

## **ADVISORY COMMITTEE REGULATION RE RULE 5.31**

### **(a) Definitions.**

(1) "Advisory Committee," the committee appointed by the Supreme Court pursuant to Rule 5.01.

(2) "Disciplinary Hearing Panel," a three-member panel hearing each matter for which an information is filed, as provided in to Rule 5.04.

(3) "Disciplinary Hearing Officer," a lawyer or non-lawyer appointed by this Court as provided in Rule 5.04.

(4) "Hearing Room," any space in which any portion of a disciplinary proceeding occurs.

(5) "Legal Ethics Counsel," the ethics counsel serving as staff to the advisory committee pursuant to Rule 5.07(b).

(6) "Media" includes any person who regularly gathers, processes and disseminates news or information about matters of public interest in any medium. "Media" also includes any educational institution or its representatives seeking media coverage of a judicial proceeding for educational purposes.

(7) "Media Coverage" includes audio, video or electronic recording; broadcasting, filming or televising; photographing; or otherwise transmitting information, including by text, electronic mail, online post or other electronic message, whether for live or later dissemination in any medium.

(8) "Media equipment" includes still or video cameras, audio recorders, and any other device capable of taking photographs, making audio or

video recordings, or otherwise transmitting information, including texts, online posts or other electronic messages, whether for live or later dissemination in any medium.

(9) "Notice in writing" shall include notice sent via electronic mail.

(10) "Participant" shall include witnesses and parties.

(11) "Presiding Officer," the person whom the chair of the advisory committee has designated as the presiding officer pursuant to Rule 5.04.

(12) "Record" shall include information produced or available to the legal ethics counsel, chief disciplinary counsel or Court regardless of physical form or storage medium used.

**(b) Open Proceedings.**

Each proceeding in which an information has been filed and in which an answer or other responsive pleading has been received is public as provided in Rule 5.31 regardless of the date on which the information was filed.

**(c) Location of Records.**

(1) The record of each case shall be maintained by the:

(A) Legal ethics counsel until the record is transferred to the chief disciplinary counsel pursuant to Rule 5.19.

(B) The chief disciplinary counsel after the record is transferred pursuant to Rule 5.19.

All requests for copies of or access to the record shall be made in writing to the legal ethics counsel, who shall transmit the request to the appropriate person or entity holding the records.

All requests for a copy of the transcript, if approved by the person maintaining the record, shall be transmitted by that person to the court reporter. Similarly, all requests for exhibits held by the court reporter shall be transmitted after approval by the person maintaining the record.

Portions of the transcript and any related exhibits covered by a protective order shall not be provided to a nonparty except as permitted by the terms of the protective order.

(2) The original of all pleadings and other documents informant or respondent files with or submits to a disciplinary hearing panel shall be filed with the legal ethics counsel, and a copy shall be served on each member of the disciplinary hearing panel, opposing counsel, and the chief disciplinary counsel. The pleading or document shall show on its face the individuals on whom a copy has been served. If there is no original, a copy shall be sent to the legal ethics counsel.

(3) The advisory committee will impose a reasonable fee for copies of records.

**(d) Conditions of Media Coverage.**

Media coverage of a disciplinary proceeding will be permitted in the

hearing room if expressly authorized by the presiding officer and under the following conditions:

(1) The presiding officer may prescribe such conditions of coverage as provided for in this regulation, including the manner in which objections may be raised and whether media coverage may be conducted in the hearing room before or after a disciplinary proceeding or while the proceeding otherwise is in recess. Any media coverage the presiding officer permits must be executed in a manner that ensures the fairness and dignity of the proceeding.

(2) Even when media coverage is expressly permitted, the presiding officer shall limit or disallow media coverage of a proceeding if the presiding officer concludes, under the circumstances of the particular proceeding, such coverage would materially interfere with the rights of the parties to a fair hearing or the substantial rights of individual participants, including but not limited to the security, privacy, confidentiality or attorney-client privilege of participants to the proceedings. Restrictions the presiding officer may impose on media coverage may not be evaded by photographing or recording proceeding activities from outside the hearing room, such as through a door or window.

(3) Any media granted permission to conduct media coverage shall be provided access to this regulation and, by appearing at a proceeding, are deemed to have agreed to comply with this regulation and any directives the presiding officer may issue pursuant to this regulation.

**(4) Prohibitions on Media Coverage.** Media coverage is prohibited of any:

(A) Disciplinary proceeding or part thereof covered by a protective order or required under state or federal law to be closed. Further, no coverage shall be permitted of any juveniles.

(B) Conferences between attorneys and their clients, between co-counsel, between counsel and one or more hearing officers, or between or among hearing officers, to protect the attorney-client privilege and the right to effective counsel.

(C) Materials: on counsel tables; subject to a discussion with one or more hearing officers regarding the materials' admissibility; or otherwise not admitted into evidence, to ensure the fairness of the proceeding. The presiding officer may provide the media access, after the proceeding concludes or while the proceeding is in recess, to exhibits received into evidence, subject to ruling on any objection from counsel in the proceeding, unless subject to a protective order or filed under seal.

**(5) Unintentional or Inadvertent Violations.** In the event of an unintentional or inadvertent violation of any of these provisions:

(A) The media shall prevent the recording, photographing or reporting, as a result of media coverage, from being disseminated in any manner; and

(B) The presiding officer shall take any other appropriate

action, including but not limited to the limitation or termination of media coverage.

(6) **Adjacent Areas.** Regardless of whether media coverage of a proceeding is granted, the presiding officer may prohibit media conducting interviews, recording, photographing or preparing a report in the hallways immediately adjacent to the entrances to the hearing room if such activity would interfere with the fairness of the proceeding or otherwise is prohibited by local officials or building or law firm managers.

(7) **Limitations on Coverage Once Granted.** The presiding officer may limit or terminate media coverage at any time during the proceedings if the presiding officer finds:

(A) Any media has violated this regulation or any directives the presiding officer imposed pursuant to this regulation; or

(B) Any substantial rights of individual participants or rights to a fair hearing may be prejudiced if media coverage is allowed to continue.

(e) **Procedural.**

(1) **Legal Ethics Counsel Coordinates Arrangements.** Whenever possible, the presiding officer and all interested members of the media shall coordinate all arrangements for media coverage with the legal ethics counsel.

(2) **Advance Notice of Media Coverage.** Subject to the presiding officer extending or reducing these times to ensure adequate notice, to prevent

delay in a disciplinary proceeding or to ensure the efficient administration of the disciplinary process:

(A) All requests for media coverage or otherwise to use media equipment in the hearing room shall be made to the legal ethics counsel in writing as soon as practicable after the disciplinary proceeding is scheduled but at least five business days in advance of the scheduled proceeding.

(B) The legal ethics counsel, in turn, shall give notice in writing of said request to counsel for all parties, parties appearing without counsel, and the hearing officers as soon as practicable thereafter.

(C) Before the proceeding commences, counsel shall inform any person counsel may call as a witness that the witness will be subject to media coverage unless the presiding officer limits or prohibits such coverage.

(3) Any media making a request to the legal ethics counsel for media coverage of a disciplinary proceeding shall include the name of the person seeking such coverage; the affiliated entity, if any; and the media equipment to be used. The legal ethics counsel shall provide this information to the presiding officer, as to all media granted access to media coverage under this regulation, as soon as practicable before a disciplinary proceeding is scheduled to begin.

**(4) Objections.** Upon the objection of a party or other participant, or on the disciplinary hearing panel's own motion and for good cause shown, the presiding officer, in consultation with the other hearing officers, may prohibit any

or all media coverage of a participant in a disciplinary proceeding or any or all of the participant's testimony.

(5) **Media Conference.** The presiding officer may hold a conference, in person or by any other means, concerning applications or plans for media coverage. During the conference, the presiding officer may hear any objections to media coverage and set terms and conditions of media coverage. To the extent appropriate to protect confidential or privileged matters, the presiding officer may exclude media from portions of the conference.

(f) **Technical.**

(1) **Equipment Limitations.** All media equipment to be used pursuant to this regulation during disciplinary proceedings must be unobtrusive in both size and appearance, without distracting sound or light, and of sufficient technical quality to prevent interference with the disciplinary proceeding. The presiding officer may limit the number of media personnel and the amount of media equipment in a hearing room covering a disciplinary proceeding and may require other media personnel to pool coverage in accordance with this regulation and as the presiding officer deems appropriate under particular circumstances. The hearing panel is not required to reject a hearing room because it will not allow for the presence of video or audio recording equipment. No live media coverage shall be permitted except as specifically authorized by the presiding officer.



(A) *Still Photography*. No more than one still photographer shall be permitted to participate at one time unless the presiding officer otherwise approves in advance.

(B) *Video Recording*. Not more than one videographer, using a single device, shall be permitted in the hearing room during a disciplinary proceeding. Such equipment must be designed or modified so participants in the disciplinary proceeding are unable to determine when the equipment is recording. When practicable, recording or broadcasting equipment that is not a component part of a video camera shall be located outside the hearing room. When video recording equipment is not compatible, the presiding officer may permit use of an additional device and operator.

(C) *Audio Recording*. Not more than one audio recording system shall be set up in the hearing room for media coverage of a disciplinary proceeding at any time. Such recording shall be made from an existing audio system present in the hearing room, if the existing system produces sound technically suitable for broadcast. Any changes in an existing audio system must be approved by the presiding officer. Microphones for use by counsel and hearing officers shall be equipped with off/on switches to facilitate compliance with this regulation. When practicable, electronic audio recording equipment and any operating personnel shall be located outside the hearing room.

(D) *Advance Approval*. It shall be the duty of the media to demonstrate to the presiding officer reasonably in advance of the proceeding that

the equipment sought to be utilized meets the requirements of this regulation. Failure to obtain advance approval for equipment may preclude its use in the proceeding. All media and media equipment should be in place at least 30 minutes prior to the scheduled time of commencement of the proceeding.

(E) *Nonapproved Uses Prohibited.* Any media equipment approved for still photography, video recording or audio recording of a disciplinary proceeding is to be used only for the specified purpose. If the equipment is capable of making other types of recordings or producing other content, no such recordings may be made or content produced without express permission of the presiding officer.

(2) **Lighting.** Other than light sources already existing in the hearing room, no external lighting equipment, flashes or other artificial light device of any kind shall be employed in the hearing room.

(3) **Pooling.**

(A) If multiple media personnel apply under the provisions of this regulation for media coverage for the same disciplinary proceeding, they shall be pooled appropriately based on the type of media coverage they seek. The legal ethics counsel or presiding officer should endeavor to rotate still photographers and videographers as may be appropriate under the circumstances. Requests for copies of audio or video recordings or photographs shall be directed to the pool representative only, who shall supply such copies upon request to the media in the pool at a price not exceeding actual cost. Failure to make timely application for

coverage may result in exclusion from the pool and from access to resulting media coverage.

(B) Pooling arrangements shall be the sole responsibility of the legal ethics counsel, and the presiding officer shall not be called upon to mediate any media dispute. In the absence of advance media agreement regarding equipment, personnel or other pooling issues, the presiding officer may exclude any or all media coverage.

**(4) Location of Media Equipment and Personnel.** When media access has been granted, the presiding officer shall designate an area or areas in the hearing room where media equipment and operating personnel shall be located. The area or areas designated shall provide reasonable access to the proceeding to be covered. The remainder of the media pool may be located in an auxiliary room, if one is available, although the hearing panel is not required to reject a facility because it will not allow for an auxiliary room for use by the media pool. No media or media equipment shall block the view of persons seated in the public area of the hearing room.

**(5) Movement During Proceedings.** Media must set up and remove all media equipment permitted by the presiding officer only when the proceeding is not in session and at all times shall operate from a fixed position. Still photographers and videographers shall not move about the hearing room while proceedings are in session, nor shall they engage in any movement that attracts undue attention.

(6) **Personal Audio Devices.** Notwithstanding other provisions of this regulation, the presiding officer may permit the media to use inconspicuous personal recording devices to make audio recordings solely as personal notes of the proceeding. Media proposing to use a personal audio recording device must make timely application to the legal ethics counsel and obtain advance permission from the presiding officer. Any such audio recording must be in accordance with the provisions governing media access and coverage in general, may not be used for any other purpose, and, if the device is capable of making other types of recordings or producing other content, no such recordings may be made without express permission of the presiding officer.

(7) **Use of Devices.** No person may use any device capable of media coverage in a hearing room unless specifically authorized under the provisions of this regulation or by the presiding officer in a disciplinary proceeding. The presiding officer may authorize media to use electronic devices solely for textual notetaking and writing if they are configured to operate quietly and in such a manner as to avoid undue distractions.

(8) **Decorum.** All media personnel in the hearing room shall wear business or business-casual attire; shall not assume any body position inappropriate for spectators; and otherwise shall maintain proper decorum at all times while covering a disciplinary proceeding.