

COMMENTS REGARDING PROPOSED AMENDMENT OF RULE 8.115 OF THE MICHIGAN COURT RULES

Submitted by The Michigan Association of Broadcasters

The Michigan Association of Broadcasters (“MAB”) is a Michigan non-profit corporation representing over 375 broadcast organizations in the State of Michigan.

The central intent of the Proposed Amendment to Rule 8.115 of the Michigan Court Rules (“Proposed Amendment”) appears to be to supplant a host of local court rules with a single state-wide rule governing the use of cell phones and other internet accessible devices in Michigan courtrooms. The MAB supports that central objective. Representatives of the broadcast media frequently and routinely find themselves in Michigan courtrooms in the course of fulfilling their First Amendment obligations. The single, uniform state-wide rule contemplated by the Proposed Amendment simply makes sense. As far as actual cell phones go, the Proposed Amendment does not seem objectionable. The public, which presumably includes the media, would appear to be able to use a cell phone to receive or store information, take notes, access the internet, and send and receive text messages (the rule is silent as to emails). A cell phone could not be used for phone calls, to communicate with a courtroom participant, or to photograph or record a proceeding.

The media, however, can be present in a courtroom in two quite different ways. It can be present, as may any other citizen, to observe and subsequently inform others and report on the proceedings. Unlike others, the broadcast media may also be present to either record the proceedings for later broadcast, or broadcast the proceedings live. This unique role of the media is ordained in Supreme Court Administrative Order 1989-1, Film or Electronic Media Coverage of Court Proceedings. Although somewhat dated,¹ it sets forth a protocol which basically works for both the broadcast media and the courts of the state. The Proposed Amendment, perhaps inadvertently or unintentionally, does not distinguish between the media as observers, and the entirely different role which is the subject of Administrative Order 1989-1.

While the comments to the Proposed Amendment describe it as applicable to “cellular phones” and the rule uses the term “portable electronic devices,” it seems clear that the rule affects media cameras in the courtroom, as currently addressed by Administrative Order 1989-1. The trouble starts with the definition of “portable electronic device.” Sec. (C)2(a). While the first sentence of the definition (“a mobile device capable of electronically storing, accessing or transmitting information”) does not appear to encroach on Administrative Order 1989-1, the same cannot be said of the additional language which elaborates on the definition: “[t]he term encompasses...a camera and other audio or video recording device....”

¹ “Film” is a thing of the past.

Section (C)3(a) could not more clearly conflict with Administrative Order 1989-1:

In a courtroom, no one may use a portable electronic device [which includes a camera]...for...broadcasting unless that use is specifically allowed by the Judge presiding over that courtroom.

Section (C)3(d) further provides that courts may adopt a local administrative order which may impose “reasonable limits on ... broadcasting in a courthouse.”

The consequences of all of this would be quite untoward. Right now there is a single, state-wide, detailed standard (Administrative Order 1989-1) governing media cameras in the courtroom. This state standard would be replaced by a myriad of local rules. Worse yet, under (C)3(a), media cameras would always be subject to the approval of the presiding judge which, given the absence of any guidance or restrictions, can be denied for any or no reason. There is a certain irony to all of this. A host of local cell phone rules will be replaced by a single state-wide rule. A single state-wide media cameras in the courtroom rule will be placed by a host of local rule, or in some cases no rules. In the event no local rules are adopted, it will be left to the unfettered consent of an individual judge. It is hard to believe that this is an intended result.

The MAB respectfully requests the elimination of any language in the Proposed Amendment which encroaches on or conflicts with Administrative Order 1989-1. It would also be helpful if the Proposed Amendment contained a specific disclaimer to the effect that it is not intended to implicate broadcast media coverage of courtroom proceedings as governed by Administrative Order 1989-1.

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