

QUESTIONNAIRE – FIRST STUDY COMMISSION – NOVEMBER 2014

Media (including social media) in the Courtroom and Effect on Judicial Independence

Broadcast and Print Media

- 1) Are there statutes, rules or orders of the courts (hereinafter referred to collectively as “rules”) that govern persons who are representatives of the media while they are reporting on judicial proceedings?
 - a) If “yes,” do they apply in criminal proceedings,
 - b) civil proceedings, or
 - c) both.
- 2) Please briefly describe such “rules” governing members of the media, addressing when possible whether they govern:
 - a) taking of photographs
 - b) use of sound/video recording equipment
 - c) use of live, text-based communications.
- 3) Are the media permitted to televise or otherwise tape and broadcast court proceedings?
 - a) If “yes,” what types of proceedings:
 - i) Criminal trials
 - ii) Civil trials
 - iii) Criminal appeals
 - iv) Civil appeals
 - b) If “yes,” are judges or other court officials given the right to control what may be televised?
 - c) If “yes,” how is such control exercised?
- 4) Where there is a real risk that disclosure of the matters in court proceedings will cause substantial and demonstrable prejudice in the proceedings, what are the possible actions/measures available to a court to avoid such prejudice?

- 5) Whether or not the media are permitted to televise court proceedings, to what extent are judges in favor of or opposed to televising or otherwise taping and broadcasting court proceedings?
- 6) What are the general views of the citizen population about whether court proceedings should be televised or otherwise broadcast? For example, do people care about what is happening in the courts such that they want to see televised proceedings; do they support televised proceedings or are they critical of them, and what are the bases of such support or criticism?

Social Media

- 7) In addition to what has been identified in response to questions 1 and 2, above, regarding the media, are there “rules” that govern persons (both members of the media and citizens generally) who are delivering information about judicial proceedings through the use of social media?
 - a) If “yes,” do they apply in criminal proceedings,
 - b) civil proceedings, or
 - c) both.
- 8) Please briefly describe such “rules” governing persons (media members and citizens generally) who are delivering information about judicial proceedings through the use of social media, addressing when possible whether the rules govern:
 - a) taking of photographs
 - b) use of sound/video recording equipment
 - c) use of live, text-based communications.
- 9) Where there is a real risk that disclosure of matters in court proceedings will cause substantial and demonstrable prejudice in the proceedings, what are the possible actions/measures available to a court to avoid such prejudice? For example, may the court simply ban the use of all communication devices in the courthouse; may the court bar the public and the media from the courtroom; may the court bar certain persons from attending the court proceedings if they have caused problems in the past?

- 10) With respect to use of social media, such as twitter, that may create an actual risk in a particular case adversely affecting fair and proper administration of justice, apart from imposing a ban on such social media are there alternative procedures available to prevent or limit that risk?
- 11) When social media is used to publicize court proceedings, should the conditions limiting or prohibiting use of social media such as twitter be determined by:
- a) system-wide statutory or procedural rules,
 - b) left to the discretion of presiding judge on a case-by-case assessment,
 - c) some combination of general rules and case-by-case assessment?
- 12) Accepting *arguendo* that there should be a balance between the goal of achieving fair and proper administration of justice and the goal of delivering accurate detailed reports of judicial proceedings to the public, can this be achieved if the use of live, text-based communications in court houses is permitted and all bans on and control over the use of social media are eliminated?

Publicity and the Courts

- 13) Who on behalf of the courts should respond to inquiries from the media and other members of the citizen population to share information about the court proceedings with the public: judges, executives of the courts, some other designated person? Who and why?
- 14) What sort of information should be shared:
- a) Explanation of the facts and law applicable to a case
 - b) Explanation of the court procedures applicable to a case
 - c) Explanation of a judge's ruling in a case
 - d) Other kinds of information, and if "yes," please describe briefly.
- 15) Where there are serious criticisms of a court proceeding, particularly criticisms that are factually inaccurate or are based on a misunderstanding of the law, what, if anything, should that court do to correct the inaccuracies or otherwise to respond to the criticisms?

- 16) If the particular court involved should not do anything to respond, should the central governing body of the judiciary take any action to respond in order to correct inaccuracies? Why or why not?
- 17) If the criticism of the court is well-founded, what, if any, should be the response of the court or the court's central governing body?
- 18) If not already covered in the preceding responses to the questions 15, 16 and 17, how are such matters handled in your country?
- 19) If all prohibitions and restrictions on the use of all forms of media (print, television, social media) in the courthouse were abolished, what in your view would be the consequences for judicial independence?

INSTRUCTIONS: Please be sure to identify your Judges Association on your answers and return the answers on or before 15 September 2014 to the IAJ-UIM Secretariat: secretariat@iaj-uim.org

with copies to the officers of the First Study Commission:

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The officers will prepare a summary of the answers for use at the meetings of the First Study Commission in November in Brazil, and we will also circulate in advance of those meetings a separate short series of questions that will further guide our discussions at the meetings in November.