

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT

Third Amended Administrative Order No.: A-2010-01-C

ADMINISTRATIVE ORDER REGARDING COURT REPORTING
AND
ORDER RESCINDING ADMIN.ORDER A-2008-06-A AND A-2010-01-A

Rule of Judicial Administration 2.535(h)(3) requires the Chief Judge, after consultation with the Circuit Court and County Court judges in the circuit, to enter an Administrative Order developing and implementing a circuit-wide plan for court reporting of all proceedings required to be reported at public expense using either full or part-time court employees or independent contractors. After consideration and in accordance with Florida Supreme Court Opinion SC08- 1658 and Florida Supreme Court Order AOSC 10-1, it is therefore:

ORDERED:

I. USE OF COURT REPORTERS

The terms "electronically recorded" or "electronic recording" as used in this Administrative Order refer to a means of recording a court proceeding or a record of a court proceeding made by equipment owned or operated by the Fifth Judicial Circuit.

The term "certified court reporter" as used in this Administrative Order means a court reporter that holds a current certification as a registered professional reporter or other higher level certifications from the National Court Reporter's Association or has been approved by the Administrative Office of the Court to provide court reporting services in the Fifth Judicial Circuit. For the purpose of this Administrative Order, the terms "certified court reporter" and "contract court reporter" are used synonymously.

All hearings before a Magistrate or Hearing Officer shall be electronically recorded.

In all proceedings where the court does not provide a record, a party may use any certified court reporter.

ALL COUNTIES IN THE FIFTH CIRCUIT

Since the transition began on July 1, 2004, all counties in the Fifth Circuit have converted from analog recording to electronic recording of juvenile delinquency, dependency, domestic violence, misdemeanor, criminal traffic, mental health, and any hearing designated by an administrative judge.

Effective January 7, 2008, all felony matters shall be electronically recorded, with the following exceptions. The certified court reporters shall continue to record:

1. Capital death penalty cases
2. Grand Jury proceedings
3. Capital death penalty post-conviction proceedings
4. Any hearing designated by the Administrative Judge or required by rules or statutes.

Hearings held in chambers will be recorded by a portable digital recorder. The electronic court reporters ("ECR") will distribute the recorders each morning to the offices conducting hearings that require recording. At the end of the session or end of the day, an ECR will pick up the recorders for storage and archiving of the recorded proceedings. Each office holding hearings in chambers shall notify the ECR office by phone or e-mail at least 24 hours in advance of the hearings.

Requests for copies of electronically recorded court sessions shall be made by completing the appropriate form obtained from the Electronic Court Reporting Office in the applicable county. Acceptable forms of payment are cashier's check, money order, or local check payable to the State of Florida in the amount of \$25.00. Payment must be submitted with the request form.

Requests for copies of recordings from first appearances and shelter hearings conducted at the Sumter County Jail must be directed to the Clerk of Court in and for Sumter County. Any request for copies of recordings from first appearances and shelter hearings conducted at the Citrus, Hernando, Lake or Marion County Jails shall be directed to the Electronic Court Reporting Office in the appropriate county.

Requests for copies of the official record reported by the certified court reporters shall be made to the certified court reporters.

First appearances and Chapter 39, Florida Statutes, shelter hearings conducted on weekends and holidays at the county jails shall continue to be recorded by analog equipment or hand-held digital recorders.

Any person may order a copy of the audio recording of any recorded proceedings, except any exempt proceedings under the Rules of Juvenile Procedure, Baker Act proceedings, or any other exempt proceeding. Copies of the exempt proceedings shall be provided by Court Order only.

If a person wishes to introduce information contained on said CD's to the Court for its consideration, in any action other than a proceeding under *Rule 8.257(f)*¹ *Fla.R.Juv.P.* an accurate transcript must be prepared and certified by a certified, impartial approved transcriptionist who holds a current certification through the National Court Reporters Association (NCRA), American Association of Electronic Reporters and Transcribers (AAERT) or National Verbatim Reporters Association (NVRA). Said transcripts must comply with requirements set forth in *Rule 2.535(e), Florida Rules of Judicial Administration*. Transcription costs will be borne by the requesting person.

¹ Pursuant to *Fl.R.Juv.P. 8.257(g)(C)* the electronic recording of the proceeding in question shall be accepted by the reviewing Court for purposes of the hearing on the exception to the magistrate's report or recommendations.

Court staff will only prepare transcripts of digital recordings requested by judicial staff for their own use.

Pursuant to *Fla.R.Juv.P.* 8.257(g)(C) the transcript of the proceedings, electronic recording of the proceedings, or stipulation by the parties of the evidence considered by the general magistrate at the proceedings may be utilized at a proceeding based on an exception to the magistrate report and recommendation in dependency actions only.

II. PROCEDURES RELATED TO ELECTRONIC RECORDING

A. Participant functions

Electronic recording equipment shall be operated in such a manner as to ensure a reliable record of the proceedings. In order to ensure an accurate record of proceedings using electronic recording equipment, all participants must cooperate with the Court to ensure an accurate record of the proceedings.

1. All court participants in the courtroom, including, but not limited to, clerks, bailiffs, attorneys, and employees of the court shall:
 - (a) If unable to easily hear a participant in the proceedings, remind the judge that the participants need to speak with sufficient volume for the system to make an accurate recording;
 - (b) Not tamper with microphones or electronic recording equipment; and
 - (c) Immediately notify the Court and/or Electronic Court Reporter Manager (if applicable) when it appears that someone is tampering with or has tampered with the electronic recording equipment.
2. The Judge shall:
 - (a) Remind participants to speak into the microphone and answer verbally;
 - (b) Ask all participants to identify themselves and spell their names for the record;
 - (c) If the Judge determines equipment has been tampered with or is not functioning properly, notify the Administrative Office of the Court and/or Electronic Court Reporter Manager (where applicable);
 - (d) If the Judge observes participants being careless with equipment, remind participants to protect the Court's equipment; and
 - (e) If unable to easily hear a participant in the proceedings, remind the participants to speak with sufficient volume for the system to make an accurate recording.
 - (f) Notify the certified court reporter or electronic court reporter when proceedings are "on the record" and "off the record".
3. Bailiffs shall:

- (a) Ensure that no one tampers with microphones or the electronic recording equipment;
- (b) Promptly notify the Court and/or Electronic Court Reporter Manager (if applicable) of any evidence that the microphones or electronic recording equipment is not functioning properly;
- (c) Promptly notify the Court and/or Electronic Court Reporter Manager (if applicable) when a microphone at an attorney's table is left muted after a private conversation; and
- (d) Remind participants to speak into the microphone.

4. Attorneys and parties shall:

- (a) Speak clearly and speak into the microphone;
- (b) Identify themselves and spell their names for the record;
- (c) Not tamper with microphones or electronic recording equipment;
- (d) Ensure that microphones are on for all non-private communications; and
- (e) Remember that non-verbal communication is not recorded.

B. Judicial Assistants and Administrative Secretaries

Judicial Assistants and Administrative Secretaries shall provide schedules and calendars to the Electronic Court Reporting Office (ECR) and certified court reporter's office as far in advance as is possible to ensure the scheduling of court reporters to cover hearings. The schedule shall contain information sufficient for the ECR Office and the certified court reporter to determine required recording coverage, as specified by this Administrative Order.

C. Clerk of Court

The Clerk of Court shall provide dockets to the Electronic Court Reporting Office and certified court reporter's office as far in advance as is possible to ensure the scheduling of court reporters to cover hearings. The dockets shall contain information sufficient for the ECR Office and the certified court reporter to determine required court reporting coverage, as specified by this Administrative Order.

D. Administrative Office of the Court Responsibilities

1. The Administrative Office of the Court (AOC) personnel shall operate and maintain equipment so that an accurate recording is made. If the sound quality of the proceeding drops to a level that brings into question the ability to transcribe the proceeding, the judge shall be notified immediately.

2. The AOC personnel shall ensure that the electronic computer recording equipment will reliably provide for recording of the proceeding. For proceedings using electronic computer recording equipment, the AOC shall ensure that

the proceeding is recorded to a hard drive and backed up on a server. The data shall be removed from the server and burned to a DVD on a periodic basis. The AOC shall maintain the DVD for a period of time prescribed by the Rules of Judicial Administration. Proceedings shall be properly identified and shall be maintained in a manner that facilitates locating specific court proceedings for purposes of reviewing the record.

3. Primary recording systems and the backup recording system shall be started when court proceedings commence. Until such time as transcripts of said proceedings are prepared and filed with the Court, recordings captured on the primary system only will be considered the official record of said proceedings. Therefore, only recordings captured on primary systems will be released to persons authorized to receive digital recordings.

4. The digital recording systems in the Fifth Circuit are equipped with "backup" servers. "Backup" servers are used as failsafe devices in the event of a "primary" system failure. It is essential for the Judiciary to utilize "backup" servers to ensure the Judiciary's ability to produce and prepare an accurate transcript and/or official record in the event the "primary" recording system fails. Backup recordings of primary electronic recordings of court proceedings are not the official record and will not be disclosed or released to persons not employed or contracted by the court². Any conflict in this Order or ambiguity regarding production of the recording or the official record of a proceeding shall be controlled by Florida Supreme Court Opinion SC 08-1658 and Administrative Order AOSC 10-1.

5. To accurately capture and ensure the integrity of proceedings in the Fifth Circuit and given the failsafe role the "backup" servers play in the overall operation of digital court reporting systems, the "backup" system shall be manually started anytime the primary system is utilized and shall be shut off contemporaneous with the primary recording system. The Digital Court Reporters shall be instructed not to shut down "backup" servers during the primary recording system's normal operation. Because of the inherent nature of the proceeding and because Grand Jury Proceedings are scheduled well in advance, Grand Jury Proceedings shall never be captured on the "backup" recording system.

Any member of the judiciary may request that the Digital Court Reporters activate and record any proceeding should the Judge determine that the need for such recording may be necessary in the proper administration of justice. However at no time should a request to activate any recording device be made for the benefit of or at the request of any litigant or counsel.

6. Video may be recorded for monitoring purposes during creation of the digital court audio recordings that are used to generate the official record.

E. Protection of Equipment

² Florida Supreme Court Administrative Order AOSC 10-1 : In Re: Court Reporting Services In Florida's Trial Courts.

In order to ensure a reliable record of proceedings using electronic recording, microphones and other electronic equipment must be protected. Any willful act that disables or circumvents the proper recording of a proceeding, or any willful destruction of such equipment will be treated as contempt of court and will be enforced in accordance with *Florida Rule of Criminal Procedure* 3.830 or 3.840.

F. Access to Control Room

Unless otherwise specifically authorized by the Chief Judge, access to the control monitoring room shall be restricted to those court employees whose job functions require access. The determination of whether a court employee's job function requires access to the control room is within the sound discretion of the Chief Judge or the Chief Judge's designee.

III. GENERAL ISSUES

A. If a party wishes to make a record of a court proceeding for which the court does not provide a record, it is the responsibility of the party or the party's attorney to secure the services of a certified court reporter.

All notices of hearings for proceedings where the court does not provide a record may specify whether or not the party setting a matter for hearing will be securing the services of a court reporter. All costs associated with the court reporter's appearance will be the responsibility of the party requesting the court reporter. This does not preclude the taxation of costs as authorized by law. See *Florida Rules of Judicial Administration* 2.535(b).

Only certified court reporters may be used. In order to report court proceedings in the Fifth Judicial Circuit, a court reporter must be approved by the Administrative Office of the Court. In order to be approved, a court reporter must either hold a current certification as a Registered Professional Reporter or other higher level certification from the National Court Reporter's Association or be approved based upon training and experience. If a court reporter arrives to report a particular proceeding but is not an approved court reporter for the Fifth Judicial Circuit, the judge may, after inquiry to determine the qualifications of the reporter, authorize that individual to report a specific proceeding.

Only one official record can be made. In the event that a court proceeding is recorded both electronically and by a certified court reporter, the record generated by the certified court reporter shall be the official record.

B. The State Attorney and Public Defender shall decide how court reporting services will be provided to their offices.

C. All ECR employees who have access to electronic recording equipment shall execute an oath acknowledging their responsibilities to the Court. New ECR employees shall execute the oath prior to assuming duties.

D. The foregoing procedures that implement electronic court reporting and certified court reporting are hereby adopted and may be changed by the Chief Judge without further amendment to this administrative order.

E. This Administrative Order rescinds the following Administrative Orders:
A-2008-06-A *Amended* Administrative Order Regarding Court Reporting AND A-2010-01-A

DONE AND ORDERED in Tavares, Lake County, Florida this 3 day of April, 2013.



DON F. BRIGGS
Chief Judge
Fifth Judicial Circuit