

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

September 28, 2009

FRANK H. EASTERBROOK
Chief Judge

No. 07-09-90083

IN RE COMPLAINT AGAINST DISTRICT JUDGE JOE BILLY MCDADE

MEMORANDUM

I learned from a newspaper report that on September 15, 2009, District Judge Joe Billy McDade, of the Central District of Illinois, allowed video recording and live broadcasting (plus still photography) of a civil proceeding. A copy of one of the video recordings was posted on a public web site, and pictures appeared in at least one newspaper. The Seventh Circuit has received inquiries about whether this action shows that the Judicial Branch's policy concerning cameras in court has been altered.

The judge's action violated a policy established by the Judicial Conference of the United States in 1996 (reaffirming an older policy). See *In re Sony BMG Music Entertainment*, 564 F.3d 1 (1st Cir. 2009) (issuing a writ of mandamus to prohibit live webcasting of a civil proceeding). It also violated a resolution adopted by the Judicial Council of the Seventh Circuit on October 15, 1996. This resolution provides:

The taking of photographs, making of audio or video recordings, or electronic broadcasting of judicial proceedings in or from a court room, must not be permitted by any district court (including any bankruptcy judge or magistrate judge) in this circuit. This order does not affect recordings made by court reporters or otherwise expressly required or permitted by law, such as closed circuit telecasting to victims of crime under Section 235 of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, the conduct of judicial proceedings involving participants in multiple locations linked by videoconferencing, or the use of electronic equipment by the judicial branch for internal functions such as security monitoring. At its discretion, a district court may permit photographs, and audio and video recording, on ceremonial occasions.

The photography and broadcast were not permitted by any of the resolution's exceptions. Finally, the judge's action violated a rule of the district court. See C.D. Ill. R. 83.7, which prohibits all "electronic devices" and defines both still and video cameras as "electronic devices".

The role of cameras in the courtroom is a subject of ongoing debate in the legislative and judicial branches, and among members of the public. People of good will

advocate photography and broadcasts; other people of good will think that cameras would have ill effects. No matter what one makes of these contentions, once the Judicial Conference of the United States and the Judicial Council of the Seventh Circuit have adopted a policy, a judge must implement it without regard to his own views. The Council is authorized to adopt rules binding on all judges within the circuit. 28 U.S.C. §332(d)(2). The resolution of October 15, 1996, is such a rule.

A judge who contravenes policies adopted by the Judicial Conference and the Judicial Council has “engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts”. 28 U.S.C. §351(a). I therefore identified a complaint under the Judicial Conduct and Disability Act of 1980 (see Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings) and conducted a limited inquiry under 28 U.S.C. §352(a). See also Rule 11(b).

Judge McDade responded by admitting his violation of the district court’s rule and the resolution by the Judicial Council. He stated that he had believed that he could grant an exception to the local rule, but that he now realizes that this belief was mistaken. Whether or not a single district judge is permitted to grant exceptions to a given local rule, no judge may disregard the Judicial Council’s resolution. Judge McDade has expressed regret and promised to comply in the future with the Conference’s policy, the Council’s resolution, and the Central District’s rule.

The 1980 Act’s goal is to ensure performance of each judge’s duties. I am satisfied that Judge McDade’s apology and promise to comply in the future accomplish this objective. As far as I can see, none of the litigants suffered any injury from the broadcasting (the proceeding, a “fairness hearing” on a settlement, did not entail the taking of testimony), and none of the litigants has complained. Thus “corrective action” can be “effective” without any steps beyond the apology and commitment to follow the rules in the future. See Rule 11(d) (and its commentary), plus the discussion of corrective action in *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 58–60, 149–50 (2006).

Because of the public nature of the events that led me to identify a complaint, I suggested to Judge McDade when initiating the process that public disclosure of the disposition would be appropriate. Judge McDade has consented to disclosure. See 28 U.S.C. §360(a)(3); Rule 23(g). Copies of my order and memorandum and Judge McDade’s letter will be posted on the court’s web site, transmitted to the Judicial Conference under Rule 24(b), and sent to all judicial officers of the circuit and appropriate administrative staff.