COMMISSION ON TRIAL COURT PERFORMANCE AND ACCOUNTABILITY Court Reporting

FINAL DRAFT

Report and Recommendations December, 2002

I. INTRODUCTION

Traditionally, the cost of providing court reporting in Florida's courts has been borne by the counties. Pursuant to Revision 7 to the Florida Constitution, however, court reporting is among those court resources that are subject to transition to state funding. Currently, policies and practices for the methods of delivery and management of court reporting vary substantially across circuits and counties, as do costs. Implementation of state funding will require a degree of standardization of policies and practices regarding the provision of court reporting that ensures effectiveness, accountability, and equitable funding throughout Florida's courts.

This report is intended to provide a starting point for the development of such statewide practices and policies. To develop this report, the Commission (formerly "Committee") on Trial Court Performance and Accountability created the Court Reporting Workgroup. Information on the membership, charge and work process of the workgroup is provided in Part VI of this report

Note on Terminology:

The term "court reporting" has a common meaning for most people, who relate it to stenographic recording. "Court reporters" are commonly understood to be operators of stenographic court machines. Modern court reporting, however, can rely on other technologies, such as audio and video recording, which in some cases are operated remotely or by courtroom officials who are also performing other tasks. In this report, the function of "court reporting" is frequently discussed in its two major component parts: the contemporaneous recording of words and events in a courtroom, whether by stenographic or by another means, is referred to as "recording;" the subsequent conversion of the record into written text is referred to as "transcription." The overall process is still referred to as "court reporting."

II. THE PURPOSE OF COURT REPORTING

Court reporting serves a critical function in our judicial system because meaningful appellate review relies on an accurate record of what transpired at the trial court. The transcript of the words spoken in open court is essential to attorneys to prepare arguments for appeal, as well as for the court. The following purpose statement for court reporting was developed by the Court Reporting Workgroup to express what court reporting is and the important role of court reporting within the judicial process:

Reporting of court proceedings is the contemporaneous verbatim recording of words spoken in court [and notation of non-verbal events]. Verbatim recording allows for the immediate utilization of words spoken in court, the preservation of those words and, when necessary, their timely and accurate transcription. Transcripts or other media are used by attorneys, litigants, judges, and the public to review events in court proceedings. This provides public accountability and facilitates due process through appellate review.

The purpose statement is intended to express several important points. First, the statement provides that "reporting" is essentially the same as "recording" for functional purposes – to report, in this context, is to make a record – and that the subsequent timely transcription of some recordings is part and parcel to the function of reporting. [The record includes not only words spoken, but identification of who is speaking as well as non-verbal events, such as the identification of those present and certain actions.] Second, the statement does not equate court reporting with stenography – other technologies are also legitimate means to perform the same function. In stating the purpose the workgroup does not express a preference for any method of making a record. The third sentence refers to both the use of an official transcript, as well as the practice of relying on the unofficial record during the course of a proceeding.

The ultimate purposes of court reporting are summarized in the last sentence. An accurate record is most important for the purpose of appellate review, a vital component of due process and a cornerstone of modern judicial systems. But transcripts of court proceedings also facilitate important mechanisms for accountability, affording the broader legal community, as well litigants, the press, and the general public an important tool that helps them independently evaluate what takes place in our courts.

III. THE LEGAL NECESSITY OF COURT REPORTING AT PUBLIC EXPENSE

In order to advance an appeal of a decision made in court proceeding a party generally must provide to the appellate court relevant portions of the transcript. In most civil case and in many of types of proceedings it is the responsibility of the party making the appeal to have secured court reporting services. However, court reporting services are frequently provided at public expense pursuant to requirements that emanate from several sources, including the state and federal constitutions, statutes, and court rules.

The United States Constitution and the Constitution of the State of Florida both provide rights to due process and equal protection. Court reporting is implicated in each of these protections in two distinct ways. First, due process requires that appellate review be meaningful and complete when a state provides an appeal as a matter of right, as Florida does in Article V, Sections 3 and 4, Florida Constitution. Delap v. State, 350 So.2d 462 (Fla. 1977). Further, due process requires that when a state provides an indigent defendant with a lawyer on appeal, the lawyer must have the ability to fully represent his or her client. Hoffman v. Haddock, 695 So.2d 682 (Fla. 1997). If the lawyer needs a complete transcript to fully represent the indigent client on appeal, then a full transcript becomes an element of due process. Jones v. State, 780 So.2d 218 (Fla. 2d DCA 2001).

Equal protection has been interpreted to mean that those without the ability to pay for court reporters or transcription cannot be denied judicial protections that are otherwise afforded to those with the ability to pay. But, as Justice Frankfurter stated in <u>Griffin v. Illinois</u>, 351 U.S. 12 (1956), "Of course a state need not equalize economic conditions But when a State deems it wise and just that convictions be susceptible to review by an appellate court, it cannot by force of its exactions draw a line which precludes convicted indigent persons, forsooth erroneously convicted, from securing such a review" at 23.

The starting point for the application of constitutional protections to the production of transcripts must be <u>Griffin v. Illinois</u>, *supra*. In <u>Griffin</u> the United States Supreme Court was confronted with an Illinois rule that required the production of a complete record on appeal, but denied an indigent criminal appellant a free transcript. The court stated that due process protections do not require a state to provide a right to appellate review, but once a state affords that right, it may not "bolt the door to equal justice." See also: <u>Delap v. State</u>, *supra*. In <u>Mayer v. Chicago</u>, 404 U.S. 189 (1971), the Court extended the <u>Griffin</u> rule to those who are not faced with imprisonment, but who have a compelling interest in the outcome of the litigation.

In Florida, the Legislature has acknowledged that interests under litigation in some cases are so important that indigent litigants must be provided with court reporting and transcription on appeal to protect constitutionally afforded rights. Florida statutes and court rules, however, present several difficulties for court managers in administering the law.

First, there is no comprehensive statute that identifies proceedings which must be reported, presumably at public expense. Statutory requirements to report various proceedings are found in at least five different sections in three different chapters. Requirements in court rules are even more scattered, with provisions in at least eleven different rules. Additionally, these statutes and rules express their requirements in differing and sometimes ambiguous language, leaving open the possibility that mandates will be construed differently in different jurisdictions.

Furthermore, court rules are often unclear regarding whether court reporting services, including transcription, must be provided at public expense, or whether a party must pay. For example, Rule of Judicial Administration 2.070(g)(1) provides that "all criminal and juvenile proceedings, and any other judicial proceedings required by law or rule to be reported at public expense, shall be reported." The rule is silent as to whether transcription must be provided at public expense.

Florida statutes and court rules which require court reporting or transcripts in specific proceedings are identified in the Appendix.

Regarding the production of transcripts, Florida Rule of Appellate Procedure 9.200 provides that once a notice of appeal has been filed the appellant has ten days to designate those portions of the proceedings not already on file that are deemed necessary for transcription. Once the court reporter has been served with this designation, he or she must acknowledge receipt of the designation and indicate when the transcripts will be completed. If the transcripts cannot be completed within 30 days, the court reporter must request such additional time as necessary to complete the transcripts. The parties have five days to object to the additional time requested.

Florida Rule of Appellate Procedure 9.010 provides that the same rules for the preparation of a record on appeal apply to appeals from the county courts to the circuit courts pursuant to Florida Rule of Appellate Procedure 9.030(c).

IV. THE DELIVERY AND MANAGEMENT OF COURT REPORTING SERVICES

Evolving Methods to Conduct Court Reporting

The technology of what is today called court reporting has evolved through time and continues to change. Today court reporting in Florida is provided through a combination of technologies. Though most of the 20th century court reporting was conducted by reporters using stenographic machines, which has been enhanced in some areas by other technologies. This transition is not just a change in machinery, but implicates the courtroom workgroup and the way proceedings are conducted as regards the making of the record. Change in the method of conducting court reporting also requires realignment of court reporting budgets and program management systems. Such realignments can be challenging, and at any rate require thoughtful planning and time for implementation. A brief overview of the evolution of court reporting technology is helpful in understanding the implications of change.

Shorthand

Shorthand – a notation system with its roots in ancient Rome – allowed scribes to record oratory at a rate approximate to the speed of the normal speech. Early notation systems developed into full phonetic writing in the 16th century, and was used by clerics and scholars to record sermons and lectures. In the early 19th century the Pitman system of shorthand was developed, followed near the end of the century by Gregg shorthand, which is still taught and used today. While faster than writing in longhand, shorthand is highly individualized, and so has the disadvantage of being largely illegible to anyone other than the person who makes the original notations. Over the last century, a series of technologies have provided more accurate, reliable and efficient methods to record spoken words and reduce them to writing.

Stenography

The stenograph machine, introduced in 1913, essentially mechanizing shorthand, or manual stenography. Using a stenograph machine, a court reporter presses a system of keys, which in turn create a series of letters and numbers on a scrolling paper tape. This method is faster and more accurate than written shorthand. As with shorthand, the stenographic tape record is most accurately transcribed by the individual who created it. Because of its higher level of accuracy, stenographic machine recording, along with typed transcripts, became the predominant method of creating a court record in the 20th century.

Computer-Aided Transcription

The emergence of small computers in the late 1970s and the 1980s added new capabilities to stenography. Computer-aided transcription, or CAT, became possible when small computers were added to stenograph machines, allowing the keystrokes to be recorded on a disk or in the internal memory of the computer, as well as on the paper tape. This digitized record can then be translated into an unedited text by the computer. CAT speeds the transcription process, and so is faster and less costly than manual stenographic transcription.

Real-Time Court Reporting

As computers became faster and more powerful, CAT systems became capable of translating a digitized record contemporaneously, producing an unedited written document even as the record made. The unedited text can be viewed immediately, and later corrected by the stenographer. The speed and quality of this type of system, known as real-time stenography, is familiar to anyone who has followed the closed caption text of a live television program.

CAT and real-time transcripts are faster than manually produced stenographic transcripts: judges and attorneys can be provided with unedited computerized translation almost immediately. This can also assist hearing impaired persons in participating in proceedings. They also have advantages that derive from their existence as digital documents: they can be searched for key words or phrases, transmitted electronically to remote locations, copied for almost no cost, and stored digitally.

Audio Tape Recording

The recording technologies discussed so far, from shorthand to real-time recording, are all variations of a two-stage process in which spoken words are "recorded" by a specialist who translates them into a series of symbols on paper or in a digital format. The symbols may be subsequently transcribed by the specialist into text that can be read by anyone. In stenographic reporting, the original "record" of a court proceeding is the paper tape or the digital document that contains the stenographic symbols made; the actual audio verbalizations are not necessarily preserved, although in many courts the practice is to also make a tape or digital audio recording. Under Florida Rule of Judicial Administration 2.075 these audio recording are also preserved

The development of audio recording technology in the 20th century made it possible to directly capture and preserve the actual sounds of the spoken words. By the 1960s, some courts were using tape recorders. The best technology at the time was magnetic, or analog, tape. It is still used many courts today, most commonly in courts handling misdemeanors, juvenile delinquency matters, and other proceedings which require fewer transcripts. Audio tapes are stored for relatively short periods of time until the need for a transcription is determined, pursuant to the Florida Rules of Judicial Administration .

Tape recording is less expensive than any of the forms of stenographic reporting because it does not require the presence of a trained stenograph reporter. The courtroom must be equipped with a tape recording machine and suitable microphones. While someone must operate the machine, including reloading, marking, and storing the tapes, the skills required are far less than those expected in a stenograph reporter. In most courtrooms the tape recorder is operated by personnel who have other duties in the courtroom, such as a clerk, bailiff, or even the judge.

Tape recording has several disadvantages that undermine its desirability. The quality of analog tape recordings is frequently poor because many courtrooms have bad acoustics. Audio quality frequently suffers when a witness or defendant does not speak clearly and loudly, or in

courtrooms with excessive background noise. Tapes which have been reused a number of times can also deteriorate in quality to a point where they may become practically inaudible. Tapes can be cumbersome to use; to search for a particular passage one must wind the tape forward and backward, looking for the passage of interest. They consume considerable storage space and are easily damaged or inadvertently erased.

Digital Audio Recording.

In the same way that CAT improved the earlier technology of stenography by digitizing the stenographic symbols, the digitization of sound recording is improving the technology and feasibility of audio recording in courtrooms. The current state of the art technology for audio recording employs digital, or electronic, recording instead of magnetic tape. Like tape recording, electronic court reporting (ECR) captures words spoken in court and preserves them for subsequent transcription if necessary. As with tape, this approach avoids the cost of having a trained stenograph reporter in court. ECR does require personnel to operate the system, but the skills required are less.

Digital recording is superior to magnetic tape recording in several respects. The audio quality is much better, in the way music on a CD is clearer and crisper than on a cassette tape. Some of the clarity occurs simply because digital systems use newer, better microphones than most analog systems, but digital systems also employ sound-enhancing techniques, such as speaker-isolation, which allows the operator or transcriptionist to screen out superfluous sounds and listen to only the sounds entering the microphone of the person speaking, or clean-up processes that screen out background noises. Furthermore, the quality of a digital recording does not deteriorate in storage, as can occur with magnetic tape.

Digital recording has advantages over tape recording that are similar to the advantages of CAT over paper stenographic tape: digital recordings can be searched for key words or markers, transmitted electronically to remote locations, copied for almost no cost, and inexpensively stored.

There are two basic models for the operation of ECR systems. The courtroom model requires a monitor in the courtroom to operate the system. The monitor logs speakers, makes notations of who is present and notes certain non-verbal events, monitors sound quality, and provides playback when directed to do so by the judge.

Larger courthouses can use a control-room model, in which the monitoring function is performed in a central control-room. In a control-room model, one ECR technician monitors several courtrooms at one time. The monitor views the courtrooms via video cameras mounted in each courtroom. The judge can give directions to the control room over his microphone or by telephone. The control-room model requires more equipment, specifically video cameras and monitors, and requires greater awareness by the judge and coordination between the judge and the monitor. While the control-room model allows one technician to monitor multiple courtroom proceedings, there are concerns that a single monitor covering several proceedings at once will

make more errors, such as misidentifying speakers or failing to note non-verbal events.

Emerging technologies, including voice-recognition systems, will likely continue to lead to improvements in capturing and transcribing spoken words.

Florida's trial courts employ all of the court reporting methods discussed above. While some circuits rely almost exclusively on one method, such as stenography or electronic court reporting, most use a combination of systems.

Service Delivery Systems

The twenty judicial circuits of Florida currently use a variety of management systems to oversee the provision of court reporting services, ranging from a contract model wherein all court reporting functions are performed by non-court personnel under contract, to employee models that use court employees exclusively. Several circuits use a hybrid system of employees and contract personnel, or are in a period of transition.

Personal Staff Model

Through the 20th century, the most common management system for most court systems was the personal staff model. Under this system, court reporters work directly and often exclusively for individual judges. Hiring, supervision, terms and conditions of employment and compensation are at the discretion of the individual judge. Some court reporters work with the same judge routinely for many years, developing effective and efficient work relationships.

Contract Model

In the 1970s and 1980s county budgets became increasingly unable to keep up with growth and court expenditures came under increased scrutiny. One result of these fiscal pressures was movement toward a more centralized contract model. Under this system, court reporters, whether employed by a firm or working individually, provide recording and transcription services on a fee basis. Under this model court reporters do not work for individual judges, but for the court at large. Hiring, firing, supervision, terms and conditions of employment and compensation are determined by judicial leadership and court administration. In some courts, court reporters are selected by court managers and assigned to courtrooms, while in other courts individual judges continue to have some authority to select and manage their own court reporters.

Under most contracts, while the stenographic paper tapes are court records and therefore property of the court, these records normally remain in the physical custody of the individual court reporter or their employing firm. This loss of physical control of the record can lead to delays in the completion of transcripts, as court reporters fall behind in the production of transcripts while continuing to appear in court (or in depositions) to record other events. Effective contract administration is essential to ensure timely production on transcripts, and the management of contracted personnel can demand significant time and attention from judges and

court managers.

The contract model is frequently used to provide other methods of court reporting, such as digital audio recording. A court can contract with a vendor, for instance, to install and maintain sound recording equipment as well as to provide personnel to monitor the system and make recordings. A court can use employees to make digital recordings, and contract out for transcription services.

Employee Model

Courts are increasingly developing in-house capacities to record and transcribe court proceedings. Under a wholly employee-operated system, all services are provided by court personnel. The advantages of an employee model flow from the greater control the court has over the process, from hiring of personnel, scheduling, and courtroom supervision through to the production of timely and accurate transcripts. Such a model can be used to deliver both stenographic and electronic court reporting.

Hybrid Systems

Some courts combine features of the contract model and the employee model to provide services. For instance, a court may use employees for electronic court reporting in some divisions of the court, and contract with stenographic reporters to record proceedings in other divisions. A variation would be to use employees to electronically record proceedings and then contract out the transcription of those recordings. With electronic transmission of digital recordings, transcription services can be provided by vendors located outside of the jurisdiction, or even in another country, allowing to court to purchase services at lower rates.

Costs

The workgroup examined data from the twenty judicial circuits regarding expenditures for court reporting services. The availability of reliable data to support this analysis is limited because county budget systems and processes are not consistent or comparable. For instance, in many counties court reporting services are funded from one budget line but provided to the court as well as to state attorneys and public defenders for depositions. The limited review conducted by the workgroup did indicate that costs associated with court reporting very significantly across circuits. These variations appear to be driven by several factors:

- recording technology whether a proceeding was recorded by a version of stenographic reporting, or by analog audio recording, digital audio recording or audio-video recording;
- local market conditions in certain urban markets demand for stenographic court reporters is greater than the capacities of local firms, leading to higher prices;

- transcript production method whether the transcript is produced by a stenographic court reporter, a scopist, or a transcriptionist;
- transcript speed the time allowed for the production of the transcript; and,
- geographic dispersion circuits with multiple smaller court facilities do not enjoy efficiencies of scale that are possible in large court facilities.

In addition to the direct costs of court reporting – equipment, contract and employee expenditures – the workgroup found that there can be significant hidden costs associated with some court reporting systems which can manifest themselves in a number of ways. For example, in jurisdictions that do not have adequate administrative staff to supervise the court reporting program, the task of supervising court reporting services falls to judges and judicial assistants. The value of the time of these personnel can be significant, and time devoted to oversight of court reporting detracts from their normal responsibilities. In some jurisdictions judges spend substantial amounts of time overseeing the production of overdue transcripts. Where such administrative costs are internalized and not calculated into the overhead of a program, the real costs of a program remains hidden, making it appear to be less expensive than it really is.

Another very serious indirect cost arises when a complete official transcript is delayed or is never produced for appeal. This can occur upon an extended absence or death of a court reporter, or where an audio recording malfunctions. When a complete transcript cannot be produced for appeal, the result may in some case be the eventual vacating of the original proceeding. A trial or hearing would have to be held again, sometimes months or even years after the first event. This type of problem carries not only a fiscal impact, but undermines the quality of the judicial process and extracts a heavy toll on victims, witnesses, jurors and defendants.

Management and Performance Measurement

The effective management of court reporting services, regardless of technology used or management system employed, requires court managers to be able to monitor some fundamental aspects of the services provided. At a minimum, court managers and policy makers should know the frequency of court reporting events, the volume of recording and transcription, and the timeliness of transcript production.

In Florida, because court reporting services are funded by the individual counties, there is little consistency in the level of information collected. For instance, some contacts pay vendors for hourly increments, while others pay for full days or for morning and afternoon sessions. Regarding timeliness, some contracts provide for different rates based on the number of days allowed for the production of the transcript, or apply penalties for late production. The use of

such production schedules is not consistent.

State funding of court reporting will require a common set of measures to support rational management and accountability for both performance and costs. The following aspects of court reporting should be monitored:

- <u>Coverage</u>: Hours of proceedings recorded, by division.
- Volume: Pages of transcripts, by division.
- ► <u>Timeliness</u>: Timeliness of production of transcripts.

V. CONCLUSIONS

Court reporting is a critical component of the court system. At present, however, court reporting services are provided under a confusing mix of statutes and court rules, using all manner of available methods, delivered through a patchwork quilt of management systems. The existence of aging systems in the midst of rapid changes in technological and market conditions has created an environment of urgency bordering on crisis for some courts. Some circuit courts are unable to ensure that accurate and timely transcripts can be produced for appellate purposes.

Revision 7, which requires the state to assume greater funding responsibilities for the trial courts effective July, 2004, represents a timely opportunity to address long-developing problems in the administration of court reporting in Florida. Before the State Courts System assumes responsibility for the oversight of court reporting and submits legislative budget requests to fund it, definitive steps must be taken to create the capability to effectively manage this resource and to provide accountability. Rational management and budgeting policies must be developed; effective and efficient technological infrastructure must be put into courthouses; statutes and rules must be revised; and accountability mechanisms must be developed and implemented.

Without a significant commitment to address these tasks, the State Courts System will be confronted with serious difficulties. It will be unable to ensure that accurate and timely transcripts will be available for the appellate courts; it will be unable to adequately serve litigants; it will be unable to contain rapidly rising costs. The recommendations made in Part VI or this report outline the efforts that need to be undertaken to address this issue.

An immediate step that should be taken is to begin to provide technological infrastructure to allow electronic court reporting where this method can be appropriately used. As discussed earlier, electronic court reporting represents an economic alternative to stenographic recording for many court proceedings. While stenographic reporting remains the superior form of court reporting, the selective deployment of ECR in the trial courts can be expected to allow the State Courts System to contain some of the costs of providing court reporting services that must be assumed by the State. While ECR labor costs are less than those of stenographic reporting, electronic court reporting does require the presence of appropriate recording and archival hardware and software. Digital recording systems can be built into new courtrooms or installed in existing courtrooms.

Expanded use of ECR in Florida's trial courts would require certain changes in the courtroom, as well as realignment of budgets and management systems. Long-standing courtroom practices must be modified, requiring judges to take greater care that the record is being properly made. A investment in the necessary infrastructure must be made. These changes, however, if made with foresight and care, would allow court reporting services, including the provision of timely and accurate transcripts, to occur in a cost-effective manner.

V. RECOMMENDATIONS

A. Purpose Statement. The following purpose statement should be adopted and used in reference to court reporting and recording in the Florida courts system:

Reporting of court proceedings is the contemporaneous verbatim recording of words spoken in court [and notation of non-verbal events]. Verbatim recording allows for the immediate utilization of words spoken in court, the preservation of those words and, when necessary, their timely and accurate transcription. Transcripts or other media are used by attorneys, litigants, judges, and the public to review events in court proceedings. This provides public accountability and facilitates due process through appellate review.

- **B. Performance Measures.** Court reporting services should be monitored through three performance measures. Information necessary to track these measures should be continuously collected.
- <u>Coverage</u>: Courtroom proceedings recorded, by division.
- Volume: Pages of transcripts produced, by division.
- Timeliness: Timeliness of production of transcripts. The specific measures of timelessness should be developed in consultation with the Commission on District Court of Appeal Performance and Accountability.
- **C. Revisions to Statutes.** Florida Statutes regarding court reporting should be considered for revision. The objectives of statutory revision should be to:
- enact a general statute on court reporting and replace multiple statutory provisions with cross references to new general statute;
- clarify legislative intent regarding those proceedings that must be recorded or transcribed at state expense under the authority of the courts, public defenders, state attorneys, or other agencies; and,
- clarify that ownership of the court reporting record rests with the court, regardless of the medium used and the court's contractual or employee relationship with the court.

- **D. Revisions to Rules.** The Florida Rules of Court regarding court reporting should be revised. Objectives of rule revisions should be to:
- adopt a definition of "court reporting" consistent with the purpose statement provided in Recommendation A, and which accommodates audio and video recording technologies, as well as stenography;
- identify, in a single rule, all proceedings that are required by statute or case law to be recorded:
- clarify the responsibilities of judges, trial and appellate counsel, parties, court reporters and clerks of the circuit courts regarding the designation, compilation and filing of the court record for purposes of appeal;
- consider more efficient guidelines for transcript pagination, including whether the volume limit of 200 pages should be eliminated and whether each day of proceedings should be bound in a single volume; and,
- accommodate the submission of transcripts in a digital format with or without paper copies.
- **E. Best Business Practices.** The Office of the State Courts Administrator should conduct a best business practices workshop with trial court administrators and other court personal to:
- develop information and advisory guidelines on best practices regarding the management and oversight of court recording services and transcription services;
- provide information on standardized contract provisions, standard contract performance provisions and fee schedules, including guidelines for bifurcated systems are used that contemplate separate contracts for recording and for transcription;
- create a standardized fee schedule for court reporting and transcription services which provides comparability and uniformity while allowing variation to accommodate of regional market conditions;
- provide guidance on the collection of information regarding court reporting for planning, budgeting, and accountability purposes.

F. Electronic Court Reporting. The State Courts System should seek funding to support the purchase and installation of electronic court reporting technological hardware and software and computer assisted transcription equipment.

VII. COURT REPORTING WORKGROUP

To assist in the development of this report and recommendations, the Commission on Trial Court Performance and Accountability created the Court Reporting Workgroup. The workgroup meet on April 9 and 10, 2002, and again on May 7, 2002. All meetings occurred in Tampa, Florida.

Workgroup Charge

The workgroup was asked to address the following matters:

- 1. develop a purpose statement that succinctly expresses the role of court reporting in the judicial process;
- 2. describe the legal context for court reporting;
- 3. articulate performance measures that would be relevant to monitor, manage and evaluate the court reporting function;
- 4. identify variations in staffing and management models among judicial circuits, and describe the benefits and disadvantages of the models;
- 5. identify existing and emerging technologies to report, or record and transcribe, court proceedings, and describe the benefits and disadvantages of the different technologies;
- 6. identify areas where administrative and management procedures for court reporting could be improved.

Workgroup Member and Staff

Martha Warner, Appellate Judge, Fourth District Court of Appeal, Co Facilitator Mark Weinberg, Trial Court Administrator, Seventh Judicial Circuit, Co Facilitator Paul Backman, Circuit Judge, Seventeenth Judicial Circuit Jack Cook, Fifteenth Judicial Circuit, Judge Paul Kanarek, 19th Judicial Circuit Judge Amy Karan, Dade County Tom Hall, Clerk of the Supreme Court Theresa Westerfield, TCA 16th Judicial Circuit Nancy Nydam, TCA 3rd Judicial Circuit Betty Sue Vincent, Director, Court Reporting, 8th Judicial Circuit

Office of the State Courts Administrator:

Peggy Horvath, Chief of Strategic Planning Steve Henley, Court Operations Consultant Skip White, Senior Court Operations Consultant Greg Smith, Senior Attorney Greg Youchock, Chief of Court Services

APPENDIX A

Florida Statutes Related to Court Reporting:

<u>Section 27.0061, Florida Statutes</u> - Verbatim recording and transcripts in all criminal cases

Transcripts in Criminal Cases.- Upon the demand of the state attorney, or the presiding judge in any criminal case, or the defendant within the time allowed for taking an appeal and for the purpose of taking an appeal in a criminal case, the court reporter shall furnish with reasonable diligence a transcript of the testimony and proceedings; and the costs for the same shall be taxed as costs in the case.

Section 390.0115(4)(e), Florida Statutes - Parental Notice of Abortion Act

- (4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE
- (e) A court that conducts proceedings under this section shall provide for a written transcript of all proceedings and issue written and specific factual findings and legal conclusions...

Section 394.467(6)(a)2, Florida Statutes - Baker Act Proceedings

- (6) HEARING ON INVOLUNTARY PLACEMENT
- (a)2. The testimony in the hearing must be given under oath and the proceedings must be recorded.

Section 744.109, Florida Statutes - Guardianship

- (1) All hearings on appointment of a guardian; adjudication of incapacity; modification, termination, or revocation of the adjudication of incapacity; or restoration of capacity must be electronically or stenographically recorded.
- (2) If an appeal is taken from any of these proceedings, a transcript must be furnished to an indigent ward at public expense.

Section 741.30(6)(h), Florida Statutes - Domestic Violence Injunction

- (6)
- (a) Upon notice and hearing . . . the court may grant such relief as the court deems proper, including an injunction.
- (h) All proceedings under this subsection shall be recorded. Recording may be by

electronic means as provided by the Rules of Judicial Administration.

Court Rules Related to Court Reporting

Rule of Judicial Administration 2.070

Rule 2.070. Court Reporting (excerpts of the rule)

- (b) When Court Reporting Required. Any proceeding shall be reported on the request of any party. The party so requesting shall pay the reporting fees....
- (g) Court Reporting Services Provided for Mental Health Proceedings or at Public Expense.
 - (1) When Reporting Required. All criminal and juvenile proceedings, and any other judicial proceedings required by law or court rule to be reported at public expense, shall be reported.
 - (2) Circuit Plan. The chief judge, after consultation with the circuit court and county court judges in the circuit, shall enter an administrative order developing 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.
 - (3) Electronic Recording and Transcription of Proceedings Without Court Reporters. A chief judge may enter a circuit-wide administrative order, which shall be recorded, authorizing the electronic recording and subsequent transcription by persons other than court reporters, of any judicial proceedings, including depositions, that are otherwise required to be reported by a court reporter.
 - (4) *Grand Jury Proceedings*. Testimony in grand jury proceedings shall be reported by a court reporter, but shall not be transcribed unless required by order of court.
- (h) Court Reporting Services in Capital Cases.
 - ... [T]he chief judge,... shall enter an administrative order developing a circuit-wide plan for court reporting in all trials in which the state seeks the death penalty and in capital post-conviction proceedings. The plan shall require the use of all measures necessary to expedite the preparation of the transcript, including but not limited to:
 - (1) where available, the use of a 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 court reporters to ensure that transcript production in capital cases is given a priority.

Florida Rule of Civil Procedure 1.820(f) - Hearing Procedures for Non-binding Arbitration

Rule 1.820

(f) Record and Transcript. Any party may have a record and transcript made of the arbitration proceeding at that party's expense.

Florida Rule of Civil Procedure 1.830(b) - Voluntary Binding Arbitration

Rule 1.830

(b) Record and Transcript. A record and transcript may be made of the arbitration hearing if requested by any party or at the direction of the chief arbitrator.

Florida Rule of Civil Procedure 1.840(h) - Judicial Waiver of Parental Notice of Abortion

Rule 1.840

- (h) Transcript; Order and Judgment. As provided by section 390.0115(4)(e), Florida Statutes, a court that conducts proceedings under the statute shall:
- (1) provide for a written transcript of all testimony and proceedings;

Florida Rule of Criminal Procedure 3.133(b)(4) - Adversary Preliminary Hearings

Rule 3.133

(b)(4) At the request of either party, the entire preliminary hearing, including all testimony, shall be recorded verbatim stenographically or by mechanical means and at the request of either party shall be transcribed. If the record of the proceedings, or any part thereof is transcribed at the request of the prosecuting attorney, a copy of this transcript shall be furnished free of cost to the defendant or the defendant's counsel.

Florida Rule of Criminal Procedure 3.190(j)(2) - Deposition to Perpetuate Testimony

Rule 3.190

(j)(2)

If the defendant or the state desires to perpetuate the testimony of a witness living in or out of the state whose testimony is material and necessary to the case, the same proceedings shall be followed as provided in subdivision (j)(1), but the witness may be taken before an official court reporter, transcribed by the reporter, and filed in the trial court.

Florida Rule of Juvenile Procedure 8.100(e) - Delinquency Proceedings

Rule 8.100

(e) A record of the testimony in all hearings shall be made by an official court reporter, a court approved stenographer, or a recording device Official records of testimony shall be transcribed only upon order of the court.

Florida Rule of Juvenile Procedure 8.255(g) - Dependency Proceedings

Rule 8.255

(g) A record of the testimony in all hearings shall be made by an official court reporter, a court approved stenographer, or a recording device. ... Official records of testimony shall be transcribed only upon order of the court.

<u>Florida Rule of Juvenile Procedure 8.625(f)</u> - Proceedings for Families and Children in need of Services

Rule 8.625

(f) A record of the testimony in all hearings shall be made by an official court reporter, a court approved stenographer, or a recording device Official records of testimony shall be transcribed only upon order of the court.

Florida Family Law Rule 12.490(d)(2) and (g)(3) - General Masters Hearing Family Law Matters

Rule 12.490

(d)(2) The general master shall take testimony and establish a record which may be by electronic means as provided in Florida Rule of Judicial Administration 2.070(d) or by a court reporter. The parties may not waive this requirement.

Commission on Trial Court Performance and Accountability 20
Court Reporting

(g)

(3) The cost of the original and all copies of the transcript of the proceedings shall be borne initially by the party seeking review, subject to appropriate assessment of suit monies.

Florida Family Law Rule 12.491(e)(2) and (h)(3) - Hearing Officers Hearing Child Support Enforcement Matters

Rule 12.491

- (e) Upon the receipt of a support proceeding, the support enforcement hearing officer shall:
- (2) take testimony and establish a record, which record may be by electronic means as provided by Florida Rule of Judicial Procedure 2.070(d);
- (h)(3) The cost of the original and all copies of the transcript of the proceedings shall be borne initially by the party seeking review, subject to appropriate assessment of suit monies.

Proceedings Recorded Based on Local Option

Some counties provide recording services in cases in which there is no statute or rule that mandates such services. Examples of these types of proceedings:

Part V of Chapter 397- The Marchman Act - Involuntary Drug Abuse Admissions

Chapter 61, Florida Statutes - Dissolution of Marriage

There may be many more proceedings that are recorded by local option, and it is possible that some counties with electronic recording retain a verbatim record of all proceedings.