

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

10-07-0002

2007 Term
October Session

512 D

Docket No: _____

2007 OCT 10 A 10:48

NEW HAMPSHIRE
SUPREME COURT
RECEIVED

In re: Newspapers of New Hampshire, Inc., *et al.*

**RULE 11 PETITION TO INVALIDATE
SUPREME COURT RULE 40(11)(j)**

Now come Newspapers of New Hampshire, Inc., publisher of the *Concord Monitor* and *Valley News*; New Hampshire Public Radio; and WMUR-TV/Channel 9, Petitioners, and request the Court pursuant to Supreme Court Rule 11 to exercise original jurisdiction and invalidate Supreme Court Rule 40(11)(j) so Petitioners may record, photograph and broadcast hearings held by the New Hampshire Supreme Court Judicial Conduct Committee (“JCC”), including the hearing in *In re: Patricia Coffey* (JC-07-015-G), scheduled for October 30 and 31, 2007.

Preliminary Statement

Petitioners seek an extension of the reasoning of *In re WMUR Channel 9*, 148 N.H. 644 (2002), where the Court invalidated Superior Court Rule 78, to hearings before the JCC. In *WMUR*, the Court noted that other states had rejected a “blanket” rule barring cameras and electronic media in courtrooms because “studies have found that the advent of cameras in the courtroom improves public perceptions of the judiciary and its processes, improves the trial process for all participants, and educates the public about the judicial branch of government.” *Id.* at 649. These same salutary effects would be extended to JCC hearings if Petitioners are permitted to use “their advancing technologies to provide better news coverage for New Hampshire citizens.” *Id.* at 651.

Given the integral role judges play in the daily administration of justice in New Hampshire courts, the importance of providing the public with “better news coverage” of JCC hearings is undeniable:

Judges are entrusted with immense authority over matters that affect the lives of all of New Hampshire's citizens. On any given day, a judge may decide the merits of a dispute between neighbors, the fault of two parties to an automobile accident, or the liberty of a person charged with the commission of a crime. It is a great public trust. Indeed, judges are the most visible symbol of the rule of law in our society. *Without judges who are perceived and trusted by members of the public as impartial, the authority of the rule of law is compromised* (emphasis added).

In re Case of Snow, 140 N.H. 618, 627 (1996). Just as the Court was given “an unusual near-firsthand glimpse” of the Pamela Smart trial, *State v. Smart*, 136 N.H. 639, 657 (1993), so the public will have “a front row seat” if Petitioners are permitted to record, photograph and broadcast JCC hearings.

In support of this petition and as grounds therefore, Petitioners represent:

1) The Court established the JCC pursuant to Supreme Court Rule 39 to conduct investigations and proceedings as “an integral source of confidence upon which public perception may be based.” *In re Thayer*, 145 N.H. 177, 181 (2000).

2) Pending before the JCC is *In re: Patricia Coffey*, which arises out of the Statement of Formal Charges Pursuant to New Hampshire Supreme Court Rule 40(9), dated August 15, 2007, and which charges Judge Coffey with violations of Canons 1 and 2 of the Code of Judicial Conduct. A public hearing on the Statement of Charges is scheduled for October 30 and 31, 2007 in the Legislative Office Building, Room 203.

3) Supreme Court Rule 40 outlines the JCC’s procedural rules that govern its hearings. The Rule was issued by the Court in the exercise of its “constitutional, statutory, and inherent authority.” *In re Case of Snow*, 140 N.H. 618, 622 (1996). Rule 40(11)(a) requires hearings to

“be open to the public,” but Rule 40(11)(j) states that “[n]o person may record, photograph, or broadcast by radio or television, the oral proceedings of the committee.”

4) Rule 40(11)(j) was promulgated in 2000, two years before the Court decided *WMUR*. Based on its “historic common law presumption in favor of open judicial proceedings,” the Court concluded “that the use of cameras by the electronic media is merely an extension of the reporting function of the more traditional arms of the press.” 148 N.H. at 650. The Court held that “[a] trial judge should permit the media to photograph, record and broadcast all courtroom proceedings that are open to the public.” *Id.* To prohibit such coverage, a trial judge first would have to meet four requirements: “(1) closure advances an overriding interest that is likely to be prejudiced; (2) the closure ordered is no broader than necessary to protect that interest; (3) the judge considers reasonable alternatives to closing the proceeding; and (4) the judge makes particularized findings to support the closure on the record.” *Id.* at 650-651.

5) The Court’s ruling in *WMUR* was grounded in a record that demonstrated electronic coverage would in no way interfere with or jeopardize the solemnity or integrity of judicial proceedings:

Advances in modern technology, however, have eliminated any basis for presuming that cameras are inherently intrusive. In fact, the increasingly sophisticated technology available to the broadcast and print media today allows court proceedings to be photographed and recorded in a dignified, unobtrusive manner, which allows the presiding justice to fairly and impartially conduct court proceedings. Radio and television broadcasts are important ways by which citizens receive news. They are effective channels of news transmission because they can carry the unfiltered content of proceedings directly to the public.

Id. at 648-649 (“Numerous States have conducted studies on the physical effects cameras and electronic media have on courtrooms, finding minimal, if any, physical disturbance to the trial process”).

6) For the same reasons it ruled Superior Court Rule 78 “is no longer valid” in *WMUR*, *id.* at 650, the Court should invalidate Rule 40(11)(j). The rule’s blanket prohibition of Petitioners’ “advancing technologies” conflicts with “the practical reality of the twenty-first century, which gives people instant access to information through all forms of electronic media.” *Id.* Moreover, invalidating the Rule and permitting cameras and broadcast coverage would promote greater and more informative access to JCC proceedings, which would directly serve the Court’s responsibility of “maintaining public confidence in the administration of justice.” *In re Petition of Judicial Conduct Committee*, 151 N.H. 123, 126 (2004). As the Court stated in *In re Thayer*, 145 N.H. 177, 181 (2000):

When members of the public are informed as to judicial misconduct, they are better able to recognize, report, and otherwise protect themselves against future instances of similar misconduct. See *Matter of Johnstone*, at 1234 (“another way to protect the public [in addition to removing offending judges from office] is to keep it informed of judicial transgressions and their consequences, so that it knows that its government actively investigates allegations of judicial misconduct and takes appropriate action when these allegations are proved”) (citing *Matter of Probert*, 411 Mich. 210, 308 N.W.2d 773, 776 (1981)).

7) Petitioners submit there is no sound policy reason why the holding announced in *WMUR* should not be extended to JCC hearings. Petitioners further represent that they will comply with the restrictions on cameras and broadcast coverage set forth in Superior Court Rule 78(i) in their coverage of JCC hearings, if the Court invalidates Rule 40(11)(j).

8) Counsel for Petitioners has spoken with Philip T. McLaughlin, who represents the JCC, and he stated he would file a reply to the Petition by pleading dated and posted not later than October 15, 2007. Counsel also has spoken with Russell F. Hilliard, who represents Judge Coffey, and he does not assent to the relief sought by the Petition.

WHEREFORE Petitioners respectfully request the Court to hold that Rule 40(11)(j) is no longer valid and to permit them to record, photograph and broadcast JCC

hearings, including the hearing scheduled for October 30 and 31, 2007 in *In re Coffey*,
and for such other relief as may be necessary.

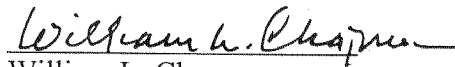
Respectfully submitted,

Newspapers of New Hampshire, Inc;
New Hampshire Public Radio; and
WMUR-TV/Channel 9

By their attorneys

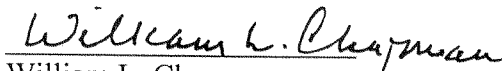
Orr & Reno, P.A.
One Eagle Square
P.O. Box 3550
Concord, N.H. 03302-3550
(603) 224-2381

Dated: October 10, 2007


William L. Chapman

CERTIFICATE OF SERVICE

I, William L. Chapman, hereby certify that on this 10th day of October, 2007, copies of this Petitioner to Photograph and Broadcast the Proceedings in *In re: Patricia Coffey* have been sent by facsimile and overnight mail to Russell F. Hilliard, Esq., 159 Middle Street, Portsmouth, NH 03801, and Philip T. McLaughlin, Esq., 501 Union Avenue, Suite 2, Laconia, NH 03246


William L. Chapman