

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
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Report

TO: Members of the Judicial Council

FROM: Court Technology Advisory Committee
Hon. Ming W. Chin, Chair
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DATE: August 5, 2005

SUBJECT: Photographing, Recording, and Broadcasting in Court (amend Cal. Rules of Court, rule 980) (Action Required)

Issue Statement

Advances in technology in recent years have resulted in the development of new electronic digital media devices that among other capabilities can create photographic images and aural recordings. These mixed-use devices are not prohibited by rule from being brought into the courthouse or courtroom, but their potential for use as cameras or recorders has raised concern by courts that they could be used without a judicial order permitting photographing or recording in the courtroom under rule 980.

Recommendation

The Court Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2006:

1. Amend rule 980 to define photographing, recording, and broadcasting to encompass digital technology; and
2. Amend rule 980 to conform the style of the rule to current usage, including eliminating the use of “shall” and specifying Judicial Council forms by name and number.

The text of the proposed amended rule is attached at pages 4–8.

Rationale for Recommendation

Photographing, recording, and broadcasting in the court under a judge’s order are permitted under rule 980. Since rule 980 was adopted, technological innovations have

resulted in the development of multiuse electronic devices that create images or aural recordings secondary to their primary purpose, such as cellular telephones that include a camera function or personal music players that include audio recording capability.

The committee recommends expanding the definitions in the rule to encompass photographing, recording, and broadcasting. Those terms are not currently defined in the rule, and photography particularly has evolved beyond the traditional film camera. The terms are broadly defined to allow for innovations in those technologies. While the terms may be commonly understood, a clear, broad definition of each allows courts to monitor the use of existing and yet-to-be developed devices that may be used to circumvent the requirement for a court order.

The committee has also indicated in the definition that traditional, nonelectronic forms of creating an image by sketching or creating notes by hand are not intended to be covered under rule 980. The definition of broadcasting is intended to include transmission by electrons or sound waves.

The technical amendments throughout the rule replace all occurrences of “shall” with “may,” “must,” or “will” as part of the overall effort to eliminate “shall” from the rules and conform the rule to current style. The rule is also amended to refer to the name and number of the Judicial Council form rather than simply as a “form approved by the Judicial Council”.

Alternative Actions Considered

The committee considered limiting the amendment to telephones, but decided that because of rapid technological change leading to the development of other multifunction electronic products, a more general definition that would encompass other devices was appropriate.

For the same reason of rapid technological change, the committee decided not to list particular devices capable of photographing, recording, or broadcasting to prevent the list from becoming obsolete.

Comments From Interested Parties

The committee circulated the proposal during the spring public comment period. Eight comments were submitted from judges, court executives and staff, and representatives from the bar. No comments were received from the media, the usual group requesting coverage under the rule. All commentators agreed with the need for the rule amendment. The Trial Court Presiding Judges and Court Executives Advisory Committee’s Rules Subcommittee reviewed and supported the proposal before the public circulation.

In response to two commentators, the definitions were revised to clarify that traditional methods of sketching and hand note taking in the courtroom were not included in the rule

covering photographing and recording. The committee also added a definition of broadcasting to address one commentator's concern that dissemination of courtroom proceedings by live broadcast could be excluded.

A chart summarizing the comments and the committee's response is attached at pages 9–12.

Implementation Requirements and Costs

Courts should incur little or no cost to implement the rule amendment. Minimal revisions in brochures or signage on courtroom decorum may be necessary to alert the public to the limitations on the use of electronic devices.

Attachments

Rule 980 of the California Rules of Court would be amended, effective January 1, 2006, to read:

Rule 980. Photographing, recording, and broadcasting in court

(a) ***

(b) **[Definitions]** For purposes of this rule,

(1)–(4) ***

(5) “Photographing” means recording a likeness, regardless of the method used, including by digital or photographic methods. As used in this rule, photographing does not include drawings or sketchings of the court proceedings.

(6) “Recording” means the use of any analog or digital device to aurally or visually preserve court proceedings. As used in this rule, recording does not include handwritten notes or the court record, whether by court reporter or by digital or analog preservation.

(7) “Broadcasting” means a visual or aural transmission or signal, by any method, of the court proceedings, including any electronic transmission or transmission by sound wave.

(c) **[Photographing, recording, and broadcasting prohibited]** Except as provided in this rule, court proceedings ~~shall~~ may not be photographed, recorded, or broadcast. This rule does not prohibit courts from photographing or videotaping sessions for judicial education or publications and is not intended to apply to closed-circuit television broadcasts solely within the courthouse or between court facilities if the broadcasts are controlled by the court and court personnel.

(d) **[Personal recording devices]** The judge may permit inconspicuous personal recording devices to be used by persons in a courtroom to make sound recordings as personal notes of the proceedings. A person proposing to use a recording device ~~shall~~ must obtain permission from the judge in advance. The recordings ~~shall~~ must not be used for any purpose other than as personal notes.

(e) **[Media coverage]** Media coverage ~~shall~~ may be permitted only on written order of the judge as provided in this subdivision. The judge in his or her discretion may permit, refuse, limit, or terminate media coverage. This rule

1 does not otherwise limit or restrict the right of the media to cover and report
2 court proceedings.

3
4 (1) *(Request for order)* The media may request an order on a ~~form approved~~
5 ~~by the Judicial Council~~ Media Request to Photograph, Record, or
6 Broadcast (form MC-500). The form ~~shall~~ must be filed at least five court
7 days before the portion of the proceeding to be covered unless good cause
8 is shown. A completed, proposed order on a ~~form approved by the~~
9 ~~Judicial Council~~ Order on Media Request to Permit Coverage (form MC-
10 510) ~~shall~~ must be filed with the request. The judge assigned to the
11 proceeding ~~shall~~ must rule upon the request. If no judge has been
12 assigned, the request ~~shall~~ will be submitted to the judge supervising the
13 calendar department, and thereafter be ruled upon by the judge assigned
14 to the proceeding. The clerk ~~shall~~ must promptly notify the parties that a
15 request has been filed.

16
17 (2) ***

18
19 (3) *(Factors to be considered by the judge)* In ruling on the request, the judge
20 ~~shall~~ is to consider the following factors:

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22 ~~(i)~~(A) Importance of maintaining public trust and confidence in the
23 judicial system;

24
25 ~~(ii)~~(B) Importance of promoting public access to the judicial
26 system;

27
28 ~~(iii)~~(C) Parties' support of or opposition to the request;

29
30 ~~(iv)~~(D) Nature of the case;

31
32 ~~(v)~~(E) Privacy rights of all participants in the proceeding, including
33 witnesses, jurors, and victims;

34
35 ~~(vi)~~(F) Effect on any minor who is a party, prospective witness,
36 victim, or other participant in the proceeding;

37
38 ~~(vii)~~(G) Effect on the parties' ability to select a fair and unbiased
39 jury;

40
41 ~~(viii)~~(H) Effect on any ongoing law enforcement activity in the case;

42
43 ~~(ix)~~(I) Effect on any unresolved identification issues;

- 1
2 (~~x~~)(J) Effect on any subsequent proceedings in the case;
3
4 (~~xi~~)(K) Effect of coverage on the willingness of witnesses to
5 cooperate, including the risk that coverage will engender threats
6 to the health or safety of any witness;
7
8 (~~xii~~)(L) Effect on excluded witnesses who would have access to the
9 televised testimony of prior witnesses;
10
11 (~~xiii~~)(M) Scope of the coverage and whether partial coverage might
12 unfairly influence or distract the jury;
13
14 (~~xiv~~)(N) Difficulty of jury selection if a mistrial is declared;
15
16 (~~xv~~)(O) Security and dignity of the court;
17
18 (~~xvi~~)(P) Undue administrative or financial burden to the court or
19 participants;
20
21 (~~xvii~~)(Q) Interference with neighboring courtrooms;
22
23 (~~xviii~~)(R) Maintaining orderly conduct of the proceeding; and
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25 (~~xix~~)(S) Any other factor the judge deems relevant.

26
27 (4) (*Order permitting media coverage*) The judge ruling on the request to
28 permit media coverage is not required to make findings or a statement of
29 decision. The order may incorporate any local rule or order of the
30 presiding or supervising judge regulating media activity outside of the
31 courtroom. The judge may condition the order permitting media coverage
32 on the media agency's agreement to pay any increased court-incurred
33 costs resulting from the permitted media coverage (for example, for
34 additional court security or utility service). Each media agency ~~shall be~~ is
35 responsible for ensuring that all its media personnel who cover the court
36 proceeding know and follow the provisions of the court order and this
37 rule.

38
39 (5) (*Modified order*) The order permitting media coverage may be modified
40 or terminated on the judge's own motion or upon application to the judge
41 without the necessity of a prior hearing or written findings. Notice of the
42 application and any modification or termination ordered pursuant to the

1 application ~~shall~~ must be given to the parties and each media agency
2 permitted by the previous order to cover the proceeding.
3

4 (6) (*Prohibited coverage*) The judge ~~shall~~ may not permit media coverage of
5 the following:
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7 ~~(i)~~(A) Proceedings held in chambers;
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9 ~~(ii)~~(B) Proceedings closed to the public;
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11 ~~(iii)~~(C) Jury selection;
12

13 ~~(iv)~~(D) Jurors or spectators; and
14

15 ~~(v)~~(E) Conferences between an attorney and a client, witness, or
16 aide, between attorneys, or between counsel and the judge at
17 the bench.
18

19 (7) (*Equipment and personnel*) The judge may require media agencies to
20 demonstrate that proposed personnel and equipment comply with this
21 rule. The judge may specify the placement of media personnel and
22 equipment to permit reasonable media coverage without disruption of the
23 proceedings.
24

25 Unless the judge in his or her discretion orders otherwise, the following rules
26 ~~shall~~ apply:
27

28 ~~(i)~~(A) One television camera and one still photographer ~~shall~~ will be
29 permitted.
30

31 ~~(ii)~~(B) The equipment used ~~shall~~ may not produce distracting sound
32 or light. Signal lights or devices to show when equipment is
33 operating ~~shall~~ may not be visible.
34

35 ~~(iii)~~(C) An order permitting or requiring modification of existing
36 sound or lighting systems is deemed to require that the
37 modifications be installed, maintained, and removed without
38 public expense or disruption of proceedings. Microphones and
39 wiring ~~shall~~ must be unobtrusively located in places approved
40 by the judge and ~~shall~~ must be operated by one person.
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~~(iv)~~(D) Operators ~~shall~~ may not move equipment or enter or leave the courtroom while the court is in session, or otherwise cause a distraction.

~~(v)~~(E) Equipment or clothing ~~shall~~ must not bear the insignia or marking of a media agency.

(8) (*Media pooling*) If two or more media agencies of the same type request media coverage of a proceeding, they ~~shall~~ must file a statement of agreed arrangements. If they are unable to agree, the judge may deny media coverage by that type of media agency.

(f) ***

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Mike Belote CA Advocates, Inc. Sacramento	A	Y	No comment.	No response required.
2.	Mr. Saul Bercovitch State Bar of California Committee on Administration of Justice San Francisco	AM	Y	<p>CAJ agrees with the need to update rule 980 to account for advances in technology in recent years that have resulted in the creation of new electronic devices for creating photographs and audio recordings. CAJ is concerned, however, that the proposed definitions could arguably be read as including traditional forms of “recording” such as taking notes and making sketches. As CAJ understands this proposal, that is not the intent, and CAJ questions whether any such proposal would be permissible in any event. See <i>KCST-TV Channel 39 v. Municipal Court</i>, 201 Cal. App. 3d 143, 145 (1988) (vacating trial court’s order barring the broadcast of a sketch of the defendant, finding that rule 980 “provides no support for an order prohibiting either taking or publishing an artistic drawing of the accused.”)</p> <p>CAJ believes it is critical to tailor the proposed new definitions so as not to preclude traditional access to the court by those such as sketch artists and note-takers,</p>	<p>The rule has been modified by indicating that photographing and recording is not intended to apply to drawings or sketching or handwritten notes. Traditional non-technology based courtroom practices have not been altered by this amendment.</p>

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				<p>and suggests the following language: (5) “Photographing” means preserving a still visual image, by any means other than drawing.” (6) “Recording” means preserving a sound or moving visual image, by any means other than drawing.”</p> <p>CAJ believes this language is more narrowly focused on photographs and photograph equivalents, audio recordings and audio recording equivalents, and videos and video recording equivalents.</p> <p>CAJ believes that any definition of “recording” that is ultimately adopted should <i>not</i> include a statement that the definition does not include the official court record. That language is potentially problematic insofar as it may suggest that an “unofficial” court record (for example a private transcription) would otherwise be included in the definition. CAJ believes that a reasonable reading of its proposed definition of “recording” (or any definition ultimately adopted) should <i>not include</i> the official court record, so there is no need to explicitly <i>exclude</i> the official court record.</p>	<p>The rule has been modified by deleting “official” from the definition. The committee agrees that a court may occasionally make an unofficial record, for example, creating an audiotape that may be used for educational purposes.</p>

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				However, in the event this issue is viewed as having some independent significance, CAJ believes any reference to inapplicability to creation of the official court record should be contained in a comment to the rule, rather than the rule itself.	
3.	Hon. Edward F. Brodie Superior Court of Ventura County Ventura	A	N	No comment.	No response required.
4.	Ms. Mary Carnahan Manager Superior Court of Solano County Fairfield	A	N	No comment.	No response required.
5.	Superior Court of Los Angeles County Los Angeles	A	Y	Each of the identified paragraphs (5) and (6) do not produce the necessary effects. Paragraph (5): Strictly read, this language would apply to courtroom sketch artists, since they “record” and their work is ultimately disseminated digitally, by e-mail or digital recording of the sketch. We suggest slightly different language. “Photographing” means the capture of an image by any means — digital, film, tape, analog, or by means of any successor imaging technologies, whether still or	The rule has been modified by indicating that photographing and recording is not intended to apply to drawings or sketching or handwritten notes. Traditional non-technology based courtroom practices have not been altered by this amendment.

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				<p>motion, regardless of medium.</p> <p>Paragraph (6): The wording “aurally or visually preserve court proceedings” could be read to exclude dissemination by live broadcast. In the case of a live shot, the image is not necessarily “preserved” since it may or may not be recorded. Rule 980 applies to live broadcasts, whether anyone records them or not.</p> <p>What about: “Recording” is creation of a record by electronic means — whether by analog or any digital image capture device. As used here, “recording” includes any image capture, even if the images in question are transmitted live and not preserved in any recording medium.</p>	The rule has been modified to define broadcasting, including transmission by electrons or sound waves.
6.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County San Diego	A	Y	Will the definition language changes be incorporated into MC-500 and MC-510 under “type of coverage”?	Form MC-500 provides an “other” check box to specify additional devices. Type of coverage is not specified in form MC-510.
7.	Hon. Dennis E. Murray Presiding Judge Superior Court of Tehama County Red Bluff	A	N	No comment.	No response required.
8.	Mr. Dean Zipser	A	Y	No comment.	No response required.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	President Orange County Bar Association Irvine				