

This rule applies directly in the civil division. It is applicable in all other divisions: environmental division, V.R.E.C.P. 3, family division, V.R.F.P. 4.0(a)(2), criminal division, V.R.Cr.P. 53, and probate division, V.R.P.P. 79.2.

Vermont Rules of Civil Procedure

RULE 79.2. POSSESSION AND USE OF RECORDING AND TRANSMITTING DEVICES

(a) **Scope.** This rule governs the possession and use of recording and transmitting devices in a courthouse or courtroom. This rule does not govern the use of recording and transmitting devices used by people with disabilities to accommodate their disabilities under the Americans with Disabilities Act or the Vermont Fair Housing and Public Accommodations Act.

(b) **Definitions.** In this rule, the following terms have the indicated meaning:

(1) *Communicate* means to send a written, oral, or visual message from a device to one or more specified individual recipients.

(2) *Courthouse* means a structure, or that portion of a structure, that is under the control of the Judiciary in which judicial proceedings are or may be conducted.

(3) *Courtroom* means a room in a courthouse or other building where judicial proceedings are being conducted.

(4) *Device* means any device that can record or transmit or receive transmissions of data, images, or sounds, or can access the internet, including

(A) a film (analog) or electronic (digital) still or video camera, whether operated electronically or mechanically or both; and

(B) a personal electronic device including a pager, laptop/notebook/personal computer (PC), PDA, audio or video recorder, wireless device, cellular telephone, smartphone, or electronic calendar.

(5) *Juror* means a member of the jury pool or panel.

(6) *Media* means any individual or organization engaging in news gathering or reporting to the public, including any free-lance reporter, newspaper, radio or television station or network, news service, magazine, trade paper, in-house publication, professional journal, or other news-reporting or news-gathering agency, and any individual employed by such an organization.

(7) *Nonparticipant* means a member of the public who is neither a designated media representative nor a participant.

(8) *Participant* means a lawyer participating in a proceeding, a person acting under the direction of that lawyer, a party, and an authorized representative of a party.

(9) *Record* means to use any device to orally or visually preserve any proceeding or associated activity occurring in a courthouse or courtroom, or the actions of a person while engaged in that proceeding or activity.

(10) *Transmit* means to send by any method, including broadcasting or live-streaming, an oral or visual transmission or signal of any proceedings or other activities occurring in a courthouse or courtroom, or the actions of a person while engaged in that proceeding or activity.

(c) **Possession and Use of Devices in a Courthouse.** 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) 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 the image or sound of an individual outside a courtroom without that individual's express consent.

(d) **Possession and Use of Devices in a Courtroom.**

(1) *In General.* Except as otherwise provided in this or other court rules, within a courtroom, all media, participants, and nonparticipants must abide by the following:

- (A) no person other than court staff may use a device to communicate orally with another person, and
- (B) no device may be operated in a manner that emits a distracting sound.

(2) *Registered Media.* Media with a permanent or one-time registration certificate may orally and visually record and transmit by any device any public proceeding or associated activity in a courtroom, or the actions of a person while engaged in that proceeding or activity, subject to the limits related to sequestered witnesses in subdivision (c), the general limits on use in paragraph (d)(1), the pooling in subparagraph (d)(2)(D), and the excluded items in subdivision (e).

(A) *Permanent Registration.* Media intending to record or transmit court proceedings or associated activity on a regular or frequent basis may apply for a registration certificate with the Court Administrator as provided by Administrative Order No. 46 of the Supreme Court.

(B) *One-time Registration.* Media that do not have a registration certificate and wish to record or transmit court proceedings or associated activity for a single day or a single proceeding must apply as provided by Administrative Order No. 46. Proceedings will not automatically be delayed pending application and any review.

(C) *Authorization of Additional Persons Representing Registered Media.* A person not authorized under an existing permanent or one-time media registration may apply to act temporarily under the authority of a registration certificate by seeking permission as provided in Administrative Order No. 46.

(D) *Location and Pooling.* In every division of the superior court, the presiding judge and the Court Administrator in consultation with representatives of regularly appearing media, will specify the area or areas of each courtroom from which media representatives may operate video and still photographic devices. If more than one media registrant seeks to

record or transmit under this paragraph (2) in a specific proceeding at the same time, the court may require those individuals or organizations to agree among themselves on an arrangement for pooled coverage.

(3) *Participants.*

(A) A participant may possess and use a device in a courtroom, and may orally record, subject to the general limits on use in paragraph (d)(1) and the excluded items in subdivision (e). A participant may not use a device to visually record proceedings or transmit. The court may permit, preclude, or limit use of a device by a participant as set forth in paragraph (e)(3).

(B) The presiding judge may prohibit the use of a specific device in a particular location in the courtroom if the judge finds that the use will disrupt the conduct of the proceeding.

(C) This rule is not intended to prevent or limit the presentation of evidence or argument by a lawyer or self-represented party during a trial or hearing.

(4) *Nonparticipants.* A nonparticipant may possess devices in a courtroom.

(A) **Prohibited Use.** During evidentiary proceedings and any time a jury or jury pool is present, including during voir dire, nonparticipants may not use devices inside a courtroom and all devices must be turned off or in silent mode.

(B) **Limited Use.** During nonevidentiary proceedings when a jury or jury pool is not present, nonparticipants may use devices in a nondisruptive manner, subject to the limits provided in paragraph (d)(1) and subdivision (e), but may not transmit or record audio or visual images.

(C) The presiding judge may prohibit the use of a specific device in a particular location in the courtroom if the judge finds that the use will disrupt the conduct of the proceeding.

(5) *Jurors.* During juror selection and trial, prospective, seated, and alternate jurors may not use a device while in the courtroom. Jurors must not possess a device while deliberating.

(e) **Limitations.** Recording and transmission are subject to the general limits on use in subdivisions (c) and (d) and the following further limitations:

(1) Bench conferences, conferences between co-counsel and activity during a recess, may be recorded or transmitted visually, but not orally. Unless permitted by the judge, proceedings in chambers may not be recorded or transmitted by any device or method. Conferences between counsel and client may be recorded with visual still images, but may not be recorded or transmitted by video or audio.

(2) Activities of the jury and images of jurors or prospective jurors in the courtroom and areas immediately adjacent thereto, or of sequestered jurors, may not be recorded or transmitted

by any device or method, except that visual recording of trial participants that will necessarily include the seated jury may be permitted by the court on terms that will protect the identity of jurors.

(3) The court may permit, prohibit, terminate, limit, or postpone the recording or transmitting of all or any part of a proceeding, and the use of any device, in the courtroom and areas immediately adjacent thereto on the court's own motion or on the request of a party or witness in the proceeding. Upon notice to the parties, to the person requesting the order, to any person or entity designated by the media to be notified on behalf of all potentially interested members of the media, and to any person who has filed a request to be heard on this particular motion, the court must hold a prompt hearing on the motion. In acting under this provision, the court will consider the following factors:

- the impact of recording or transmitting on the rights of the parties to a fair trial;
- whether the private nature of testimony outweighs its public value;
- the likelihood that physical, emotional, economic, or proprietary injury may be caused to a witness, a party, the alleged victim, or other person or entity;
- the age, mental condition, and medical condition of the party, witness, or alleged victim;
- whether sequestration of the jury, a delay in transmitting until a verdict has been rendered (if agreed upon by the media or person seeking to transmit), or some other means short of prohibition would protect the interests of the parties, witnesses, or other persons;
- other good cause.

(4) A person seeking an order has the burden of persuading the court by a preponderance that the court should permit, prohibit, terminate, limit, or postpone the recording or transmission.

(f) **Waiver.** The court may waive specific limitations of this rule on request for good cause prior to the proceeding for which waiver is sought. Good cause may include the fact that there is a particularized public interest in the proceeding. If the court grants a participant or nonparticipant a waiver it may impose on that person any of the restrictions applicable to the media, including restrictions on the placement and operation of equipment and personnel.