

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
OF FLORIDA

ADMINISTRATIVE ORDER NO. :
07-10
SUPERSEDES 05-12 & 05-40

IN RE: COURT REPORTERS - ELECTRONIC COURT RECORDING PLAN

Whereas, rule 2.535(g)(3), Florida Rules of Judicial Administration, permits the Chief Judge to enter a circuit-wide administrative order authorizing the electronic recording and subsequent transcription by persons other than court reporters, of any judicial proceedings; and

Whereas, the courtrooms of the Eighteenth Judicial Circuit of Florida, are equipped with digital recording equipment; and

Whereas, fiscal considerations require the increased use of digital court recording of judicial proceedings; and

Pursuant to rule 2.535, Florida Rules of Judicial Administration, and after consultation with the circuit and county court judges of the Eighteenth Judicial Circuit, the Court hereby revises, adopts, and implements the following circuit-wide plan that pertains specifically to digital court recording of proceedings.

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I. DEFINITIONS AND DESIGNATIONS

For the purpose of this Administrative Order, the following terms have the following definitions and designations:

A. CIRCUIT COURT REPORTER

“Circuit court reporter” means a contractor, contractor personnel, or any person employed by the Administrative Office of the Courts for the Eighteenth Judicial Circuit (“AOC”), who meets the AOC’s qualifications for delivery of court reporting services and whose duties include operating a stenographic machine in the courtrooms or hearing rooms of the Eighteenth Judicial Circuit.

B. CLASSES OF COURT REPORTERS

The State Court System has established three classes of court reporters: Court Reporter I, Court Reporter II, and Digital Court Reporters. Court Reporter I and Court Reporter II are specific to the stenographic skill level of the position. For the purpose of this Administrative Order, persons performing court reporting in the Eighteenth Judicial Circuit shall be designated as Circuit Court Reporters or Digital Court Reporters.

C. CONTRACTOR

“Contractor” means any person or entity with whom the Court Administrator of the Eighteenth Judicial Circuit contracts to provide court reporting services for judicial proceedings required to be reported at public expense.

D. CONTRACTOR PERSONNEL

“Contractor personnel” includes and is collectively defined as employees, independent contractors, subcontractors, agents, assigns, students, or interns of the contractor.

E. COURT REPORTING

“Court Reporting” means the act of making a verbatim record of the spoken word, whether by use of written symbols, stenomask equipment or electronic devices, in any judicial proceedings pending in any of the courts of this circuit.

F. DIGITAL COURT REPORTER

“Digital court reporter” means a Contractor, Contractor Personnel, or any person employed by the Administrative Office of the Courts for the Eighteenth Judicial Circuit,

who meets the AOC's qualifications for delivery of court reporting services and whose duties include operating digital electronic recording equipment in the courtrooms or hearing rooms of the Eighteenth Judicial Circuit.

G. DIGITAL COURT REPORTING

"Digital court reporting" means the process of digitally capturing and recording, with the assistance of encoding hardware and software, the complete verbatim Multi-Media Court Record of any and all judicial proceedings.

H. EQUIPMENT

"Equipment" means all hardware, software, storage, appliances, accessories, and peripherals necessary to provide for the monitoring, recording, distribution, storage, archiving, assembling, or production of the court verbatim record.

I. JUDICIAL PROCEEDINGS

"Judicial proceedings" means all communications which take place in open court between the judge (including general magistrates and hearing officers) and the lawyers or other parties to the proceeding, and the testimony of any witnesses. Judicial proceedings, include, but are not limited to courtroom hearings, chamber or hearing room hearings, pre-trial conferences, jury trials, non-jury trials, motion or docket hearings, plea hearings, status review hearings, arraignments, dispositions, sentencing hearings, injunction hearings, detention and shelter hearings, bond hearings, post-conviction relief proceedings, first appearance proceedings, sworn statements, and all other matters relating to the court's business. This term does not include any other matters that may have been monitored or recorded at the same time but which were not part of the court's business and which would likely not have been reported by a trained circuit court reporter (such as, private conversations between a lawyer and client or between co-counsel).

J. MULTI-MEDIA COURT RECORD

"Multi-Media Court Record" means any combination of the digital audio file, metadata file, text file, annotated file, and video file that is generated from the performance of court reporting.

K. SERVER

“Server” means a computer that hosts an application or collects data from remote computer stations.

L. SERVICES

“Services” includes and is collectively defined as digital court reporting services and transcription services.

M. TRANSCRIPTION

“Transcription” means the process of converting the complete verbatim Multi-Media Court Record generated by a Digital Court Reporter or the notes, disks, or tapes generated by a Circuit Court Reporter, into a text file as a printed certified transcript.

N. CENTRALIZED COURT REPORTING

“Centralized Court Reporting” is a digital court reporting model in which several courtrooms or hearing rooms are monitored and recorded simultaneously utilizing digital audio and video systems from a centralized location where the digital court record is captured, annotated, and indexed.

O. VIDEO COURT REPORTING

“Video Court Reporting” is the combination of a digital and video court reporting system and tools utilized to monitor and record remote court appearances in the courtroom or hearing room for events where the audio alone is insufficient to capture the record.

II. HYBRID MODEL OF COURT REPORTING

The Eighteenth Judicial Circuit currently uses a hybrid model of court reporting. The hybrid model utilizes a combination of stenographic, digital, centralized and video media for capturing the record in all judicial proceedings where court reporting is required at public expense. This model incorporates multiple service delivery strategies for the reporting or recording of all proceedings required to be reported or recorded at public expense. The plan utilizes both independent contract court reporters and employee digital court recorders.

III. APPLICABLE PROCEEDINGS

This Administrative Order and the contracts entered into in accordance with the terms of Administrative Order Number 04-33

and the other authorities cited herein shall apply to all criminal and juvenile proceedings, including depositions, and any other judicial proceedings required by law or the court to be reported or recorded at public expense, as required by rule 2.535(g), Florida Rules of Judicial Administration.

IV. METHODS OF REPORTING

A. STENOGRAPHIC RECORDING

In any required proceeding set forth in paragraph II above, stenographic reporting by a court reporter as defined by rule 2.535(a), Florida Rules of Judicial Administration, may be utilized.

B. ELECTRONIC RECORDING

The term "electronic recording" shall include audio tape recording, videocassette tape recording, or recording by any other electronic means, including but not limited to, digital or other technology.

V. INDEPENDENT CONTRACT COURT REPORTERS

Court reporting services as defined by rule 2.535(a), Florida Rules of Judicial Administration, may be provided by independent contractors subject to contracts entered into between the Administrative Office of the Court and the court reporters. (See Eighteenth Judicial Circuit Administrative Order Number 04-33).

VI. ELECTRONIC RECORDING AND TRANSCRIPTION

In accordance with rule 2.535(g)(3), Florida Rules of Judicial Administration, the Chief Judge hereby authorizes that the electronic recording and subsequent transcription by persons other than circuit court reporters of any judicial proceedings, including depositions, that are otherwise required to be reported by a circuit court reporter.

A. DIGITAL COURT RECORDING OFFICE

1. Authorized Proceedings

The Administrative Office of the Courts, Digital Court Recording Office, is authorized to capture the record for criminal and civil judicial proceedings required by law or by rules of court to be reported or recorded at public expense. Parties to civil actions shall arrange for an independent court reporter to record

those proceedings that the Court is not required to record or report at public expense.

2. Digital Court Reporters

a. Court Administrator as Manager

The Court Administrator, or his or her designee, is responsible for the management of delivering court reporting services for all judicial proceedings required to be reported at public expense.

b. Qualifications and Training

The Court Administrator, or his or her designee, is responsible for providing qualified and trained Digital Court Reporters to perform the services, in addition to being responsible for any training, certification, or continuing education associated with the Digital Court Reporters performing the services.

c. Officers of the Court

Employees of the Digital Court Recording Office are considered officers of the court and shall not disclose or discuss any confidential information to which they may be privy. Each employee must sign an Oath of Confidentiality, which will be maintained in his or her personnel file. Failure to comply with the Oath of Confidentiality is grounds for termination of employment.

B. RELIABILITY OF THE RECORD

To ensure a reliable record of proceedings, the following procedures and directives are prescribed to be applied in all cases wherein any judge directs electronic recording.

1. Digital Court Recording Office's Responsibility

The Digital Court Recording Office shall be responsible for capturing, managing, maintaining, and storing the complete verbatim Multi-Media Court Record in all judicial proceedings reported at public expense utilizing digital court recording.

2. Operation of Electronic Equipment

The Court's electronic recording equipment shall be operated by employees of the Administrative Office of the Courts and/or by such other persons designated by the Court Administration. All equipment utilized by the digital court reporters shall be operated and maintained in such a manner and under such conditions to ensure the reliability of capturing the record. These employees shall operate the electronic recording equipment in such manner and under such conditions as to ensure the production and safekeeping of an understandable recording capable of being transcribed into a reliable record.

3. Monitoring the Recordings

The Digital Court Reporters shall monitor the recording input and shall immediately signal or notify the trial judge or presiding official, or such other person designated by the trial judge, when the quality of the recording is in question or doubtful.

4. Testing prior to Court Sessions

Prior to beginning of each court session captured by the digital court reporting system, all equipment shall be tested by the Digital Court Reporter to establish all microphones, appliances, and peripherals are operating at a level sufficient to ensure the recording of the record, playback of the audio, and production of a transcript.

5. Responsibilities of Other Court Personnel

When digital court recording is utilized in a courtroom or hearing room, all court personnel are expected to comply with this Administrative Order.

a. Trial Judge

In all proceedings in which digital court reporting is utilized, judges should remind participants:

1. The proceeding is being recorded and/or monitored;
2. All questions need verbal responses;

3. Each participant shall identify self and shall speak clearly, loudly, and distinctly into or near a microphone;
4. Counsel shall not speak at the same time that witnesses or other counsel are speaking or otherwise improperly interrupt or obstruct the recording of another's speech;
5. All physical and visible happenings and events are reported in sound; and
6. The proceedings will be stopped when needed to remedy any matter preventing an adequate recording.

b. Court Deputy

The court deputy should assist the trial judge as needed or desired in maintaining courtroom discipline and should be constantly alert for signals from the trial judge and clerks to communicate with others and to remedy any circumstances interfering with the making of an adequate recording.

c. Counsel

All participating counsel must be constantly aware of the special requirements for making a clear, reliable, and transcribable recording. Counsel must speak loudly, distinctly, and only from a position at or near a microphone. Counsel must make all directions and explanations verbally and should aid and direct all witnesses as needed. Counsel should use the push to mute feature on the counsel table when engaging in privileged communications. Counsel should instruct all parties at the table to do the same. Counsel should also identify themselves before speaking for the first time in court each day.

C. ALTERATION OR CIRCUMVENTION OF RECORDING SYSTEM PROHIBITED

Alteration or circumvention of the court's recording system is prohibited. This includes, but is not limited to, unplugging a microphone, repositioning a microphone, covering a microphone, or permanently engaging a microphone's mute switch with books, rubber bands, or other objects. All parties shall work on the assumption that

their conversations are being recorded while in the courtroom. The mute switches provided are designed for brief moments of private consultation. Parties desiring to have extended private conversations should take appropriate measures such as, but not limited to, requesting that the recording system be put in "Off Record" mode or leaving the courtroom.

D. RETENTION OF ELECTRONIC RECORDINGS

1. Cassette Taped Recordings

The Clerk of Court shall provide storage space and safekeeping for all taped recordings of court proceedings for the appropriate record retention period.

2. Digital Recordings

The Digital Court Recording Office is responsible for providing storage space and safekeeping for all digital recordings of court proceedings for the appropriate record retention period. The Digital Court Recording Office is the custodian of digital court recordings that it has recorded. The Digital Court Recording Office shall follow court orders regarding sealed and expunged files, and to what extent recordings of proceedings in those cases should be released. Digital recordings currently in the possession of the Clerk of the Court will be properly stored and safeguarded by the Clerk of the Court until transferred to the Digital Court Recording Office.

E. TRANSCRIPTION

1. Transcriber

Proceedings electronically recorded and where said recordings are the official record will be transcribed only by the Digital Court Recording Office, or by a firm or individual, who has contracted with the Court. All other proceedings outside the scope previously defined, shall be transcribed by a contracted firm or individual.

2. Request for Transcript and Fees

Any individual may request and obtain, without a court order, a transcript of any reported or recorded

judicial proceeding unless a record of such proceeding is deemed confidential (such as, juvenile and Baker Act proceedings). In order to obtain a transcript, a person must make a written request and pay the requisite fees to the transcriber. An original and at least one copy of proceedings shall be transcribed and the transcriber shall file the original with the clerk.

3. Requests for Copies of Tapes and Digital Recordings

All requests for a written transcript or a copy of an original recording must be submitted in writing to the Digital Court Recording Office. The form to be utilized for any written request is available from the Digital Court Recording Office or on-line on the website of the Eighteenth Judicial Circuit. If the request is for transcripts or copies of original recordings which may include confidential information, including but not limited to juvenile dependency and delinquency cases, the request must be accompanied by an appropriate court order.

4. Production

When a transcript of a judicial proceeding or a portion of a judicial proceeding is requested from the Circuit Court Reporters or from the Digital Court Reporters, an accurate and timely transcript shall be produced in accordance with rule 2.535(e), Florida Rules of Judicial Administration, and rule 9.200(b), Florida Rules of Appellate Procedure.

5. Notification Provision

The Digital Court Recording Office shall notify in writing, all parties to the action when the transcript is completed. In instances where independent contract transcriptionists are used, it shall be the responsibility of the independent contract transcriptionist to notify, in writing, all other parties to the action when the transcript is completed. This provision shall not apply to any transcript or copy of an electronic recording ordered by the court.

6. **Original Transcript of Proceedings to be Filed**

Unless otherwise ordered by the Court, the original transcript of the proceeding shall be filed with the Clerk of Court.

7. **On-Record Events When Court Reporter Present**

If a circuit court reporter records a proceeding (trial, hearing, or other court event), the request for a copy of the proceeding shall be submitted to the court reporter. In circumstances where both a circuit court reporter is present and the digital recording equipment is used, a request for the digital recording may be made pursuant to the appropriate request procedures. No juvenile recordings will be released without a court order. However, the Digital Court Recording Office will notify the requestor that the recording is not the "official court record." Exceptions to this policy may be considered and granted by the Chief Judge upon a showing of extraordinary circumstances.

8. **Off-Record Events**

Electronic recording by the Digital Court Recording Office of off-record discussions or conversations were not made pursuant to any court rule, law or ordinance, and were not recorded in connection with the transaction of official business of the judiciary. As such, any incidental electronic recordings of off-record discussions or conversations do not constitute a record of the judicial branch to which the public is entitled access, as defined by rule 2.420, Florida Rules of Judicial Administration. In addition, all off-record conversations between attorneys and their clients are protected by the attorney-client privilege and shall remain confidential. The Digital Court Recording Office shall review all recordings and shall not provide copies of its electronic recordings of off-record discussions or conversations. In addition, anyone who has or gains access to any recordings produced from the electronic court record shall not reveal, divulge, utilize in any fashion, or transcribe any attorney-client statements, conversations, or similar confidential communications that are monitored, intercepted, and/or recorded in the courts

of the Eighteenth Judicial Circuit, unless otherwise provided by specific order of the Court.

9. Certification of Transcripts or Electronic Recordings

All persons transcribing digital recordings, whether court personnel or independent contract transcriptionist, shall certify the transcript as a true and accurate text of the digital recording of the proceeding or deposition. All court personnel providing a copy of the original recording on electronic medium, such as compact disk, shall certify the copy to be true and accurate. If any portion of the recording is redacted from a copy of the audio recording, the Digital Court Reporter shall provide in the certification an accurate record of the date and time of the redaction and indicate that the redaction is for an off-record conversation as the term is utilized in paragraph 8. If any dispute arises as to whether any transcript truly discloses what occurred, the disputing party shall motion the presiding court for settlement of the dispute, and, upon order of the court, the transcript shall be made to conform accordingly.

F. DEPOSITIONS

Depositions may be electronically recorded. The party scheduling an electronically recorded deposition shall be responsible for safekeeping the recording of any testimony. Any party requesting transcription shall be responsible for notifying all parties that transcription is being requested and obtaining a competent transcriber. Depositions in criminal cases may be scheduled at the Office of the State Attorney, the Office of the Public Defender, or at any other location, if the parties agree.

VII. FEEES AND RATES

A. ELECTRONIC COURT RECORDING

Fee schedules for transcripts or copies of electronically recorded proceedings or depositions required to be reported at public expense shall be on file in the Digital Court Recording Office.

B. COURT RECORDING BY INDEPENDENT CONTRACTORS

Fees and rates for the recording and transcription by independent contract court reporters of court proceedings or depositions required to be reported at public expense shall be as set forth in the court reporting contracts referenced in Eighteenth Judicial Circuit Administrative Order Number 04-33.

VIII. SIGNAGE

Appropriate signs shall be placed outside all courtrooms and hearing rooms where digital court recording or monitoring is being utilized to capture the records. Signs noticing the use of microphones shall also be posted on the counsel table and podiums. The signs shall provide notice to all who enter the courtroom or hearing room of the use of digital court recording and that any conversations may be recorded.

IX. ON-SITE SUPPORT

To ensure the reliability, integrity, safekeeping, and accurate transcription of the record, the Digital Court Recording Office shall maintain daily on-site support and management personnel.

X. EMERGENCY BACK-UP PLAN

In all proceedings in which the type and means of court reporting equipment or services specified in this Order are not available due to emergency circumstances, the Chief Judge or his or her designee may utilize and implement whatever other means of reporting is available to capture the court record.

XI. EFFECTIVE DATE

This Administrative Order is effective immediately.
DONE AND ORDERED this 6th of March, 2007.

TONYA RAINWATER
TONYA RAINWATER
CHIEF JUDGE

Distribution:

All Circuit and County Judges (Brevard and Seminole Counties)
Court Administration (Brevard and Seminole Counties)
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