

Cite as 2011 Ark. 317

SUPREME COURT OF ARKANSAS

No.

IN RE ADMINISTRATIVE ORDER
NO. 6(c)

Opinion Delivered July 27, 2011

PER CURIAM

On November 18, 2010, we created the Ad Hoc Committee on Broadcasting of Court Proceedings and appointed the following members: Steve Barnes of Little Rock, Honorable Gary Arnold, circuit judge of Benton, Honorable Fred Kirkpatrick, district court judge of Harrison, Gary Nutter, Esq., of Texarkana, Spence Fricke, Esq., of Little Rock, and Thomas Carpenter, Esq., of Little Rock. *See In re Ad Hoc Committee on Broadcasting of Court Proceedings*, 2010 Ark. 460 and 2011 Ark. 18. Mr. Fricke was selected by the members to serve as the chair.

We charged the committee as follows:

A recent opinion issued by the Arkansas Judicial Ethics Advisory Committee suggested that there might be a conflict between the Code of Judicial Conduct and Administrative Order Number 6. *See Op. Ark. Jud. Ethics Advisory Comm. No. 01 (2010)*. We note that there have been many advances in the technology related to broadcasting since this court adopted these provisions in 1993. In addition, the court has become aware that several limited and general jurisdiction courts in our state allow for the broadcasting of some or all of their proceedings. For this reason and others, we believe that Administrative Order Number 6 needs to be reviewed in light of current events and technology.

2010 Ark. 460.

The committee submitted its report on June 8, 2011. As outlined in the report, the committee met on three occasions, including one meeting at which it heard from media representatives, circuit judges, and a representative of the Arkansas Judicial Discipline and Disability Commission. The committee “focused on whether Administrative Order No. 6 should be supplemented to include specific provisions relating to broadcasting drug court proceedings, or whether the proceedings should be excepted from being broadcast, as are juvenile, probate and domestic relations matters, among others.” It left for future action any broader revisions to Administrative Order No. 6.

We excerpt the following points from the report:

The Committee considered and discussed a number of different considerations bearing on the broadcasting of drug court proceedings under Administrative Order No. 6. ... The considerations which tend to support broadcasting drug court proceedings included the following:

- Providing open and public courtroom proceedings. There is a strong public, statutory, and case law policy in Arkansas supporting open courtroom proceedings. . . .
- Striking a balance between openness and confidentiality. The consideration here is to do whatever is reasonably possible to both protect those involved in drug court proceedings and to provide public access. Rather than limiting public access, perhaps a balance can be struck by crafting specific provisions for drug court proceedings within Administrative Order No. 6.
- Recognition of the fact that no defendant can have drug court proceedings broadcast over his or her objection. A witness, as well, can object to being broadcast as part of the proceedings.
- The educational effect on the public of viewing drug court proceedings. . . .

The considerations tending to support a recommendation that there be no broadcasting of drug court proceedings included the following:

- The unique nature of drug court. Drug court is significantly different from other courts. It is a specialty court designed to promote and achieve substance abuse rehabilitation. A defendant who appears in drug court has already forfeited (voluntarily) a number of due process rights, and is hopeful both of becoming rehabilitated and having the drug-related charges in question expunged from his or her record. A real question arises, therefore, of whether any waiver of an objection to being broadcast is a knowing and voluntary one. The defendant could well be driven by a desire to please the court if he or she perceives the court favors broadcasting. Other issues within this topic also arise, such as the difficulty or impossibility of avoiding broadcasting the faces of juveniles or other family members during proceedings. . . .
- The potential misuse of recordings of drug court broadcasts. The Committee believes there is a real risk involved in having individuals or entities use the drug court proceedings for their own purpose and profit. A related topic here is the concern that an individual who has successfully completed drug court and had his or her charges expunged could at some time in the future be faced with the embarrassment of some sort of public airing of the recording.
- The risk to the drug court judge of violating the Arkansas Code of Judicial Conduct. These risks are outlined in detail in Opinion No. 2010-01 of the Judicial Ethics Advisory Committee. They include the potential effect on public confidence in the integrity of the judiciary, as outlined in Canon 1, Rule 1.2, and the risk of violating Canon 1, Rule 1.3 relating to abusing the prestige of judicial office to advance the personal or economic interests of the judge or others.
- The difficulties involved in reviewing and overseeing the broadcasting of drug court proceedings.
- The difficulty of creating a set of procedures which would strike a balance between open court proceedings and those problems associated with the broadcasting of drug court proceedings. No Committee member was able to propose a satisfactory set of procedures which could achieve such a balance.

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The most viable option, then, was to preclude such broadcasts by the appropriate exception within Administrative Order No. 6.

(Report)

Based on its consideration of the foregoing factors, the committee made the following recommendation regarding the broadcasting of drug court proceedings:

The Committee recommends that Administrative Order No. 6 be amended to except the broadcast of all drug court proceedings from its provisions, thereby effectively disallowing such broadcasts. Although the Committee wishes to emphasize it is acutely aware of the positive effects of broadcasting court proceedings, it has concluded that the negative effects of drug court broadcasts and the potential harm they could bring to individuals must take precedence here. The considerations discussed above for excepting such broadcasts from Administrative Order No. 6 simply outweighed the other considerations. In particular, matters of privacy, the special and unique nature of drug court proceedings, and the potential for the abuse of broadcast recordings have driven this Committee's decision. The risk of violating certain portions of the Code of Judicial Conduct comes into serious play at this point as well, although there is general agreement among the Committee members that the Committee recommendations are directed toward drug courts in general, not a specific drug court.

Id.

We thank the committee members for their work. The members noted that, as a first step, they focused on the more immediate problem of the broadcasting of drug court proceedings particularly because of the concerns expressed in the opinion of the Judicial Ethics Advisory Committee and the cloud over these proceedings that it created. We understand the committee's priorities.

The committee concluded that broadcasting of drug court proceedings should not be permitted. We likewise are persuaded by the factors militating against the broadcasting of drug

court proceedings and agree with the committee’s recommendation—at least on an immediate or interim basis.

The broader issues that the committee left for future action include a comprehensive examination of courtroom broadcasting focusing on the current state of broadcast journalism and its technology. When these aspects of the issue are studied and reported to the court, including an examination of how other jurisdictions have addressed them, Administrative Order No. 6 may need to be more comprehensively revised, and the action that we have taken today with respect to drug courts may be revisited.

At this time, we amend Administrative Order No. 6(c)(3)¹ to read as follows:

(3) The following shall not be subject to broadcasting, recording, or photographing:

all juvenile matters in circuit court,

all probate and domestic relations matters in circuit court (*e.g.*, adoptions, guardianships, divorce, custody, support, and paternity), and

all drug court proceedings.

This amendment is effective August 1, 2011. Administrative Order No. 6 (a)–(c) is republished as set out below.

¹“(3) All juvenile matters in circuit court as well as hearings in probate and domestic relations matters in circuit court, *e.g.*, adoptions, guardianships, divorce, custody, support, and paternity, shall not be subject to broadcasting, recording, or photographing.”

Administrative Order Number 6 – Broadcasting, Recording, or Photographing in the Courtroom

(a) *Application – Exception.* This Order shall apply to all courts, circuit, district, and appellate, except as set out below.

(b) *Authorization.* A judge may authorize broadcasting, recording, or photographing in the courtroom and areas immediately adjacent thereto during sessions of court, recesses between sessions, and on other occasions, provided that the participants will not be distracted, nor will the dignity of the proceedings be impaired.

(c) *Exceptions.* The following exceptions shall apply:

(1) An objection timely made by a party or an attorney shall preclude broadcasting, recording, or photographing of the proceedings.

(2) The court shall inform witnesses of their right to refuse to be broadcast, recorded, or photographed, and an objection timely made by a witness shall preclude broadcasting, recording or photographing of that witness.

(3) The following shall not be subject to broadcasting, recording, or photographing:

all juvenile matters in circuit court,

all probate and domestic relations matters in circuit court (*e.g.*, adoptions, guardianships, divorce, custody, support, and paternity), and

all drug court proceedings.

(4) In camera proceedings shall not be broadcast, recorded, or photographed except with consent of the court.

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(5) Jurors, minors without parental or guardian consent, victims in cases involving sexual offenses, and undercover police agents or informants shall not be broadcast, recorded, or photographed. . . .