Courtroom.

153 The North Dakota Advisory Commission on ~~Cameras~~ Electronic Media in the
154 Courtroom is appointed by the Chief Justice, and consists of two members of the North
155 Dakota Bar Association, two members of the North Dakota Judicial Conference, one member
156 of the ~~Dakota Press Photographers Association~~ representing news photographers, two
157 members of the North Dakota Broadcasters Association, one member of the North Dakota
158 ~~Trial Lawyers Association~~ for Justice, and, if appointed as a member, ~~the~~ a person designated
159 in Section 3. The associations or their presidents recommend their members for appointment.
160 Members serve staggered three-year terms, and are eligible for reappointment. A member
161 may not serve more than three consecutive terms. A former member who served three
162 consecutive terms is eligible for reappointment after a six-year break in service. The Chief
163 Justice designates the chair.

164 ~~The Commission shall conduct a continuing evaluation of the operation of this rule~~
165 ~~and shall submit its findings and recommendations to the Supreme Court.~~ The Commission
166 shall must receive and consider complaints from any person concerning the rules directed to
167 it by the Supreme Court, and, if the complaint cannot be satisfactorily resolved by the
168 Commission, submit a report to the Supreme Court.

169 Section 11. This rule was amended effective April 1, 2006.

170 **HISTORY:** Adopted March 29, 1984, effective July 1, 1984. Amendments adopted
171 May 13, 1987. August 28, 1990, order continuing N.D. Sup. Ct. Admin. R. 21(E). Emergency
172 amendments adopted effective May 18, 1994. N.D. Sup. Ct. Admin. R. 21 amendments
173 adopted effective July 1, 1995, incorporate and amend N.D. Sup. Ct. Admin. R. 21E.
174 Amended effective April 1, 2006 (Supreme Court No. 20060059).

175 **Cross-Reference:** N.D.R.Ct. 10.1; N.D.R.Crim.P. 53; N.D. Code Jud. Conduct Canon
176 3; N.D. Sup. Ct. Admin. R. 21(E).

Williams, Kathryn

From: Jack McDonald <Jackmcdonald@wheelerwolf.com>
Sent: Saturday, March 22, 2014 9:11 PM
To: LeCates, Christopher; Dave Bliss; DuWayne Walker; McDonald, Jack; Jim Shaw; Herman, Douglas; Sandstrom, Justice Dale V.; Williams, Kathryn; Pam Nesvig; Sean Foss; Tom Gerhardt
Cc: McDonald, Jack
Subject: 2 changes

Justice Sandstrom: I had a chance to go over the proposed changes to AR21 in some detail over the weekend, and wish I could have suggested two other changes. I will make them now and ask your advice on how best to advance them at this stage. Probably at the hearing before the Court? And hopefully without objection from the Commission?

The first would be an addition to the Commission membership in Section 10 to add: "One member of the North Dakota Newspaper Association." It was originally thought that the photographer would always be a newspaper photographer, but that is no longer the case. Newspaper should really have a seat at the table.

The second would be in Section 8 (a) to add a sentence at the end of the subsection at line 125 of my copy to read: "Media may use any form of electronic devices in reporting on court proceedings." This is to assure that reporters can use Smart Phones, iPads, Tablets, laptops, or whatever will be developed next week in taking notes and helping to write and transmit their story. I'm concerned because I know some court security personnel still require that all laptops, etc. be barred from the courtroom.

Many thanx for your consideration.

Jack McDonald
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220 N. 4th St.
Bismarck, ND 58502-1776
Phone: 701-751-1776
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LeCates, Christopher

From: Hulm, Petra
Sent: Tuesday, March 04, 2014 2:24 PM
To: LeCates, Christopher
Subject: FW: Comments to Proposed Rule Changes to Advisory Commission on Cameras in the Courtroom

Chris – These go to you, correct?

Petra H. Mandigo Hulm

Chief Deputy Clerk of Court
North Dakota Supreme Court
phulm@ndcourts.gov
701-328-2221

This email and any transmitted files attached are intended solely for the use of the individual or entity to which they are addressed, and may be confidential under the law. If you have received this email in error please notify the originator of the message.

From: Mattson, Doug
Sent: Tuesday, March 04, 2014 12:09 PM
To: Hulm, Petra; (SUP) Clerk of Court Office
Subject: Comments to Proposed Rule Changes to Advisory Commission on Cameras in the Courtroom

Thank you for the opportunity to submit comments on the proposed changes to Administrative Rule 21. My comments are as follows:

1. In Section 2, please provide a definition of “media”. This would be helpful when interpreting and applying the proposed “All forms of media must be given equal access to proceedings” provision in Section 7.
2. As to Section 3, please change “administrative unit” to “judicial district”. Such a change would be more workable on a judicial district basis as opposed to an administrative unit framework. The administrative unit approach makes sense if trial court administrators were to decide motions to the court for expended media coverage.
3. In Section 4, please include specific language that an order for expended media coverage only applies to media personnel who made the motion for expended media coverage. I make this request after having encountered, generally in emotional high profile cases, efforts by media personnel from one news organization to claim they should be allowed to come into court with their equipment based on my granting another news organization’s motion for expended media coverage. Such an expansive view was not contemplated in either the motions or the issued Orders for expended media coverage. With having faced this situation more than once, possibly the reporters or their superiors misread Administrative Rule 21. Also, such confusion may well increase if some clarifying language is not added to Section 4 should the Supreme Court adopt the proposed added language to Section 7 that “All forms of media must be given equal access to proceedings”. Suggested language change to address this issue would be in the first unnumbered paragraph to Section 4 of Rule 21:

“The court may permit expended media coverage of a judicial proceeding in the courtroom while the judge is

present, and in adjacent areas as the court may direct, Expanded media coverage provided for in this rule may be exercised only by media personnel who made the motion for expanded media coverage."

Thank you.

/s/
Douglas L. Mattson
District Court Judge