

April 10, 2018

Hon. Thad Balkman
District Judge
Cleveland County Courthouse
200 S. Peters
Norman, OK 73069

Re: *State of Oklahoma ex rel. Mike Hunter, Attorney General of Oklahoma v. Purdue Pharma, LP*, Case No. CJ-2017-816

Dear Judge Balkman:

As you know, this case by the State of Oklahoma against several pharmaceutical companies raises significant issues regarding enforcement of public health policy. The suit, which, if not settled before then, is set for trial in May 2019, is naturally of keen interest to the citizens of this state.

I write on behalf of The Oklahoma Publishing Company, which publishes *The Oklahoman* newspaper and operates the news website NewsOK.com, to inquire whether OPUBCO reporters might be permitted to use digital cameras in the courtroom during the trial. The use of unobtrusive cameras would allow reporters to create images and video that can be displayed later in the newspaper or online, giving readers and website visitors a more complete view of what has transpired in the courtroom than traditional narrative reporting.

Of course, court proceedings, both civil and criminal, are traditionally (and constitutionally) open to the public, including the media. Nevertheless, the courtroom has limited space, and few citizens likely have time to attend the proceedings in person. Reporters can attend trials, take notes, and write stories describing the testimony of witnesses and rulings of the court. Without visual images, however, it is impossible to present a full picture of what has happened in the courtroom; a narrative report of the trial, for example, cannot describe demonstrative exhibits fully or capture the body language of a witness being cross-examined so citizens can assess for themselves the credibility of the evidence.

We are not aware of any statute or rule that would prohibit the use of a digital camera in the courtroom during the trial. The presence of cameras used to be limited (though not prohibited) by Canon 3(B)(9) (or at one time, Canon 3(B)(10)) of the Code of Judicial Conduct. That Canon was abandoned with the adoption of the current Code in 2010. *See In re Oklahoma Code of Judicial Conduct*, 2010 OK 90, 285 P.3d 1080. While some local court rules maintain limitations akin to Canon 3(B)(9)—probably more as a matter of inertia than deliberation—neither the 21st Judicial District nor Cleveland County appear to have local rules that do so.

The appellate courts of this state have long recognized the value of video images of court proceedings (either still camera or television). For example, in *Lyles v. State*, 1958 OK CR 79, ¶8, 330 P.2d 734, 741, the court said “there is no sound reason why photographers and television representatives should not be entitled to the same privileges of the courtroom as other members of the press. Certainly there is much force in the Chinese proverb, one picture is worth a thousand words.” And in an opinion more than 35 years ago, 1981 OK AG 169, the Oklahoma Attorney General, responding to a legislator’s question whether cameras and tape recorders could be barred from meetings of the trustees of a public trust, said this:

[A] blanket ban on cameras and tape–recorders is impermissible. Members of the news media must be afforded a reasonable opportunity to use their tools to cover public meetings, and that right, like any other legal right, should not be exercised abusively to the detriment of equally important public interests. Certainly, modern attitudes toward the once assumed disruptive presence of cameras in public meetings has softened, as evidenced by the now widely accepted judicial view that cameras may be used in courtrooms to enhance the public’s accessibility to information about judicial proceedings.

We respectfully request that the court consider permitting credentialed reporters to use digital cameras during the trial of this case. Modern cameras are quiet and unobtrusive, and their non–disruptive use can afford citizens a view of the case that even the best narrative description of the proceedings cannot convey.

Very truly yours,

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.



Robert D. Nelson

RDN:rl

cc: Kelly Dyer Fry