

Supreme Court Guidelines on Electronic Devices in the Courtroom



Promulgated by
Directive #08-14
Effective Feb. 2, 2015

General Considerations:

A. Goals

The goals of the *Supreme Court Guidelines on Electronic Devices in the Courts* (“guidelines”) are

- to provide public access to the courts while ensuring fairness to litigants;
- to acknowledge the existence of new technology and to permit its use in and around a courthouse, subject to restrictions;
- to avoid delay or interference in court proceedings and to maintain appropriate courtroom decorum.

B. Rationale

Advances in technology have provided not only traditional journalists but also members of the general public with access to a variety of easily portable electronic devices that can be used to capture news, photographs and/or video. Gone are the days of notebooks and sketchbooks used by reporters and courtroom artists. Those tools have been replaced with smart phones and computer tablets which, together with new forms of media outlets, have changed the concept of who is a journalist. Courts should not, in administering guidelines regulating the use of electronic devices in and around courthouses, be required to determine who qualifies as a journalist. Rather, courts should focus on the uses to which such devices are put. The pervasiveness of new electronic devices, and their availability to traditional journalists, bloggers, new age journalists and the general public, requires courts to implement guidelines governing the use of electronic devices in and around a courthouse, so that their use does not compromise fairness to litigants, efficiency in court proceedings and/or appropriate courtroom decorum.

C. Applicability

These guidelines apply to proceedings in the Supreme Court, Appellate Division, Superior Court, Tax Court and Municipal Court. Whenever these guidelines refer to a decision to be made by “the court,” such decision shall be made by the chief justice or the Supreme Court clerk for matters in the Supreme Court; by the presiding judge for administration or the Appellate Division clerk for matters in the Appellate Division; by the assignment judge for the vicinage where the court facility is located or by a judge designated by the assignment judge for matters in Superior Court; by the presiding judge of the Tax Court for matters in the Tax Court; and by the presiding judge or a judge designated by the presiding judge for municipal court matters.

Section I. Possession and Use of Electronic Devices

As utilized in these guidelines, the term “electronic device” means any device, including any portable device, that has the capability to transmit, broadcast, record and/or take photographs and also includes any other similar electronic devices whether now in existence or later developed (hereinafter “electronic device”).

As utilized in these guidelines, the term “electronically record” means the audio and/or video recording of events by means of an electronic device (hereinafter “electronically record” and/or “electronically recording” and/or “electronic recording (s)).”

A. Courthouse Grounds, Environs and Ceremonies

Except as otherwise provided in these guidelines, the use of electronic devices for any purpose, including photography, electronic recording, broadcasting and/or transmitting, on the grounds outside the courthouse shall be permitted. However, individuals are cautioned to seek appropriate approval from facility security authorities and/or the owner of such facility before doing so including, but not limited to, the county sheriff’s department.

In cooperation with appropriate facility security authorities, the court will take appropriate measures to ensure that the entrances and exits to the courthouse are kept clear in order that all participants in proceedings may enter and leave the courthouse safely and without undue interference.

Permission for all audio and visual coverage of ceremonial proceedings involving the Judiciary must first be obtained from the court subject to compliance with these guidelines.

B. Common Areas of the Courthouse

While in common areas of a courthouse, all persons are permitted to possess and use an electronic device for any purpose other than to take photographs, electronically record and/or broadcast. Such permitted use is subject to further reasonable restrictions by the court and/or facility security authorities and/or facility owners, on the time, place and manner of such use that are appropriate to maintain safety, decorum and order.

A “Requestor,” as that term is defined in Section I(C)(2)(a) *infra*, who has obtained the required court permission to photograph, electronically record, broadcast and/or transmit a court proceeding, is permitted to use an electronic device to photograph, electronically record, broadcast and/or transmit photographs, video and/or audio of persons in the common areas of the courthouse, provided that any person that the requestor seeks to photograph, electronically record, broadcast and/or transmit, (1) is involved in the court proceeding for which the requestor has obtained court permission to photograph, electronically record, broadcast and/or transmit, (2) is a person whose photograph, electronic recording, broadcast and/or transmission is not otherwise prohibited by these guidelines or by court order, and (3) consents to being photographed, electronically recorded, broadcasted and/or transmitted when in the common areas of the courthouse. Any violation of these guidelines may be addressed by the judge presiding over the proceeding for which the requestor obtained or failed to obtain permission to photograph, electronically record, broadcast and/or transmit.

C. Inside the Courtroom

(1) Agreement for the Use of Electronic Devices

(a) Agreement Required Before Use of Electronic Device in Courtroom. Before a person may operate an electronic device in a courtroom, the person must execute an agreement for the Use of Electronic Devices ("agreement") and submit the executed agreement to the trial court administrator or his/her designee, if in the Superior Court law or chancery division, Municipal Court or Tax Court, or to the clerk of the court, if in the Appellate Division or Supreme Court, to be dated and filed. A form of such agreement is attached to these guidelines as Exhibit A.

(b) Obtaining and Submitting an Agreement. This agreement shall be accessible on the Judiciary website, njcourts.com. An executed agreement may be submitted electronically to the trial court administrator or his/her designee, if in the Superior Court law or chancery division, Municipal Court or Tax Court, or to the clerk of the court, if in the Appellate Division or Supreme Court. The appropriate email addresses shall be accessible on the Judiciary website. An executed agreement may also be submitted via mail or hand delivery to either the trial court administrator or clerk of the court, or their designee.

A copy of the executed agreement signed and dated by the trial court administrator or the clerk of the court, or their designee, or evidence of same, shall be returned to the person and shall be in the possession of the person at all times when in the courtroom and shall on request of the court be produced to the court for examination. Displaying a copy of the filed agreement, or evidence of same, upon an electronic device shall satisfy this requirement, provided that such electronic device is capable of transmitting a copy of such agreement via email to the court upon request.

(c) Duration of Agreement. The agreement shall be valid for a one-year period from the date of filing, provided all information set forth on the agreement shall remain complete and accurate during that period.

(d) Permitted Uses Upon Execution and Filing of Agreement. A person with a valid agreement may use an electronic device inside a courtroom to silently take notes and/or transcribe and receive communications and information, without obtaining prior authorization from the court. The court may prohibit or further restrict use of electronic devices used to transcribe, transmit and receive communications and information, if such use interferes with the administration of justice, poses a threat to safety or security, or compromises the integrity of the proceedings.

(e) Violation of Agreement. Violation of the agreement shall subject the person to such sanctions as the court may deem appropriate including, but not limited to, contempt of court.

(2) Request for Permission to Photograph, Electronically Record, Broadcast and/or Transmit a Proceeding

(a) **Permission required.** A person desiring to photograph, electronically record, broadcast and/or transmit a court proceeding ("requestor") shall request permission from the court to do so ("request") after signing and submitting an agreement.

(b) **Form of Request.** The request shall be in writing unless time constraints render it impracticable to do so and, in such case, the court may entertain an oral request. The request shall provide the following information: the date of the requestor's agreement for the use of electronic devices; the matter to be covered and whether permission is sought for a specific proceeding or for all court proceedings open to the public in a given matter until it is concluded; and an agreement by the requestor to provide pooling capabilities. A form of such a request is attached to these guidelines as Exhibit B.

(c) **Obtaining and Submitting a Request Form** The request shall be accessible on the Judiciary website, njcourts.com. A completed request may be submitted electronically to the court, provided that the court accepts such electronic transmissions. Otherwise, the request may be submitted via mail or hand delivery. A requestor should ascertain from chambers a judge's preferred method of submission of the request.

(d) **Time of Request.** The request shall be presented to the court within a reasonable time prior to the commencement of the proceeding to permit the court adequate time to consider the request. Requests relating to a proceeding in progress shall be considered at the discretion of the court.

(e) **Consent of Parties Not Required.** Permission to electronically record, broadcast, photograph and/or transmit public court proceedings using an electronic device shall not be conditioned upon obtaining consent of any party, any party's attorney, or any witness or participant in a proceeding. Although the consent of parties is not required, the court may, in its discretion, consider the views of such participants regarding the permission granted and any restrictions on same.

(f) **Decision of Court.** The court shall decide whether to grant permission within 24 hours of the request or as soon as practicable, giving due consideration to the number of requests, the timeliness thereof, and the requestor's need for timely access to the proceeding. The court shall specify whether permission is granted for a specific proceeding or for all court proceedings open to the public in a given matter until it is concluded. The court retains the discretion to modify or rescind such permission in the event that circumstances relating to the proceeding warrant such measures.

(3) Pro Hac Vice Attorneys

Any attorney applying for admission *pro hac vice*, pursuant to R.1:21-2 in any matter that is pending, and desiring permission to use an electronic device inside a courtroom as set forth in Section I(C)(1), *supra*, in any court proceeding, in addition to the requirements set forth in R.1:21-2(b), shall execute an agreement, which agreement shall be valid so long as any order granting the application to speak *pro hac vice* shall be effective.

(4) Exception

An agreement for the use of electronic devices and/or a request for permission to photograph, electronically record, broadcast and/or transmit a proceeding, as set forth in this section, shall not be required in the case of adoptive parents and other family members present at final hearings in uncontested adoption cases, provided that the judge presiding over that hearing grants those individuals permission to photograph, electronically record, broadcast and/or transmit the hearing.

Section II. Exclusions

Photography, electronic recording, broadcasting and/or transmitting is prohibited at any proceeding closed by court order, statute or Rule of Court. Attached hereto as Appendix II is a reference to New Jersey Rules of Court and New Jersey statutes that relate to the sealing of court proceedings and records. The appendix is merely a guide and is not intended to be an exhaustive list of all potentially relevant Rules of Court and statutes.

Section III. Restrictions

The following restrictions apply to any requestor granted permission to photograph, electronically record, broadcast and/or transmit:

■ Photographs, electronic recordings, broadcasts and/or transmissions of victims of crime under 18 years of age at the time of trial and of witnesses under 14 years of age at the time of trial shall be allowed only at the discretion of the court.

■ While photographs, electronic recordings, broadcasts and/or transmissions are prohibited at juvenile proceedings, photographs, electronic recordings, broadcasts and/or transmissions of defendants 17 years of age who are charged with motor vehicle violations that are heard in municipal court are permissible.

■ There shall be no electronic recordings, broadcasts and/or transmissions of conferences between an attorney and client or between co-counsel of a client that occur in a courtroom or anywhere in a court facility. Still photographs and silent video are permitted.

■ There shall be no electronic recordings, broadcasts and/or transmissions of side-bar conferences between the court and counsel. Still photographs are permitted.

■ There shall be no photographs, electronic recordings or broadcasts of a jury, any individual juror or any other person that would permit the identification of any juror. Nothing contained herein shall prohibit the photographing, electronic recording, broadcasting and/or transmission of any juror who has been discharged from jury service in any proceeding unless otherwise ordered by a court.

Section IV. Judicial Discretion

A. Fair Proceeding. The court retains discretion to impose such restrictions on the use of electronic devices necessary to implement the goals of these guidelines. Photographs, electronic recordings, broadcasts and/or transmissions may be excluded in any proceeding where the court determines such uses would cause a substantial increase in the threat of, or the potential for, harm to a litigant, juror, witness, or any other participant in the case or would otherwise unduly interfere with the integrity of the proceeding. In determining whether such substantial increase in the threat of, or the potential for, harm exists, a court may appropriately consider the potential for intimidation of witnesses, victims and others when exercising its discretion in deciding whether to grant or deny permission to photograph, electronically record, broadcast and/or transmit a proceeding.

B. Order to Exclude or Vary Coverage Previously Permitted. The court, may, upon reasonable notice with an opportunity for the requestor and any other affected person(s) to be heard, terminate, limit, or otherwise modify the conditions of the taking of photographs, electronic recordings, broadcasts and/or transmissions permitted in any proceeding or trial.

Section V. Pretrial Conference

The court may, at its discretion, require a requestor to attend a pretrial conference prior to the court making a decision on a request to photograph, electronically record, broadcast and/or transmit a court proceeding or trial. The purpose of such pretrial conference is limited to decisions on electronic video/audio recording or still photography and not to substantive matters unrelated to these guidelines. Any such required pretrial conference shall include the court, the attorneys for the litigants, requestor(s) and/or their attorneys, and any other persons identified as necessary by the court, with all matters discussed to be consistent with these guidelines.

At such pretrial conference, the court shall review with all present the provisions of these guidelines. Any objections to photographing, electronically recording, broadcasting and/or transmitting in the particular matter shall be considered at this conference. The court shall consult with the requestors and/or their attorneys before imposing any special limitations or restrictions on photographing, electronically recording, broadcasting and/or transmitting in the particular matter.

No formal pretrial order is required. However, the court, subsequent to the pretrial conference, shall reduce to writing or make a record of the decisions

reached at the pretrial conference, including, but not limited to, any and all limitations or restrictions imposed.

Section VI. Appellate Review

Any requestor aggrieved by any decision concerning photographs, electronic recordings, broadcasts and/or transmissions may move for leave to appeal the decision to the Appellate Division, where the decision was by the Superior Court law or chancery division, Municipal Court or Tax Court, or to the Supreme Court, where the decision was by the Appellate Division. Such motions shall be made promptly after any such decision.

Section VII.

Nothing contained in these guidelines shall be deemed to create any right of privacy not already existing in law.

Section VIII. General Requirements

Attached hereto as Appendix I and made part hereof are general requirements and responsibilities for requestors seeking to photograph, electronically record, broadcast and/or transmit specific court proceedings.

APPENDIX I

A. GENERAL REQUIREMENTS AND RESPONSIBILITIES

(1) Prior Permission Required. Any individual seeking to photograph, electronically record, broadcast and/or transmit a specific court proceeding or trial must make a specific request to the court in advance for permission to do so.

(2) Electronic Recordings. If no technologically suitable electronic recording system exists in the particular court facility, or if the particular electronic device does not contain its own electronic recording system, any microphones, cameras and related wiring shall be unobtrusive and shall be located in places designated in advance of any proceeding by the court. Any individual seeking to use any other technology to record sound or video for broadcast shall make a specific request to the court in advance for permission to do so.

(3) Electronic Recordings Inadmissible. No electronic recording, broadcast and/or transmission shall be admissible as evidence or used in any court proceeding for any purpose including, but not limited to, a challenge to the accuracy of the official court record. The electronic recording may not be represented as an official transcript in any manner and/or for any purpose.

(4) Pooling Capability Requirements. Any person who obtains permission from the court to photograph, electronically record, broadcast and/or transmit proceedings shall provide pooling capabilities so that others may share in the coverage. Pooling requires, at a minimum, that the pooling supplier have available capabilities to pool by providing multiple electronic connections for other media representatives desiring participation by the use of their own recording equipment or by direct-line hook-up. Any individual who has obtained court permission to cover proceedings shall pool his/her video/audio signals or photographs at the request of others without requiring said others to obtain further court approval.

(5) Pooling Arrangements. Participating users of electronic devices and participating still photographers are to make their own pooling arrangements, including the establishment of necessary procedures, the provision of appropriate pooling equipment as described in these guidelines, and selection of a pool representative without calling upon the court to mediate any dispute as to the appropriate media representative, costs or equipment authorized for a particular proceeding.

B. EQUIPMENT, SOUND AND LIGHT CRITERIA

(1) Sound or Light Distractions. No electronic device that produces distracting sound or light either from the equipment itself or from its operation shall be used to cover judicial proceedings. The court may, at its discretion, require proof that equipment meets these guidelines before approving the equipment for use at a particular proceeding. Further, the court may order operation of any equipment to cease if that equipment does not meet these guidelines.

(2) Temporary Artificial Light. Absent prior approval from the court, no temporary artificial lighting device of any kind shall be employed in connection with any electronic video television camera, electronic device or still photographic cameras.

(3) Adding Light Sources. With the approval of the court and the concurrence of the owner of the building in which a court facility is situated, modifications and additions may be made to light sources existing in the facility, provided that any such modifications or additions are installed and maintained at the user's expense.

C. PLACEMENT OF EQUIPMENT

(1) Placing/Removing Equipment. Other than electronic devices capable of being hand held, photographic equipment and electronic equipment, including still cameras, microphones, and audio/video recording equipment and other electronic devices shall be placed in or removed from the courtroom facility

only prior to commencement or after adjournment of proceedings each day, or during a recess in the proceedings.

(2) Courtroom Placement. Other than hand held electronic devices, all other electronic video camera equipment, broadcast audio equipment and all other electronic devices shall be positioned only in areas designated by the court. Video recording equipment that is not a component part of the video camera shall be located in an area remote from the courtroom. The areas designated shall provide reasonable access for coverage.

(3) Placement in Other Areas. When the need arises, the court may provide additional rooms or areas where others may view the proceedings. Other individuals may, at their own expense and with their own equipment, make the necessary pooling arrangements to bring an electronic signal into such additional rooms or areas for viewing and for video/audio recording of the proceedings. All camera and audio equipment not designated by the court to be in the courtroom shall be positioned only in such rooms or areas.

(4) Fixed Locations for Persons and Equipment. All persons using electronic devices shall assume fixed positions within the designated location in the courtroom and, once positioned, shall not move about the courtroom in any way in order to photograph or record court proceedings. Noncompliance with this provision may be cause for the court to order the person and equipment out of the courtroom.

APPENDIX II

<u>R.</u> 1:2-1	Proceedings in open court
<u>R.</u> 1:2-2	Verbatim record of proceedings
<u>R.</u> 1:2-3	The verbatim record shall include references to all exhibits
<u>R.</u> 1:38-1 et seq.	Public access to court records and administrative records

Closures Pursuant to Court Rule:

<u>R.</u> 1:20A-5	Fee arbitration matters
<u>R.</u> 3:6-7	Secrecy of grand jury proceedings
<u>R.</u> 3:6-9(c)	Hearing on request of public official after grand jury censure
<u>R.</u> 3:13-3(f)	Protective orders
<u>R.</u> 4:10-2(e) tion	Claims of privilege or protection of trial preparation materials
<u>R.</u> 4:74-7(e)	Adult civil commitment hearings
<u>R.</u> 5:3-2	Family actions involving/affecting the welfare of a juvenile

<u>R. 5:12-4(b)</u>	Hearings and trials held by Division of Child Protection and Permanency
<u>R. 5:19-2</u>	Confidentiality of juvenile delinquency hearings

Closures Pursuant to Statute:

<u>N.J.S.A. 9:3-47(c), N.J.S.A. 9:3-48(b)</u>	Hearing on complaint for adoption of child is held in camera.
<u>N.J.S.A. 2C:14-7(a)</u>	Court shall conduct in camera hearing to determine admissibility of sexual offense victim's previous sexual conduct.
<u>N.J.S.A. 9:17-42</u>	Any proceeding held under the Uniform Parentage Act shall be held in closed court and all papers, records and information pertaining thereto is confidential.
<u>N.J.S.A. 2A:84A-21.4</u>	Upon the finding of a waiver of privilege, the court shall order the production of materials for in camera inspection and determination as to admissibility.
<u>N.J.S.A. 2A:61B-1d(1)</u>	Court shall conduct hearing in camera to determine admissibility of evidence of victim's previous sexual conduct in action for sexual abuse.

But see T.S.R. v. J.C., 288 N.J. Super. 48 (App. Div. 1996)(construing that statute as authorizing the court to permit full disclosure and open trial on the victim's motion over the defendant's objection).



**New Jersey Judiciary - Supreme Court
Request for Permission to
Photograph, Electronically Record or
Broadcast a Court Proceeding**

Date of Request: _____

Earliest date for which permission is requested: _____

Name of Requestor: _____

Address: _____

Telephone Number: _____

Affiliation, if applicable: _____

Matter to be covered: _____

before Judge (if known) _____

Permission is requested for:

specific proceeding on date(s): _____

all court proceedings in this matter that are open to the public.

By signing this agreement below, I affirm that:

I agree to provide pooling capabilities as required by the Supreme Court Guidelines on Electronic Devices in the Courts.

Requestor:

Date: _____

Signature: _____

Approved By:

Date: _____

Name: _____

Signature: _____

This Request is **Granted**

Denied