

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by. KWAME RAOUL, Attorney)
General of the State of Illinois,)
)
Complainant,)
)
v.) No. 24-33
)
CITY OF LASALLE,)
an Illinois municipal corporation,)
)
Respondent.)

NOTICE OF FILING

PLEASE TAKE NOTICE that I have caused to be filed with the Clerk of the Illinois Pollution Control Board by electronic filing the following Response to the Motion for Extended Media Coverage today, February 1, 2024, true and correct copies of which are attached hereto and hereby served upon you.

Respectfully Submitted,

BY: /s/ Cara V. Sawyer
Assistant Attorney General
Environmental Bureau
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CERTIFICATE OF SERVICE

I, CARA V. SAWYER, an attorney, do hereby certify that, today, February 1, 2024, I caused to be served by electronic mail on the individuals listed on the below Service List a true and correct copy of the attached Response and related Exhibit 1.

/s/ Cara V. Sawyer
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by KWAME RAOUL, Attorney)
General of the State of Illinois,)
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Complainant,)
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v.) No. 24-033
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CITY OF LASALLE,)
An Illinois municipal corporation)
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Respondent.)

COMPLAINANT’S RESPONSE TO MOTION FOR EXTENDED MEDIA COVERAGE

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, pursuant to the January 22, 2024 Hearing Officer Order, and submits its response to a Motion for Extended Media Coverage filed January 25, 2024, and states as follows:

1. During a Hearing Officer status call on January 18, 2024, an in-person hearing was scheduled for this matter for February 29, 2024 at 10 a.m. (“Hearing”).
2. A participant inquired as to whether recording by a documentary crew or other recording such as by cell phone during the Hearing would be allowed. The Hearing Officer directed the participant to timely file a request before January 25, 2024.
3. On January 25, 2024, Karen (Karry) King (“Media Coordinator”) timely filed a Media Coordinator’s Notice of Request(s) for Extended Media Coverage of Trial or Proceeding (the “Request”).
4. The Media Coordinator described the desired extended media coverage as follows: “1 videographer and 1 photographer with a still camera and video and audio equipment.” Request, p. 1. The Request also “includes every part of such proceeding and any later proceedings caused

by a delay or continuance.” *Id.*

I. APPLICABLE LAW AND HEARING OFFICER AUTHORITY

Rule 101.606 of the Board Procedural Rules, 35 Ill. Adm. Code 101.606, provides as follows:

Informal recording of Board proceedings is allowed as provided for in this Section. The hearing officer may prohibit audio or video recording at hearing if a witness refuses to testify on the grounds that the witness must not be compelled to testify if any portion of the testimony is to be broadcast or televised. If the hearing officer determines that recording is disruptive or detrimental to proper development of the record, the hearing officer may limit or prohibit audio and video recording.

On its face, Rule 101.606 provides guidance for “informal” recordings. 35 Ill. Adm. Code 101.606. Complainant is not aware of definitions of “informal” or “formal” provided by the Board Procedural Rules. The dictionary describes things that are informal as “casual” or “without ceremony.” Informal, *The American Heritage Dictionary of the English Language*, (Houghton Mifflin, 5th ed. 2012). An example of an informal recording might be one that a participant makes using his cell phone for his own later recollection, as compared to formal recordings made by a crew using professional cameras to capture images for a documentary film. The Request, which asks that a still photographer and a videographer record the Hearing, seems more akin to the latter formal recording scenario. Further, Complainant is not aware of any Board cases addressing whether the scope of Rule 101.606 also applies to formal media coverage, or of any Board Procedural Rule or citable case law addressing extended media coverage.

In the absence of obvious guidance from the Board, 35 Ill. Adm. Code 101.100(b), the Hearing Officer should not only consider Rule 101.606, 35 Ill. Adm. Code 101.606, but also look to the Illinois Supreme Court’s Policy for Extended Media Coverage in the Circuit Courts of

Illinois, M.R. 2634, as amended on February 22, 2016 (the “Policy”),¹ as a highly relevant authority on this subject. Attached as Exhibit 1.

The Policy in Section 1.0 allows media access to proceedings as follows:

Upon application and approval by the Supreme Court of Illinois, a judicial circuit of the circuit courts of Illinois may allow extended media coverage of public judicial proceedings in accordance with the provisions of this policy...

The coverage shall be subject, at all times, to the authority of the judge presiding at the proceeding. Extended media coverage shall not be distracting or interfere with the solemnity, decorum and dignity of the court making decision that affect the life, liberty or property of citizens. ...

Here, the role of the Hearing Officer presiding at the Hearing is similar to that of “judge presiding at the proceeding.” Policy, Sec. 1.0. As such, all media coverage is subject to the authority of the Hearing Officer as granted by Rule 101.606 and Section 1.0 of the Policy. 35 Ill. Adm. Code 101.606; Policy, Sec. 1.0.

II. COMPLAINANT DOES NOT OBJECT TO THE REQUEST, CONTINGENT UPON CONTINUED DECORUM, DUE PROCESS, AND SAFETY

Complainant does not object to the request for media coverage, but Complainant urges the Hearing Officer to limit or disallow media coverage if issues of decorum, due process, or safety arise during the Hearing, or would in any way be disruptive or detrimental to the proper development of the record.

First, Hearing decorum should remain of primary importance. The Hearing Officer should use his authority to disallow, alter, or limit media coverage at the Hearing should it distract or interfere with the “solemnity, decorum or dignity” of the Hearing. Policy, Sec. 1.0. Such distraction or interference could include but should not be limited to recording personnel’s failure to maintain reasonable distance from participants, disruptive attempts at a better angle or sound,

¹The Policy is available at, https://www.illinoiscourts.gov/Resources/6a32f078-067c-49af-b763-7c31c0aca6e1/Extended_Media_Coverage.pdf (last accessed 1/31/24).

or verbal or visual or other disruption due to flashes, equipment, discussions, attempts at interviews, requests for repetition, or other actions that would be disruptive or detrimental to the proper development of the record. 35 Ill. Adm. Code 101.606. Further, the Policy provides specific technical limitations. For example, both still and video cameras, and related equipment, “must be unobtrusive,” and still cameras must be “without distracting light or sound.” Policy, Sec. 1.4(a)(1-4). Also, no artificial lighting devices should be allowed. Policy, Sec. 1.4(b). And, audio equipment must be “of adequate technical quality to prevent interference” with proceedings. Policy, Sec. 1.4(a)(3).

Complainant further urges the Hearing Officer to disallow the recording of conversations during the Hearing that are specifically made outside of the record. Relatedly, the Hearing Officer should require recording equipment to be switched off during recesses. The Policy, Sections 1.2(e) and (f), Policy, Secs. 1.2(e) and (f), applies both limitations as follows:

1.2 General

Broadcasting, televising, recording and photographing may be permitted in the courtroom during sessions of the court, under the following conditions:

- (e) There shall be no audio pickup or broadcast or recording of a conference in a court proceeding or in a court facility between attorneys and their clients, between co-counsel, between attorneys and opposing counsel, or attorneys and the judge.
- (f) Audio or visual equipment authorized by these provisions shall not be operated during a recess in the court proceeding.

Next, Complainant urges that the Hearing Officer, in his discretion *sua sponte* or at the request of counsel, disallow, alter, or limit media coverage that violates participants’ substantial rights or rights to the due process of a fair hearing, or is needed in the interest of safety, for example, if camera equipment or photographers block the aisles or fire exits. The Policy addresses such limitations, pursuant to Section 1.2(i), as follows:

The judge may refuse, limit, amend or terminate photographic or electronic media coverage at any time during the proceedings in the event the judge finds that provisions established under this policy, or additional rules imposed by the judge, have been violated, or that substantial rights of individual participants or rights to a fair trial will be prejudiced by the manner of coverage if it is allowed to continue; or if it is necessary to guarantee the safety of the courtroom, including any party, witness, juror or attendee of the proceeding. Policy Section 1.2(i).

The media coverage at the Hearing may be more akin to the informal recording situation addressed by Section 101.606 of the Board Procedural Rules, 35 Ill. Adm. Code 101.606. Or, such media coverage might be better categorized as formal and match the description included in the Request such that the Policy should apply. In either event, contingent upon the reservations stated herein, and pursuant to the Hearing Officer's discretion in conducting the Hearing, Complainant does not object to the Request.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, does not object to the media coverage as described in the Media Coordinator's Notice of Request(s) for Extended Media Coverage of Trial or Proceeding, provided such coverage is not disruptive or detrimental to the proper development of the record as provided in Section 101.606 of the Board Procedural Rules, 35 Ill. Adm. Code 101.606, and/or that any such coverage conform to the Illinois Supreme Court's Policy for Extended Media Coverage in the Circuit Courts of Illinois, M.R. 2634 as amended, as determined by the Hearing Officer in his discretion, and requests that the Hearing Officer takes such other action before or during the Hearing as he believes to be appropriate and just.

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Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by KWAME RAOUL, Attorney General
of the State of Illinois

By: /s/ Cara V. Sawyer

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COMPLAINANT’S RESPONSE TO MOTION FOR EXTENDED MEDIA COVERAGE

EXHIBIT 1

MEDIA POLICY

**POLICY FOR EXTENDED MEDIA COVERAGE
IN THE CIRCUIT COURTS OF ILLINOIS**

1.0 Media Access

Upon application and approval by the Supreme Court of Illinois, a judicial circuit of the circuit courts of Illinois may allow extended media coverage of public judicial proceedings ~~on an experimental basis~~ in accordance with the provisions of this policy. The application shall be submitted on a form authorized by the Supreme Court and include a draft administrative order, local rules, or policy proposed to be issued upon approval of the application.

The coverage shall be subject, at all times, to the authority of the judge presiding at the proceeding. Extended media coverage shall not be distracting or interfere with the solemnity, decorum and dignity of the court making decisions that affect the life, liberty or property of citizens. Nothing in this policy shall limit or restrict the power, authority or responsibility otherwise vested in the chief judge of the circuit; and the judge presiding to: a) control the conduct of any proceeding; b) maintain decorum and prevent distractions; c) guarantee the safety of the courtroom, including any party, witness, or juror and d) ensure the fair and impartial administration of justice in the pending cause.

1.1 Definitions

- (a) "Extended media coverage" means any media recording or broadcasting of proceedings by the use of television, radio, photographic, or recording equipment for the purpose of gathering and disseminating news to the public.
- (b) "News Media", in general, means established news gathering and reporting agencies and their representatives whose function is to inform the public.
- (c) "Judge" means the circuit or associate judge presiding in a trial court proceeding.
- (d) "Chief Judge" means the chief judge of the circuit.
- (e) "Judicial proceedings" or "proceedings" includes all public trials, hearings or other proceedings of a trial court when extended media coverage is requested, except those specifically excluded by these provisions.
- (f) "Media coordinator" means a member of the news media who has requested extended coverage or, in the case of more than one media person requesting extended coverage, a representative chosen by all of the media requesting extended coverage and approved by the judge. The

media coordinator shall work with the chief judge and the judge, or with their designee, in a court proceeding with extended coverage.

1.2 General

Broadcasting, televising, recording and photographing may be permitted in the courtroom during sessions of the court, under the following conditions:

- (a) Permission first shall have been granted by the judge, who may prescribe such conditions of coverage as provided for in this policy. The chief judge shall have discretion to deny all extended media coverage.
- (b) In prosecutions for sexual abuse, or when sexual abuse is an essential element, there shall be no extended media coverage of the testimony of a victim unless the testifying victim consents. Further, an objection to coverage by a testifying victim in any other forcible felony prosecution, and by police informants, undercover agent(s), and relocated witnesses shall be presumed valid. The judge shall exercise broad discretion in deciding whether there is cause for prohibition. This list is not exclusive. The judge may find cause in comparable situations.
- (c) Extended media coverage is prohibited in any court proceeding required under Illinois law to be held in private. No coverage shall be permitted in any juvenile, dissolution, adoption, child custody, evidence suppression or trade secret cases.
- (d) Extended media coverage of jury selection is prohibited. Extended media coverage of the jury and individual jurors is prohibited.
- (e) There shall be no audio pickup or broadcast or recording of a conference in a court proceeding or in a court facility between attorneys and their clients, between co-counsel, between attorneys and opposing counsel, or attorneys and the judge.
- (f) Audio or visual equipment authorized by these provisions shall not be operated during a recess in the court proceeding.
- (g) The quantity and types of equipment permitted in the courtroom shall be subject to the discretion of the judge within the guidelines set out in this policy.
- (h) Upon application of the media, the judge may permit the use of equipment or techniques at variance with the provisions in this policy, provided the variance request is included in the advance notice of coverage provided for in subsection 1.3(b). Objections, if any, shall be made as provided in

subsection 1.3(c). Ruling upon a variance application shall be at the sole discretion of the judge. Variances may be allowed by the judge without advance application or notice if all counsel and parties consent to it.

- (i) The judge may refuse, limit, amend or terminate photographic or electronic media coverage at any time during the proceedings in the event the judge finds that provisions established under this policy, or additional rules imposed by the judge, have been violated, or that substantial rights of individual participants or rights to a fair trial will be prejudiced by the manner of coverage if it is allowed to continue; or if it is necessary to guarantee the safety of the courtroom, including any party, witness, juror or attendee of the proceeding.
- (j) The rights of extended media coverage may be exercised only by the news media.
- (k) A decision by a judge to deny, limit or terminate extended media coverage is not appealable.
- (l) A judge may authorize extended media coverage of ceremonial proceedings at variance with provisions in this policy as the judge sees fit.

1.3 Procedural

- (a) **Media Coordinator.** The judge, or the court's designee, and all interested members of the media shall work, whenever possible, with and through an appropriate media coordinator on all arrangements for extended media coverage. In the event a media coordinator is not available for a particular proceeding, the judge may deny extended media coverage or may appoint an individual from among local working representatives of the media to serve as the coordinator for the media in the proceeding.
- (b) **Advance Notice of Coverage.**
 - 1. All requests for extended media coverage shall be made through the media coordinator. The media coordinator shall inform the judge at least 14 days in advance of the time the proceeding is scheduled to begin, but these times may be extended or reduced by court order. When the proceeding is not scheduled at least 14 days in advance, however, the media coordinator shall give notice of the request as soon as practicable after the proceeding is scheduled. Upon receipt of notice, the judge shall inform the chief judge.

2. Notice of the request shall be in writing, filed in the office of the Clerk of the Circuit Court. A copy of the notice shall be provided by the media coordinator, or by the Clerk of the Circuit Court, or by the court media liaison to all counsel of record, parties appearing without counsel, the appropriate court administrator or court media liaison and the judge expected to preside. The notice shall contain:
 - A. The title and docket number of the case, and the date and time, if available, of the proceeding;
 - B. The type of extended media coverage requested with a description (e.g. the number of television cameras, still photographers).
 - C. A statement that appropriate notice is being provided to all counsel of record, parties appearing without counsel, the trial court administrator and the judge, along with the names of each.
 - D. The name, address and telephone number of the media coordinator making the request, and the media coordinator's employer.
3. Failure to provide notice to all counsel of record and to parties appearing without counsel may result in denial of the request for extended media coverage.

(c) Objections.

A party objecting to expanded media coverage shall file a written objection, stating the reasons, at least three (3) days before commencement of the proceeding. All witnesses shall be advised by counsel proposing to introduce their testimony of their right to object to extended media coverage, and all objections by witnesses shall be filed prior to the commencement of the proceeding. Witnesses shall be entitled to the assistance of the clerk of the circuit court in providing copies of this objection to all counsel of record, parties appearing without counsel, the media coordinator and the judge. All objections shall be heard and determined by the judge prior to the commencement of the proceedings. The judge may rule on the basis of the written objection alone. In addition, the objecting party or witness, and all other parties, may be afforded an opportunity to present additional evidence by affidavit or by other means as the judge directs. The judge may permit presentation of evidence by the media coordinator in the same manner. Time for filing of objections may be extended or reduced at the discretion of the judge, who also, in

appropriate circumstances, may extend the right of objection to persons not specifically provided for in this policy.

1.4 Technical

- (a) Equipment specifications. Equipment to be used in courtrooms during judicial proceedings must be unobtrusive and must not produce distracting sound. In addition, equipment must satisfy the following criteria, where applicable:
1. Still cameras. Still cameras and lenses must be unobtrusive without distracting light or sound.
 2. Television cameras and related equipment. Television cameras, together with any related equipment to be located in the courtroom, must be unobtrusive in both size and appearance, without distracting sound or light.
 3. Audio equipment. Microphones, wiring and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the covered judicial proceedings. Any changes in existing audio systems must be approved by the presiding judge. No modifications of existing systems shall be made at public expense. Microphones for use of counsel and judges shall be equipped with power switches to facilitate compliance with subsections 1.2(e) and (f) of this policy.
 4. No light or signal visible or audible to participants in the proceeding shall be used on any equipment during extended coverage to indicate whether it is operating.
 5. Advance approval. It shall be the duty of media personnel to demonstrate to the judge reasonably in advance of the proceeding that the equipment sought to be used meets the criteria set forth in this section. Failure to obtain advance judicial approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least fifteen minutes prior to the scheduled time of commencement of the proceeding.
- (b) Lighting. Other than light sources already existing in the courtroom, no flashbulbs or other artificial light device of any kind shall be employed in the courtroom. With the approval of the judge, however, modifications may be made in light sources existing in the courtroom (e.g., higher wattage light bulbs), provided modifications are installed and maintained without public expense.

- (c) Pooling and Equipment. The following limitations on the number of photographic and broadcast media personnel in the courtroom and the amount of equipment shall apply:
1. Pooling. The media are encouraged to pool equipment and personnel. Where the limitations on equipment and personnel under these provisions make it necessary, the media shall be required to pool equipment and personnel. Pooling arrangements shall be the sole responsibility of the media coordinator. No judicial officer or court personnel shall mediate disputes. Priority consideration shall be extended to one of the two television cameras to televise an entire proceeding from beginning to end. In the absence of agreement or in the event of unresolved disputes relating to pooling arrangements, the kind of extended coverage sought shall be prohibited and excluded from the proceeding.
 2. Still photography. Not more than two still photographers, each using not more than two camera bodies and two lenses, shall be permitted in the courtroom during a judicial proceeding at any one time.
 3. Television. Not more than two television cameras, each operated by not more than one camera person, shall be permitted in the courtroom during a proceeding. Other than the television cameras, recording and broadcast equipment shall be located outside of the courtroom.
 4. Audio. Only one audio system for broadcast shall be permitted in a proceeding. Where possible, audio for all media shall be from any existing audio system present in the courtroom. If no technically suitable audio system exists, microphones, wiring, and recording equipment shall be furnished and temporarily installed by the news media without public expense, shall not interfere with the sound quality of any existing courtroom audio system, shall be operated by one person and shall be located in places designated in advance by the judge or designee. Where possible, electronic audio recording equipment and any operating personnel shall be located out of the courtroom.
 5. Sufficient video and audio tape capacities should be provided to obviate the need to make changes except during court recess.

6. No equipment or clothing of any extended coverage personnel shall bear any insignia or identification of the individual medium or network involved in extended coverage.
- (d) Location of equipment and personnel. Equipment and operating personnel shall be located in, and coverage of the proceedings shall take place from, an area or areas within the courtroom designated by the judge. The area or areas designated shall provide reasonable access to the proceeding to be covered. No equipment or personnel involved in extended media coverage shall impede pedestrian traffic movement into, or from, the courthouse, including but not limited to courthouse corridors and courtroom entrances and exits.
- (e) Movement during the proceedings. Television cameras and audio equipment may be installed in or removed from the courtroom only when the court is not in session. Equipment shall not be stored in the courthouse. In addition, such equipment shall at all times be operated from a fixed position. Still photographers and broadcast media personnel shall not move about the courtroom while proceedings are in session, nor shall they engage in any movement attracting undue attention. Still photographers shall not assume body positions inappropriate for the courtroom.
- (f) Decorum. All news media representatives shall be properly attired and shall maintain proper courtroom decorum at all times when covering a judicial proceeding. The judge has discretion to determine proper attire and courtroom decorum.

1.5 Jury Admonishment and Instruction

- (a) Jury Admonishment. The judge shall give the following admonishment to the jury at the commencement of any criminal or civil trial with an approved request for extended media coverage:

In this case, I have approved a request to allow the news media to film and photograph the proceedings. This is permitted by the Illinois Supreme Court and is subject to numerous restrictions contained in the Policy for Extended Media Coverage in the Circuit Courts of Illinois.

The policy in place regarding cameras in the courtroom is very strict and the court closely monitors every policy provision. In general, the policy permits the news media to film and photograph the courtroom setting, the participants in the trial, and any persons who might be in the audience. The policy does not permit the news

media to film or photograph any of you as jurors or the jury panel as a whole in the courtroom and outside the courtroom.

The presence of cameras does not make this case more important than any other. All trials are equally important to the court and the involved parties. You should not draw any inferences or conclusions from the fact that cameras are present at this particular trial.

The news media is generally able to choose which portion or portion(s) of the trial they wish to attend. Therefore, their attendance may be periodic from day-to-day. Also, for legal reasons, the news media may not be permitted to film and photograph certain witnesses. You are not to concern yourself with why certain witnesses are filmed and photographed and others are not.

Whether a particular witness is filmed or photographed is not any indication as to the value of, or weight to be given to, that witness's testimony.

You should ignore the presence of any cameras. If you find at any time that you are distracted or unable to concentrate because of the cameras, please notify me immediately.

- (b) Jury Instruction. The judge shall give the following instruction to the jury when news media was present at any portion of a criminal or civil trial:

In this case, the news media was permitted to film and photograph the proceedings pursuant to the Illinois Supreme Court Policy for Extended Media Coverage in the Circuit Courts of Illinois.

In your deliberation, you should not draw any inferences or conclusions from the fact that cameras were present at this particular trial. Nor should you concern yourself with why certain witnesses were filmed and photographed and others were not. Whether a particular witness was filmed or photographed is not any indication as to the value of, or weight to be given to, that witness's testimony.

1.6 Reporting

- (a) The judge presiding in a trial court proceeding where extended media coverage has been permitted shall file a written report with the Chief Judge within a reasonable time after the date the permitted extended media coverage is concluded. The report shall, at a minimum, contain the

following information: the type of extended media coverage allowed; the date, time, location, and nature of the proceeding covered; a statement of any problems encountered; and any other information relevant to the extended media coverage of the proceeding. All reports shall be confidential and may also contain the reporting judge's observations, comments, or recommendations concerning extended media coverage.

- (b) The Chief Judge in each judicial circuit where extended media coverage is permitted by order of the Supreme Court shall provide a quarterly written report to the Chief Justice of the Supreme Court and the Supreme Court Justice(s) of the District where the judicial circuit is located, with a copy to the Director of the Administrative Office of the Illinois Courts and the Supreme Court Director of Communications. The report shall be submitted on a form authorized by the Supreme Court and shall, at a minimum, contain the following information: the number of requests for extended media coverage received during the previous quarter; the type of extended media coverage requested in each instance; the number of such requests that were approved; the number of such requests that were denied; and the category of each proceeding in which extended media coverage was allowed. All reports shall be confidential and may also contain the Chief Judge's observations, comments, or recommendations concerning extended media coverage.

Approved: January 24, 2012.

Amended: January 24, 2013.

Amended: March 13, 2015.

Amended: February 22, 2016.