

No. _____

**STATE OF MINNESOTA
IN SUPREME COURT**

In re:

Proposed Amendments to
Minnesota Code of Judicial Conduct Canon 3A(11),
and Minnesota General Rule of Practice 4

**PETITION OF MINNESOTA JOINT MEDIA COMMITTEE,
MINNESOTA NEWSPAPER ASSOCIATION, MINNESOTA
BROADCASTERS ASSOCIATION, AND SOCIETY OF
PROFESSIONAL JOURNALISTS, MINNESOTA CHAPTER**

INTRODUCTION

Petitioners Minnesota Joint Media Committee, Minnesota Newspaper Association, Minnesota Broadcasters Association, and Society of Professional Journalists, Minnesota Chapter, respectfully ask the Court to reconsider and revise portions of its rules that, for decades, have effectively prevented audio and video coverage of trial court proceedings by the state's news media.

Specifically, Canon 3A(11) of the Minnesota Code of Judicial Conduct prohibits such coverage by the media, unless permission is obtained not only from the trial judge, but from *all* of the parties as well. Comparable restrictions appear in Minn. Gen. R. Prac. 4. Because long experience demonstrates that the requirement of

unanimous consent will rarely be satisfied, Minnesota's trial courts have remained overwhelmingly closed to audio and video coverage.

Whether electronic coverage of civil and criminal proceedings should be more readily allowed is an issue that this Court has addressed before. However, its last formal deliberations on the subject occurred nearly 20 years ago. Since then, much has changed, particularly respecting two important factors having direct relevance to the issue—the character of audio and video recording technology, and information about the impact of such coverage obtained in other states.

In recent decades, an ever-increasing number of jurisdictions have permitted cameras and similar recording devices in their courtrooms. In fact, only a few states currently appear to impose limitations on audio and video coverage that are comparable to, or more than restrictive than, those found in Minnesota.

While many explanations for this trend may exist, the most plausible is that in those states where audio and video coverage is generally permitted, experience demonstrates that virtually all of the criticisms once leveled at such coverage are largely lacking in substance. Indeed, such coverage has been shown to produce distinct dividends, not simply for the news media but for the public and the courts as well.

Meanwhile, over the past 20 years or so, many technological improvements have occurred in the devices that can be used for recording court proceedings. Once bulky, noisy, and obtrusive, some are now so small and quiet as to be virtually

undetectable in the courtroom. Thus the potential they once posed for distracting from the proceedings has been dramatically reduced.

BASIS FOR PETITION

Petitioners submit that the time is ripe to reconsider the content and impact of Minnesota's rules governing electronic media coverage of trial court proceedings. The specific grounds supporting this Petition, and the relief sought, can be summarized as follows:

1. Petitioner Minnesota Joint Media Committee is a nonprofit corporation organized to foster exchanges among the state's diverse news media about issues of mutual concern, as well as to seek improvements in law and policy that might be of mutual benefit. Its members include representatives of nearly all the major media trade associations, news organizations, and journalism groups in the state.

2. Petitioner Minnesota Newspaper Association (MNA) is a voluntary trade association of all of the general-interest newspapers and most of the special-interest newspapers in the state. It is the principal representative of the organized press in Minnesota, with approximately 400 newspaper members.

3. Petitioner Minnesota Broadcasters Association is a voluntary trade association of virtually all of Minnesota's licensed radio and television stations. It is the principal voice of the broadcast industry in Minnesota.

4. Petitioner Society for Professional Journalists, the oldest, largest, and broadest-based organization of journalists in the U.S., was founded as Sigma Delta Chi in 1909. The Minnesota Chapter was founded in 1956.

5. Canon 3A(11) of the Minnesota Code of Judicial Conduct provides that “a judge shall prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recess between sessions.”¹ The current text of Canon 3A(11) appears at A-1; the revisions proposed by Petitioners are shown in red-lined format at A-2.

6. Minnesota Rule of General Practice 4 provides that no “pictures or voice recordings, except the recordings made as the official court record, shall be taken in any courtroom . . . during a trial or hearing of any case or special proceeding incident to a trial or hearing, or in connection with any grand jury proceedings.” The current text of Rule 4 appears at A-3; the revisions proposed by Petitioners are shown in red-lined format at A-4.

7. In essence, Petitioners suggest that audio and video coverage be presumptively allowed in most criminal and civil proceedings at the trial court level, subject, however, to the authority of individual trial judges to override the presumption in particular circumstances for good cause.

¹Canon 3A(11) encompasses restrictions on audio and video coverage formerly found in Canon 3A(7).

8. In 1983 and again in 1989, this Court issued Orders responding to previous petitions requesting modification of the rules restricting audio and video coverage. See *In re Modification of Canon 3(a)(7) of the Minnesota Code of Judicial Conduct*, No. C7-81-300 (Minn. Sup. Ct., April 18, 1983); *In re Modification of Canon 3(a)(7) of the Minnesota Code of Judicial Conduct*, No. C7-81-300 (Minn. Sup. Ct., May 22, 1989). As noted above, the only revision permitted by the Court as a result of those proceedings was an experimental program that required the consent of the trial judge and all of the parties, which in practice has established a nearly insuperable barrier to audio and video coverage.

9. Minnesota is currently identified as one of only a handful of states that impose total or near-total prohibitions on audio and video coverage of trial court proceedings. At A-7 is a compilation prepared by the Radio and Television News Directors Association (RTNDA) summarizing the status of such coverage in the 50 states.

10. Assessments of audio and video coverage of trial court proceedings have been conducted in the many jurisdictions where it is more readily permitted than in Minnesota. They suggest that the concerns and anxieties once surrounding electronic coverage of trial court proceedings are either groundless or considerably exaggerated. They also show that many benefits accrue to the public and the court system, as well as the news media.

11. When this Court last considered a proposal to modify the restrictions on audio and video coverage, it denied the petition, identifying a litany of worries about the potential consequences:

[T]hat the reluctance of vulnerable individuals, including crime victims and witnesses, to testify will increase substantially given the likelihood of the public notoriety of their participation; that the rights of privacy of the same individuals are threatened by extensive exposure; that no matter how technologically advanced, the mere presence of the equipment is a distraction; that proceedings ancillary to the trial may be necessitated as a result of challenges to camera coverage, resulting in additional costs and use of judicial time and resources; and that, after the proceedings have been completed, it is virtually impossible to measure or quantify the nature and extent of any impact on the litigation process or the participants' entitlement to a fair trial and due process.

See Memorandum accompanying Order of May 22, 1989, *supra*. However, with the passage of time and the experience acquired in other jurisdictions, it can now be stated with confidence that each of these concerns either has been largely obviated, or can be accommodated without banning nearly all electronic coverage.

12. Indeed, over the past two decades, the courts themselves have increasingly embraced the use of audio and video recording for a variety of purposes. This further demonstrates that the technology used for such recording can be employed in courtrooms without unduly distracting from the proceedings.

Petitioners therefore respectfully request that this Court adopt the amendments described above. Should the Court have additional questions or concerns, Petitioners stand ready and willing to address them, in whatever form and manner may be convenient for the Court.

DATED: March 6, 2007

Respectfully submitted,

MINNESOTA JOINT MEDIA COMMITTEE,
MINNESOTA NEWSPAPER ASSOCIATION,
MINNESOTA BROADCASTERS ASSOCIATION,
AND SOCIETY OF PROFESSIONAL
JOURNALISTS, MINNESOTA CHAPTER

/s/

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