

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
OF FLORIDA

ADMINISTRATIVE ORDER NO.:
16-11
SUPERSEDES 15-18 AMENDED

IN RE: COURT REPORTING

Whereas, rule 2.535(h)(3), Florida Rules of Judicial Administration, requires that the chief judge, after consultation with the circuit and county court judges in the Eighteenth Judicial Circuit, shall enter an administrative order developing and implementing a circuit-wide plan for the court reporting of all proceedings required to be reported at public expense using either full or part-time court employees or independent contractors;

Whereas, rule 2.535(h)(4), Florida Rules of Judicial Administration, permits the Chief Judge after consultation with the circuit and county judges of the Eighteenth Judicial Circuit, to enter a circuit-wide plan that authorizes electronic recording of court proceedings and subsequent transcription by approved court reporters or approved transcriptionists of any judicial proceedings; and

Whereas, rule 2.535(i), Florida Rules of Judicial Administration requires the chief judge of each circuit to enter an administrative order developing and implementing a circuit-wide plan for court reporting in all trials in which the State seeks the death penalty and in capital post-conviction proceedings;

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, stenographic 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 digitally recording proceedings held 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 this Administrative Order, former 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, 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, 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(h)(3), 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.

A. A request for proposal shall be issued in Brevard County and in Seminole County for contracted court reporting services.

B. The proposal shall clearly state the relationship between the contractor(s) (court reporter(s)) and the Courts as being independent:

1. The contractor(s) shall pay any and all applicable taxes, comply with all pertinent state and federal statutes, and is solely responsible for any tax withholding from its employees or subcontractors;
2. The contractor(s) shall hire, compensate, supervise, terminate, set the hours of work for members of their work force, and control and direct the manner in which the work is performed;
3. The contractor(s) shall not be provided office space at the courthouse(s), and shall not perform office work and/or transcription services on court property;
4. The contractor(s) shall furnish their own equipment, supplies and pay their own travel, training and continuing education expenses.

C. The Court Administrator and the contractor(s) shall enter into a contract that:

1. States the fee schedule for services provided;
2. Sets the term of the contract;
3. Describes the scope of services and specific requirements;
4. Sets the qualifications of proposers;
5. Describes possible sanctions for non-compliance;
6. Outlines the methods for invoicing and payment;
7. States minimum insurance coverage requirements; and
8. Establishes a policy for record storage and ownership.

D. The trial court administrator or designee shall be the contract manager.

VI. ELECTRONIC RECORDING AND TRANSCRIPTION

In accordance with rule 2.535(h)(4), 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. As officers of the court, employees must comply with all applicable Florida statutes, court rules, and other requirements as established by the State Courts System. 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

The digital recording equipment shall comply with all statewide standards for digital recording as established by the Florida Courts Technology Commission. 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 and the Chief Judge. 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 Judges, General Magistrates and Hearing Officers**

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, spell their names for the record, 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;
6. Notify the court if equipment has been tampered with or is not functioning;
7. The proceedings will be stopped when needed to remedy any matter preventing an adequate recording
8. Protect the recording equipment; and
9. Signify when it is appropriate to use Mute button;
10. SEMINOLE COUNTY ONLY: The Chief Judge hereby orders and designates as of January 15, 2014 that all Baker Act Proceedings in Seminole County shall be preserved by digital recording means using equipment provided by Court Administration which shall be operated by the Magistrate

without the need for an electronic reporter to be present. The Magistrate shall maintain custody of the equipment and record until surrendering it to Court Administration for preservation on or before the end of the work day of the scheduled hearing. Court Administration shall pick up and deliver the recording device to the Magistrate.

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. The court deputy shall ensure that all participants refrain from tampering with equipment including the inappropriate use of microphone mute buttons or the unauthorized removal of microphones from their original location.

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 and spell their names before speaking for the first time in court each day. Attorneys shall inform their clients of the method of recording being utilized and take necessary precautions to protect disclosure of confidential communication during the proceeding.

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. Persons who tamper with the digital recording equipment, including the microphones, may be held in contempt of court.

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 contracted firm or individual who is capable of producing an accurate and quality transcript. All persons performing court reporting transcription services shall comply with all applicable court rules and standards established by the State Courts System and the Chief Judge of this circuit.

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, the request must be accompanied by an appropriate court order. If you are a party or attorney of record in a juvenile delinquency cases, a court order is not needed for the recording.

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(f), Florida Rules of Judicial Administration, and rule 9.200(b), Florida Rules of Appellate Procedure.

5. **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.

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

The digital recording is the official record for all proceedings except when a court reporter is present and paid for with state funds.

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. If the court reporter is present and paid for with state funds, the Digital Court Recording Office will notify the requestor that the digital recording is not the “official court record.”

If a circuit court reporter records a proceeding (trial, hearing, or other court event), the request for a transcript of the proceeding shall be submitted to the court reporter.

No juvenile recordings will be released without a court order, except in juvenile delinquency cases where the requestor is a party or an attorney of record. Exceptions to this policy may be considered and granted by the Chief Judge upon a showing of extraordinary circumstances.

7. **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 Recording Office shall review recordings to be given to the public at large to ensure that matters protected from disclosure by court rule or Florida law are not disseminated. 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.

8. **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.

Copies of audio/video recordings may be made available to attorneys of record, parties to a case, and self-represented litigants upon request so long as an acknowledgement is provided with the copy that states confidential information may be contained on the recording, further dissemination of confidential information contained on the recording is prohibited, and violation of the prohibition against the dissemination may subject the requestor to an action for contempt of court.

9. Capital Cases

- A.** In all trials in which the State seeks the death penalty, and in capital post-conviction proceedings, in-court stenographic court reporting services must be used. The use of digital court reporting as the court reporting system is prohibited. If available, Real-time or CAT stenography may be used. All persons approved by the Court to perform court reporting transcription services shall give priority to capital cases in the production of transcripts, and shall use all measures necessary to expedite the preparation of the transcript, including but not limited to:
 - 1.** Where available, the use of an approved court reporter who has the capacity to provide real-time transcription of the proceedings;
 - 2.** If real-time transcription services are not available, the use of a computer-aided transcription qualified court reporter;
 - 3.** The use of scopists, text editors, alternating court reporters, or other means to expedite the finalization of the certified transcript; and
 - 4.** The imposition of reasonable restrictions on work assignments by employee or contract approved court reporters to ensure that transcript production in capital cases is given a priority.
- B.** The Court Reporter in these cases shall provide, upon request, transcripts of individual testimony within 48 hours of the request.
- C.** The Court Reporter shall be paid from state funds to prepare and provide the finalized and certified transcript in these cases within 30 days of the end of the trial or proceeding.
- D.** "Loaning out" of stenographic notes is prohibited in capital cases to ensure that the court reporter has immediate access to the notes for production of the transcript.

- E. Use of only the digital recording to transcribe a proceeding without the in-court stenographic reporter's notes is prohibited unless those notes are destroyed or lost.
- F. Judges shall give immediate instruction to the court reporter to begin transcription upon the return of the verdict in capital cases and immediately initiate an order approving the production of the transcript.
- G. The contracted court reporting agency shall assure that any court reporter assigned to death penalty or capital post-conviction proceedings is aware and capable of complying with these requirements.
- H. In the event of an appeal, the appealing party is responsible for the payment of transcripts.

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. FEES 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 deposition required to be reported at public expense shall be as set forth in the court reporting contracts.

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. OWNERSHIP OF THE OFFICIAL RECORD

The Court shall retain ownership and control over the official record whether it is in paper or electronic format. The Court reserves the right to full and complete access to any unedited notes, paper tapes, electronic files, and audio and video recordings used to create the official record.

XI. EFFECTIVE DATE

This Administrative Order is effective immediately.

DONE AND ORDERED this 4th of April, 2016.

JOHN D. GALLUZZO
JOHN D. GALLUZZO
CHIEF JUDGE

Distribution:

All Circuit and County Judges (Brevard and Seminole Counties)

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