

Rule 11. USE OF ELECTRONIC DEVICES IN COURTROOMS AND RECORDING OF JUDICIAL PROCEEDINGS

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11.1 Overview.

Open courtrooms are an indispensable element of an effective and respected judicial system. It is the policy of Georgia's courts to promote access to and understanding of court proceedings not only by the participants in them but also by the general public and by news media who will report on the proceedings to the public. This must be done, however, while protecting the legal rights of the participants in the proceedings and ensuring appropriate security and decorum.

Except as otherwise required by law, this rule governs the use of devices to record sounds or images in a courtroom and comports with the standards provided in OCGA § 15-1-10.1 regarding the use of devices to record judicial proceedings.

This rule similarly governs the use of electronic devices, including mobile phones and computers, in a courtroom for purposes other than recording sounds and image use is generally allowed by lawyers, by employees of lawyers, and by self-represented parties, but to ensure decorum and avoid distraction, such use is generally prohibited by jurors, witnesses, parties, and spectators, including representatives of the news media. Such persons may, however, use their devices by stepping outside the courtroom, and nothing in this rule prevents a judge from permitting parties and spectators to use their devices for non-recording purposes as the judge may allow in his or her discretion.

A court must use reasonable means to advise courtroom visitors of the provisions of this rule and must make the form in Exhibit A available in its clerk's office and on the court's website.

11.2 Definitions. The following definitions apply in this rule:

(1) "Recording device" means a device capable of electronically or mechanically storing, accessing, or transmitting sounds or images. The term encompasses, among other things, a computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone or other wireless phone; a camera and other audio or video recording devices; a personal digital assistant (PDA); and any similar devices.

(2) "Recording" means electronically or mechanically storing, accessing, or transmitting sounds or images. "Record" means to electronically or mechanically store, access, or transmit sounds or images, including by photographing, making an audio or video recording, or broadcasting. Nothing in this rule prohibits making written notes and sketches pertaining to any judicial proceedings.

(3) "Courtroom" means the room in which a judge will conduct a court proceeding and the areas immediately outside the courtroom entrances or any areas providing visibility into the courtroom.

11.3 Witnesses, parties, and spectators, including representatives of the news media. The following restrictions apply to use of recording devices by jurors, including grand jurors and prospective jurors, by witnesses, by parties, and by spectators, including representatives of the news media.

(1) *Witnesses:* Witnesses shall turn the power off to any recording device while present in a courtroom, and may use a device while testifying only with permission of the judge. Witnesses shall not record proceedings.

(2) *Parties and spectators:* Parties and spectators may use recording devices to record proceedings only as specifically authorized by the court pursuant to this rule. All parties and spectators shall turn the power off to any recording device while present in a courtroom, unless the judge allows orally or in writing the use of recording devices in the courtroom for purposes other than recording sounds and images, which the judge may freely do when he or she believes such use would not be disruptive or distracting and is not otherwise contrary to the administration of justice. When such use is allowed, recording devices must be silenced and may not be used to make or receive telephone calls or for other audible functions without express permission from the judge.

11.4 Attorneys, employees of attorneys such as paralegals and investigators, and self-represented parties (pro se litigants).

(1) *Use of recording devices to record:* Unless otherwise ordered by the court, attorneys representing parties in a proceeding and self-represented parties may make audio recordings of the proceeding in a nondisruptive manner after announcing to the court and all parties that they are doing so. Recordings made pursuant to this paragraph may be used only in litigating the case or as otherwise allowed by the court or provided by law. Attorneys and self-represented parties may also seek authorization to record proceedings pursuant to paragraph (E) of this rule.

(2) *Use of recording devices for non-recording purposes:* Attorneys and their employees such as paralegals and investigators may use recording devices in a courtroom for purposes other than recording sounds and images, including word processing, storing or retrieving information, accessing the internet, and sending or receiving messages or information. Self-represented parties may do the same but only in direct relation to their proceedings. Recording devices must be silenced and may not be used to make or receive telephone calls or for other audible functions without express permission from the judge.

(3) *Limitation:* Any allowed use of a recording device under paragraph (D) is subject to the authority of the judge to terminate activity that is disruptive or distracting or is otherwise contrary to the administration of justice.

11.5 Celebratory or ceremonial proceedings, or when the court is not in session. Notwithstanding other provisions of this rule, a person may request orally or in writing, and a judge or judge's designee may approve orally or in writing, use of a recording device in a courtroom to record a celebratory or ceremonial

proceeding or use of a recording device in a courtroom when the court is not in session.

11.6 Other persons or organizations desiring to record. Any other persons or organizations, including representatives of the news media, desiring to record a court proceeding shall make application to the judge on the form in Exhibit A following this rule.

(1) *Submission of a request:* The person or organization must submit the request to the judge or to an officer of the court designated to receive requests under this rule. The request should address any logistical issues that are expected to arise.

(2) *Time limit for submitting a request:* The person or organization must submit the request sufficiently in advance of the proceeding – at least 24 hours where practicable under the circumstances – to allow the judge to consider it in a timely manner.

(3) *Notice and hearing:* The court will notify the parties of its receipt of a request for recording. Parties shall then notify their witnesses. The prosecutor of a criminal case shall notify alleged victims. The judge will promptly hold a hearing if the judge intends to deny the request or a portion of the request, or if a party, witness, or alleged victim objects to a request. The hearing under this paragraph shall be part of the official record of the proceeding.

(4) *Time for a party, witness, or alleged victim to object to a request:* A properly notified party, witness, or alleged victim waives an objection to a request for recording of a proceeding if the party, witness, or alleged victim does not object to the request in writing or on the record before or at the start of the proceeding.

11.7 Denial or limitation of recording. A properly submitted request for recording should generally be approved, but a judge may deny or limit the request as provided in this paragraph. A judge's decision on a request, or on an objection to a request, is reviewable as provided by law.

(1) *Denial of recording:* A judge may deny a request for recording only after making specific findings on the record that there is a substantial likelihood of harm arising from one or more of the following factors, that the harm outweighs the benefit of recording to the public, and that the judge has considered more narrow restrictions on recording than a complete denial of the request:

(a) The nature of the particular proceeding at issue;

(b) The consent or objection of the parties, witnesses, or alleged victims whose testimony will be presented in the proceedings;

(c) Whether the proposed recording will promote increased public access to the courts and openness of judicial proceedings;

(d) The impact upon the integrity and dignity of the court;

(e) The impact upon the administration of the court;

(f) The impact upon due process and the truth finding function of the judicial proceeding;

(g) Whether the proposed recording would contribute to the enhancement of or detract from the ends of justice;

(h) Any special circumstances of the parties, witnesses, alleged victims, or other participants such as the need to protect children or factors involving the safety of participants in the judicial proceeding; and

(i) Any other factors affecting the administration of justice or which the court may determine to be important under the circumstances of the case.

(2) *Limitation of recording*: Upon his or her own motion or upon the request of a party, witness, or alleged victim, a judge may allow recording as requested or may, only after making specific findings on the record based on the factors in the preceding paragraph, impose the least restrictive possible limitations such as an order that no recording may be made of a particular criminal defendant, civil party, witness, alleged victim, law enforcement officer, or other person, or that such person's identity must be effectively obscured in any image or video recording, or that only an audio recording may be made of such person.

11.8 Manner of recording. The judge should preserve the dignity of the proceeding by designating the placement of equipment and personnel for recording the proceeding. All persons and affiliated individuals engaged in recording must avoid conduct or appearance that may disrupt or detract from the dignity of the proceeding. No person shall use any recording device in a manner that disrupts a proceeding.

11.9 Pooling of recording devices. The judge may require pooling of recording devices if appropriate. The persons or organizations authorized to record have the responsibility to implement proper pooling procedures that meet the approval of the judge.

11.10 Prohibitions. The following uses of recording devices are prohibited:

(1) *No use of recording devices while the judge is outside the courtroom*: Except as provided in paragraph (E) of this rule, a person may use a recording device in a courtroom only when the judge is in the courtroom, and use of a recording device must terminate when the judge leaves the courtroom.

(2) *No recording of privileged or confidential communications*: In order to preserve the attorney-client privilege and client confidentiality as set forth in the Georgia Rules of Professional Conduct and statutory or decisional law, no person shall make a recording of any communication subject to the attorney-client privilege or client confidentiality.

(3) *No recording of bench conferences*: No person other than the court reporter may record a bench conference, unless prior express permission is granted by the judge.

11.11 Recording not official court record. No recording of a judicial proceeding made pursuant to this rule may be used to modify or supplement the official court record of that proceeding without express permission of the judge pursuant to OCGA § 5-6-41(f).

11.12 Disciplinary authorities. This rule does not apply to disciplinary authorities acting in the course of their official duties.

11.13 Enforcement. Persons who violate this rule may be removed or excluded from the courtroom. A willful violation of this rule may be punishable as contempt of court.