

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) “Hearing Room,” any space in which any portion of a disciplinary proceeding occurs.

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

(4) “Media Coverage” includes broadcasting, televising, electronic recording, or photographing of disciplinary proceedings for the purpose of gathering and disseminating news or information to the public or for the purpose of education.

(5) “Notice in writing” shall include notice sent via electronic mail.

(6) “Participant” shall include witnesses and parties.

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

(8) “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) MEDIA ACCESS AND COVERAGE IN GENERAL

Broadcasting, televising, recording, and photographing will be permitted in the hearing room under the following conditions:

(1) Permission first shall have been expressly granted by the presiding officer, who may prescribe such conditions of coverage as provided for in this regulation, including the manner in which objections may be raised.

(2) Media coverage of a proceeding shall not be permitted if the presiding officer concludes that 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.

(3) Media coverage is prohibited of any proceeding or part of a proceeding that is covered by a protective order or that is required under state or federal law to be held in private. Further, no coverage shall be permitted of any juveniles.

(4) There shall be no audio pickup or broadcast of private conferences between attorneys and their clients, between co-counsel, between counsel and one or more hearing officers, or between or among hearing officers.

(5) There shall be no focusing on or photographing materials on counsel tables or that otherwise has not been admitted into evidence; however, the media will be given access during periods of recess to exhibits that have been introduced and received

into evidence, absent objection from counsel in the proceedings unless subject to a protective order or filed under seal.

(6) The quantity and types of equipment permitted in the hearing room shall be subject to the discretion of the presiding officer within the guidelines set out in this regulation.

(7) Notwithstanding the provisions of any of the guidelines set out in this regulation, the presiding officer may permit the use of equipment or techniques at variance therewith if the application for variance is included in the advance notice of coverage. Such variances may be allowed by the presiding officer without advance application or notice if all hearing officers, counsel and parties consent to it. Decisions upon any variance application shall be in the sole discretion of the presiding officer.

(8) Regardless of whether media coverage of a proceeding is granted, members of the media shall not record interviews for broadcast in the hallways immediately adjacent to the entrances to the hearing room. Photographing through the windows or open doors of the hearing room is prohibited.

(9) The presiding officer may, as to any or all media participants, limit or terminate photographic or electronic media coverage at any time during the proceedings if the presiding officer finds that:

(A) These guidelines or rules imposed by the presiding officer have been violated, or

(B) Substantial rights of individual participants or rights to a fair hearing may be prejudiced by such manner of coverage if it is allowed to continue.

(10) The privilege of photographic and electronic coverage provided for by this regulation may be exercised only by persons or organizations that are part of the news media or educational television.

(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 Coverage.** All requests for media coverage by use of photographic equipment, television cameras, or electronic sound recording equipment in the hearing room shall be made to the legal ethics counsel in writing at least five business days in advance of the scheduled proceeding. A copy of each request shall be sent to the chief disciplinary counsel.

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 at least four business days in advance of the time the proceeding is scheduled to begin. These times may be extended or reduced by order of the presiding officer or advisory committee chair.

(3) **Objections.** The presiding officer shall prohibit the video recording, audio recording, and photographing of a participant in a disciplinary proceeding if the participant so requests and the presiding officer, in consultation with the other hearing officers, finds good cause to protect the interests of party or other participant. 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 may prohibit any or all of the following: the visual identification, video recording, audio recording, or photographing of a participant in a disciplinary proceeding or any or all of the participant's testimony. At or before the commencement of the proceeding, the presiding officer shall direct counsel to inform, and counsel shall inform, any witness that counsel will call that the witness will be subject to video recording, audio recording, and photographing unless the presiding officer finds good cause to prohibit the video recording, audio recording, and photographing of the witness or the witness' testimony.

(f) **TECHNICAL**

(1) **Equipment Specifications.** Equipment to be used pursuant to this regulation during disciplinary proceedings must be unobtrusive and must not produce distracting sound. In addition, such equipment must satisfy the following criteria, where applicable:

(A) Still Cameras. Still cameras and lenses must be unobtrusive, without distracting light or sound.

(B) Video Cameras and Related Equipment. Video cameras, together with any related equipment to be located in the hearing room, must be unobtrusive in both size and appearance, without distracting sound or light. Video cameras are to be designed or modified so that participants in the disciplinary proceedings being covered are unable to determine when recording is occurring. The hearing panel is not required to reject a hearing room because it will not allow for the presence of television cameras and related equipment

(C) Audio Equipment. Microphones, wiring, and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the disciplinary proceeding being covered. Any changes in the existing audio systems 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. The hearing panel is not required to reject a hearing room because it will not allow for the presence of audio equipment.

(D) Other Equipment. No other electronic or digital equipment – whether a cellular telephone, iPhone or other smartphone, hand-held recorder, iPad or other tablet, laptop or other device that is capable of recording audio or video or of taking photographs – shall be permitted into a disciplinary hearing room except as designated in Rule 5.31(f)(3).

(E) Advance Approval. It shall be the duty of media personnel to demonstrate to the presiding officer reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in this regulation. Failure to obtain advance approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least 30 minutes prior to the scheduled time of commencement of the proceeding.

(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) **Equipment and Pooling.** The following limitations on the amount of equipment and number of photographic and broadcast media personnel in the hearing room shall apply:

(A) Still Cameras. Not more than one still photographer, using not more than two camera bodies and two lenses, shall be permitted in the hearing room during a disciplinary proceeding at any one time.

(B) Video Cameras. Not more than one video camera, operated by not more than one camera person, shall be permitted in the hearing room during a disciplinary proceeding. Where possible, recording and broadcasting equipment that is not a component part of a video camera shall be located outside of the hearing room. No live streaming of video shall be permitted except as specifically authorized by the presiding officer.

(C) Audio. Not more than one audio system, which does not produce distracting sound, shall be set up in the hearing room for broadcast coverage of a disciplinary proceeding. Audio pickup for broadcast coverage shall be accomplished from an existing audio system present in the hearing room, if such pickup would be technically suitable for broadcast. Where possible, electronic audio recording equipment and any operating personnel shall be located outside of the hearing room. No live streaming of audio shall be permitted except as specifically authorized by the presiding officer.

(D) Pooling. Pooling arrangements shall be the sole responsibility of the legal ethics counsel, and the presiding officer shall not be called upon to mediate any

dispute as to the appropriate media representatives authorized to cover a particular disciplinary proceeding. Requests for copies of audio recordings, video files or photographs shall be directed to the pool representative only, who shall supply copies upon request to media representatives at a price not exceeding actual cost. To be eligible for such copies, requests to be part of the media pool must be made in advance in accordance with Rule 5.31(e).

(4) Location of Equipment and Personnel. The equipment and operating personnel designated to provide the photographs, video and audio pursuant to Rule 5.31(f)(3) shall be located in, and coverage of the proceedings shall take place from, an area or areas within the hearing room designated by the presiding officer. 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.

(5) Movement During Proceedings. Video cameras and audio equipment may be placed in or removed from the hearing room only when the proceeding is not in session. In addition, such equipment shall at all times be operated from a fixed position. To the extent the video cameras or audio equipment use cassettes, such cassettes shall not be changed within the hearing room except during a recess. Similarly, still cameras, lenses and film or memory cards shall not be changed within the hearing room except during a recess. Still photographers and broadcast media personnel shall not move about the hearing room while proceedings are in session, nor shall they engage in any

movement that attracts undue attention. No media personnel in the hearing room shall assume body positions inappropriate for spectators.

(6) **Decorum.** All media personnel in the hearing room shall wear business or business-casual attire and shall maintain proper decorum at all times while covering a disciplinary proceeding.