

# Cameras Coming to an Illinois Courtroom Near You: What Are the Rules and What Impact Might They Have

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Probably everyone saw portions of the O.J. Simpson and George Zimmerman trials, because each was a high profile case broadcasted on live television. Now, cameras are coming to Illinois courtrooms.

In January 2012, the **Illinois Supreme Court** approved the use of "**extended media coverage**" in the courtrooms of judicial circuits that applied for such coverage and received approval. "Extended media coverage" essentially means the use of still cameras, video cameras, and audio recording. Over time, 40 Illinois counties have applied for and received approval to allow extended media coverage in their courtrooms.

Attorneys and clients must familiarize themselves with the applicable rules for extended media coverage, and must consider and prepare for the practical implications if cameras will be present at trial. While such media coverage will likely be limited to criminal cases in most instances, it will inevitably occur in high profile civil cases, including some medical malpractice cases. And, if extended media coverage proves to benefit one side or the other over time, attorneys representing those parties will undoubtedly push for more and more coverage.

## Who or What is Considered "Media"?

Historically, the media may have been thought of as newspapers and television stations. Today, however, the term media may include biased blogs, social media, or other similar internet media that does not follow basic standards of journalism. Luckily, Illinois rules operate with a more historical definition of media, thus limiting who may request to cover the trial and hopefully ensuring a certain amount of fairness in reporting. In order to be credentialed under the rules, a media member or organization must be regularly engaged in news gathering and reporting, cover judicial proceedings on a consistent basis, and must regularly follow basic journalistic standards for ethics, accuracy and objectivity.

## Request for Extended Media Coverage

Extended media coverage is not allowed as of right. Instead, a credentialed media member must make a written request and have that request granted by the court before extended media coverage

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is allowed. The request for media coverage must be made at least 14 days before the trial or hearing the media member wishes to cover. Further, the written request must be provided to all attorneys. The 14 day requirement allows the defense time to consider the request and make appropriate objections prior to the trial or hearing.

## **Objection to Extended Media Coverage**

Objections to extended media coverage may be raised by the parties to the lawsuit and may also be raised by witnesses. In either case, a written objection is required, but the timing of the objection can differ for parties and witnesses. If a party, i.e. plaintiff or defendant, wishes to object, his written objection must be filed at least 3 days before the beginning of the trial or hearing. Witnesses must be advised by the attorney presenting their testimony of the right to object, and the witness must file his objection before the beginning of the trial or hearing. The rule also allows the judge to exercise discretion to consider objections that do not comport with the timing requirements.

Once an objection to extended media coverage has been made, the judge may rule on the basis of the written objection alone, or he may choose to hear evidence. At his discretion, the judge may choose to hear evidence from a party, witness, or media coordinator before ruling.

It would be inadvisable to object to media coverage in a trial where no member of the media has made a written request for coverage. Such a pre-emptive motion would be likely to draw media interest where none previously existed.

## **Technical Requirements and Sharing Equipment**

Technical requirements for the cameras and other equipment are provided in the rules. The overall theme of these rules is to ensure that any equipment is not obstructive or disruptive during the trial or hearing. The equipment cannot produce distracting lights or noises during operation. Further, no flashbulbs or other lighting may be used to aid the cameras.

The rules limit the amount of equipment allowed in the courtroom, again with the overall goal of limiting obstructions and distractions. A maximum of two still cameras and two television cameras are allowed, but the judge may choose to limit that to only one still camera and one television camera. Only one audio recording system is permitted. Obviously, if multiple media outlets wish to cover the trial or hearing, they may be required to share the video and audio stream under the rules.

## **What May be Filmed or Photographed**

Most trials and other hearings may be recorded, with exceptions limited mostly to the area of family law. Importantly though, several portions of the trial cannot be recorded. Jury selection cannot be recorded at all, and the media is forbidden from filming or photographing individual jurors or the jury as a whole. This is an important protection provided in the rule, because if a juror is assured that he cannot be recorded, the juror should feel less inclined to consider public opinion in deciding the case. Further, the media may not record interactions between the lawyer and client, between opposing lawyers, or between the judge and the lawyers, i.e. sidebars. And, no materials, papers or exhibits can be recorded unless they are admitted to evidence or shown to the jury. These limitations are obviously important to protect the confidential attorney-client relationship, among other things. Finally, no filming is allowed during recesses or in the public areas or hallways, which provides some known off-camera time.

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## **Live Blogging**

A judge also has discretion to allow live blogging during a trial or other proceeding, which does not include visual or audio recording. The most typical example of live blogging would be tweeting, but includes any transmittal in text form of testimony, proceedings, and summaries from the courtroom. Again, only credentialed news media are allowed to engage in live blogging.

The rule allowing for live blogging simply says that it may be allowed upon request. It does not provide a time-period within which the request must be made, and does not provide for objections. However, the decision to allow live blogging is left to the "absolute discretion" of the judge, and therefore, it seems reasonable that a judge would also be vested with the authority to allow objections and consider whatever he deems necessary. In any event, an objection can always be stated on the record, whether or not the judge chooses to consider it.

## **Required Jury Admonishment and Jury Instruction**

Jurors cannot be photographed or filmed, with the apparent goal of minimizing any influence or consideration of public opinion. Carrying this theme further, the rules require the trial judge to read an admonishment to the jury at the beginning of the trial and an instruction to the jury at the conclusion of trial regarding the media coverage. Of course, the admonishment and instruction advise the jury that they should not be influenced by or draw inferences based upon the presence of the media. Also, importantly, the admonishment advises the jury they cannot be photographed or filmed as a group or individually, and it advises the jurors to inform the court if the cameras are distracting or cause an inability to concentrate.

## **Practical Considerations and Potential Effects**

At the outset, the lawyer and client should consider whether they do or do not want cameras in the courtroom. In most cases, the defense would prefer cameras not be present so that the trial is focused exclusively on liability and damages, not extraneous issues. If a request for extended media coverage is made, the lawyer and client should ask themselves why the request is being made, and whether a written objection should be filed. If an objection will be filed, however, it should be based upon specific facts or concerns in that case. The Illinois Supreme Court and local judicial circuit have already determined, from a policy standpoint, that cameras should be allowed if the rules are complied with. Therefore, objections based upon general concerns that cameras may be disruptive or may have a negative impact on the jury are likely to fail.

## **Conclusion**

While most defendants and their lawyers are opposed to cameras in the courtroom, it appears that they are here to stay for the foreseeable future. Given the national trend toward cameras in the courtroom and instantaneous media, it's hard to imagine that these rules will ever be reversed. Therefore, attorneys and clients will need to carefully consider how to operate within the rules in a way that most favors the presentation of their case.

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