

# Limiting Recording in the Courtroom

**Question:** As a trial court judge, can I exclude someone from recording in the courtroom?

**Answer:** Trial court judges can limit photography and other forms of recording in the courtroom.

**It is advisable that your judication create either a local rule or a written advisement regarding court room recording and make it available to the public.**

With the rise of phone cameras and streaming services, anyone can be a “journalist.” But what does that mean for recording in courtrooms?

- Judges have inherent power to control their courtrooms, including the authority to control and manage their calendars, proceedings, and parties. (GR 29)” **This includes the authority to order the public to shut off all electronic devices in their courtrooms.”**
- Judges can issue guidelines for conduct related to court operations and administration, which includes placing limitations on camera and video recording. (GR 16)

What should a judge consider when limiting recording in a courtroom?

- Prohibiting a person from recording in a courtroom potentially implicates the right to free speech under the U.S. Constitution’s First Amendment and Article I, § 5 of the Washington State Constitution.
- Because courtrooms are not public forums, the First Amendment right to speak or record may be limited as long as the limitations are viewpoint-neutral and reasonable in light of the purpose of the forum. *Sanders v. Seattle*, 160 Wn.2d 198, 156 P.3d 874 (2007). **However, you must exercise caution when imposing any limitations.**

### What can judges do?

- A judge can place restrictions on “speech” (in this case, the taking of photographs or video), **provided those restrictions are clear case specific and on the record.** *State v. Russell*, 141 Wn. App. 733, 172 P.3d 361 (2007).
- Many Washington courts have promulgated reasonable and viewpoint-neutral rules restricting recording in the courtroom.

### If the judge imposes limitations, what principles should be followed?

1. Open access is presumed; limitations on access must be supported by reasons that are sufficiently compelling to outweigh that presumption.
2. Prior to imposing any limitations on courtroom photography or recording, the judge shall, upon request, hear from any party and from any other person or entity deemed appropriate by the judge.
3. Any reasons found sufficient to support limitations on courtroom photography or recording shall relate to the specific circumstances of the case before the court rather than reflecting merely generalized views. **There must be both a written and oral record of the limitations imposed. The standard for overturning limitations on the media is abuse of discretion. Judges are advised to proceed with caution on all issues regarding free speech.**

### Who are the News Media?

- GR 16 only applies when the rights of the “news media” are implicated, but the meaning of “news media” for purposes of GR 16 has not been judicially analyzed.
- The rule and scant case law provide little guidance regarding whether today’s YouTube streamer or social media poster is a member of the “news media.”

- If a person claims that they are a member of the news media under GR 16, the court may need to conduct an analysis to see if they are eligible for the heightened protections of GR 16 and case law pertaining to court closures.

What can a judge do if a person doesn't follow the rules?

- Judges have inherent authority to restrict the recording of proceedings by people who have not obtained prior permission from the court or who disobey the court's order.
- The judge could potentially take away the person's recording device or limit the scope of the recording by imposing specific parameters or order the person removed from the courtroom.
- If the person continues to disrupt the courtroom, contempt proceedings may be required – the person in contempt must have actual knowledge of the order and its legal effect. **Again, it is best to make a written and oral record of any limitations or sanctions you impose.**

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