

STATE OF VERMONT
VERMONT SUPREME COURT
SEPTEMBER TERM, 2019

**Order Promulgating Emergency Amendments to Rule 79.2(c) of the
Vermont Rules of Civil Procedure and Rule 35(c) of the Vermont Rules of Appellate
Procedure**

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 79.2(c) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined, deleted matter struck through):

**RULE 79.2. POSSESSION AND USE OF RECORDING AND TRANSMITTING
DEVICES**

(c) Possession and Use of Devices in a Courthouse.

(1) *In General.* In a courthouse, any person may possess a device without registration or specific authorization of the court, and may use it in public areas of the courthouse nondisruptively, ~~except that no person may~~ (1)

(2) *Registered Media.* Media with a permanent or one-time registration certificate may orally and visually record and transmit by any device in a courthouse, subject to the limitations in subdivision (e), and may not communicate with, or record or transmit images and sound of, a witness who has been sequestered anywhere in a courthouse or ~~(2)~~ record or transmit images or sound of parties and witnesses in confidential proceedings in areas immediately adjacent to the courtroom.

(3) *Participants, Nonparticipants, and Jurors.* Participants, nonparticipants, and jurors may not record or transmit the image or sound of an individual outside a courtroom without that individual's express consent.

Reporter's Notes—2019 Emergency Amendment

Rule 79.2 was amended effective September 3, 2019. That amendment added a restriction on use of devices in a courthouse by prohibiting any person from recording or transmitting the image or sound of an individual outside a courtroom without express consent. The prohibition was designed to prevent recording of juveniles, jurors, and participants in confidential proceedings from being recorded in public areas of the courthouse and to prevent the public from using recording as a harassment tool against others attending obligatory court hearings. The emergency amendment allows registered media to visually and orally record and transmit in the courthouse, consistent with the distinction made elsewhere in the rules. The restriction on

communication with a sequestered witness is preserved. The media are precluded from recording or transmitting images or sound of parties and witnesses in confidential proceedings in areas immediately adjacent to the courtroom. Nonmedia are still precluded from recording or transmitting without express consent.

2. That Rule 35(c) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined, deleted matter struck through):

RULE 35. POSSESSION AND USE OF RECORDING AND TRANSMITTING DEVICES

(c) **Possession and Use of Devices in a Courthouse.** Any person may possess a device without registration or specific authorization of the Court, and may use it in public areas of the courthouse nondisruptively, ~~except that outside a courtroom no person may record or transmit the image or sound of an individual without that individual's express consent.~~

Reporter's Notes—2019 Emergency Amendment

Rule 35 was amended effective September 3, 2019. That amendment added a restriction on use of devices in a courthouse by prohibiting any person from recording or transmitting the image or sound of an individual outside a courtroom without express consent. The prohibition was designed to prevent individuals from using recording as a harassment tool against others attending obligatory court hearings. The emergency amendment eliminates the restriction on recording and transmitting in the courthouse and allows use in the courthouse that is nondisruptive. Disruptive uses include using a device to harass or intimidate another person. There is no distinction between media and nonmedia in the appellate rule, unlike the rule applicable in the superior court, because, among other reasons, there are no witnesses or jurors at the Supreme Court.

3. That these rules, as amended, are prescribed and promulgated to become effective immediately. The Reporter's Notes are Advisory.

4. That the Court finds that these emergency amendments must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11 because the amendments seek to immediately restore the media's ability to record in the courthouse generally.

5. That the Court Administrator is directed to send these rules as amended out for comment pursuant to Administrative Order 11.

6. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont this 4th day of September, 2019.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice