

**Recommendations for the  
Provision of Court Reporting Services in  
Florida's Trial Courts**

*October 2007*

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## Executive Summary

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### Commission on Trial Court Performance and Accountability

The Commission on Trial Court Performance and Accountability (TCP&A) was established by the Supreme Court in July 2002 for the purpose of proposing policies and procedures on matters related to efficient and effective resource management, performance measurement, and accountability of Florida's trial courts. Since this time, the TCP&A has issued two reports related to the provision of court reporting services in the trial courts. The first report was issued in December 2002 and the second was issued in February 2005.

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### Supreme Court Directive

The TCP&A's third effort to date concerning court reporting services is in response to the directive of the Supreme Court to "make recommendations on the effective and efficient management of due process services" with a specific focus on "legal and operational issues arising from the use of digital technology" and "developing operational standards and best practices for providing court reporting services." (AOSC06-54)

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### Court Reporting Workgroup

Judge Alice L. Blackwell, Chair of the TCP&A, established a Court Reporting Workgroup to address the Supreme Court's directive. The workgroup was charged with recommending statute and rule revisions, standards of operation, and best practices for court reporting services in the trial courts. The workgroup and a legal subcommittee of the workgroup met nearly each week between February and May 2007 to develop the recommendations which were then outreached to the trial courts and presented to the TCP&A for extensive review and final approval.

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### Guiding Principles

There were several principles guiding the development of the recommendations contained in this report. In reviewing the existing status of court reporting programs, there was an immediate recognition of the extreme operational variations that currently exist across the trial courts. With these variations, the need for uniformity in trial court

operations system-wide became a primary focus. In recommending uniformity, priority attention was given to the effectiveness and quality of the court reporting process because of the impact these services have on due process rights. However, quality and effectiveness were not the only considerations. The maximization of resources and accountability for the resources expended was also of significant importance. Further, after a thorough exploration of current practices both in Florida and around the United States, consideration was given to the need for the trial courts to retain a reasonable amount of operational flexibility. Local market conditions, in which the circuit courts have very little control, drive many of the current practices. To ensure a certain level of operational flexibility, the TCP&A decided to distinguish between a “standard of operation” and a “best practice” in developing the recommendations. A “standard of operation” is defined as a *mandatory* practice and a “best practice” is defined as a *suggested* practice.

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### Legal Recommendations

The proposed court rule revisions in the report are based on three primary conclusions. First, a transcript is considered the official record of a court proceeding. Digital recordings should be considered preliminary to the official record and thus, not public record. Second, the court owns the record of a judicial proceeding and has the authority and responsibility to control access to the record. Thus, copies of digital recordings may be made accessible per the discretion of the court given certain protocols are followed. Third, transcripts (including those created from digital recordings) may only be prepared by court reporters or transcriptionists approved by the court.

The report also provides a proposed revision to 934.03, Florida Statutes stating that the interception of oral communications through “authorized electronic court reporting services in capturing the record of judicial proceedings” is a lawful act.

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### Operational Recommendations

Along with the proposed rule and statutory changes, the standards of operation and best practices offered throughout the report speak to both legal and operational considerations that have yet to be fully addressed since the transition spurred by Revision 7 to Article V of the Florida Constitution. The recommendations provide a comprehensive groundwork for court reporting operations in the trial courts. Issues covered include: the proper use of digital technology, staffing and service delivery models, transcript production, and the cost sharing arrangement with the public defenders, state attorneys, and Justice Administrative Commission. These recommendations stand ready for adoption and implementation.

## Introduction

Revision 7 to Article V of the Florida Constitution mandated that due process costs, such as court reporting services, be funded by the state. Both prior to and following the July 1, 2004 effective date of Revision 7, Florida's State Courts System has made continual progress towards ensuring the effective and efficient delivery of court reporting services. The Commission on Trial Court Performance and Accountability (TCP&A) was established by the Supreme Court in July 2002 for the purpose of proposing policies and procedures on matters related to efficient and effective resource management, performance measurement, and accountability of Florida's trial courts. In preparation for Revision 7, the TCP&A issued a December 2002 report discussing the purpose, legal necessity, delivery methods, costs, and performance measurement of court reporting services. The TCP&A issued a second report in February 2005 which outlined a *Statewide Plan for Effective Use and Management of Court Reporting Services*. The plan provided overall goals, objectives, and strategies for court reporting in Florida's trial courts post Revision 7. The overarching goals of the statewide plan focused on ensuring the accuracy and quality of the record of court proceedings, utilizing appropriate court reporting methods to record proceedings, ensuring the timely production of transcripts for appellate review, and the cost-efficiency of providing court reporting services.

Today, the State Courts System has reached a critical juncture in the delivery of court reporting services. Revision 7 has spurred the trial courts to operate as a system that must be uniform, effective, and efficient across all judicial circuits. With the foundation set in place by the 2002 and 2005 TCP&A reports, standards of operation and best practices may now be codified for use statewide. Most notably, the increased implementation of digital court reporting in the trial courts has created the need to detail the proper use of this technology. Existing court rules and Florida Statutes allow for the use of digital technology but have not sufficiently addressed issues such as: defining digital recordings; determining accessibility to digital recordings; preventing the unintentional recording of confidential information and; identification of persons permitted to produce transcripts from digital recordings. Further, in order to maintain accountability for the approximate \$30 million spent annually by the trial courts in the provision of court reporting services, there is a need to standardize when and how digital recording technology is utilized and when a copy of a digital recording may be released as an alternative to a transcript. Operational guidelines are also needed for the entire court reporting process from the qualifications of employees or contractors performing these services to regulations regarding the production of transcripts.

In September 2006, Chief Justice R. Fred Lewis directed the TCP&A to "make recommendations on the effective and efficient management of due process services" with a

specific focus on “legal and operational issues arising from the use of digital technology” and “developing operational standards and best practices for providing court reporting services.” (AOSC06-54) Therefore, Judge Alice L. Blackwell, Chair, established a workgroup to assist in this endeavor. The Court Reporting Workgroup members are as follows:

**Robert B. Bennett, Jr.**, Circuit Judge, Twelfth Judicial Circuit, Chair  
**Robin Berghorn**, General Counsel, Ninth Judicial Circuit  
**Les Davis**, Court Technology Officer, Fifteenth Judicial Circuit  
**Barbara Dawicke**, Trial Court Administrator, Third Judicial Circuit  
**Thomas Genung**, Trial Court Administrator, Nineteenth Judicial Circuit  
**Anne Kaylor**, County Judge, Polk County, Tenth Judicial Circuit  
**Gillian Lawrence**, Electronic Court Reporting Manager, Eighteenth Judicial Circuit  
**Jonathon Lin**, Court Technology Officer, Fifth Judicial Circuit  
**Elaine New**, Court Counsel, Sixth Judicial Circuit  
**Carol Ortman**, Trial Court Administrator, Seventeenth Judicial Circuit  
**Dave Rowland**, General Counsel, Thirteenth Judicial Circuit  
**Brenda Sansom**, Manager of Court Reporting Services, First Judicial Circuit  
**Robert K. Rouse, Jr.**, Circuit Judge, Seventh Judicial Circuit  
**Eduardo Whitehouse**, Manager of Court Reporting Services, Eleventh Judicial Circuit  
**Susan W. Wright**, Clerk, Fifth District Court of Appeal

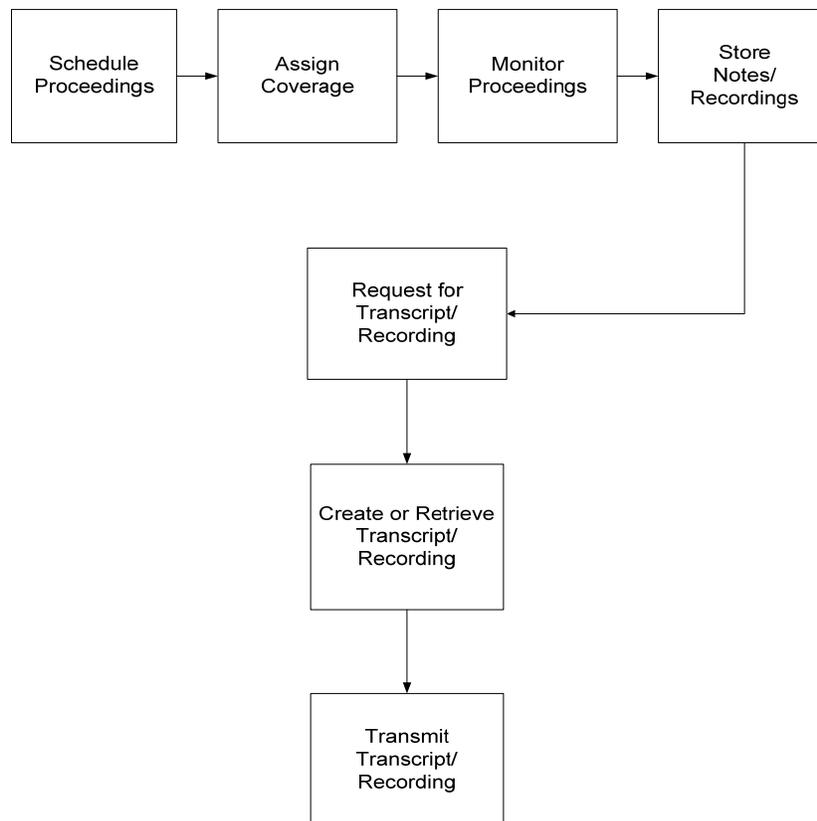
The workgroup was charged with recommending statute and rule revisions, standards of operation, and best practices for court reporting services in the trial courts. To accomplish this task, the workgroup reviewed several sources of information. Within Florida these sources included: statutes, court rules, court opinions, circuit administrative orders and profiles, reports issued by the TCP&A and the Florida Courts Technology Commission (FCTC), and Trial Court Budget Commission (TCBC) policies. Other states' laws and regulations regarding court reporting were also reviewed along with information gleaned from the National Center for State Courts and the National Association for Court Management. The workgroup and a legal subcommittee of the workgroup met on numerous occasions between February and May 2007 to accomplish their directive. The recommendations of the workgroup were outreached to the trial courts and presented to the TCP&A for extensive review and final approval. The report is organized into three main sections: a general overview of the court reporting process, proposed rule and statutory revisions, and proposed standards of operation and best practices. A “standard of operation” is defined as a *mandatory* practice and a “best practice” is defined as a *suggested* practice for adoption in all judicial circuits in order to improve the effectiveness, efficiency, or timeliness of court reporting operations in the trial courts.

## Court Reporting Process Overview

To understand the court reporting process in Florida's trial courts, one fact must be made abundantly clear... no circuit operates its court reporting program exactly like another. Each circuit, and sometimes even each county within a circuit, has a unique service delivery system dictated by any number of factors. These variations must be carefully considered in formulating legal and operational recommendations designed to improve the effectiveness and efficiency of court reporting services.

As used in this report, "court reporting services" refers to those services provided for proceedings recorded at state expense (e.g., circuit criminal, county criminal, delinquency, dependency, termination of parental rights, domestic violence injunction, Baker Act, Marchman Act, guardianship, Jimmy Ryce, general magistrate, and child support hearing officer proceedings). The following diagram and subsequent descriptions, supply a general overview of court reporting process steps.

### General Court Reporting Process Steps



**Schedule Proceedings**

The first step is to schedule proceedings. This step determines which judge, general magistrate, or hearing officer will preside over the associated proceedings and in which location the proceedings will take place. There may be several different people involved with scheduling proceedings, including the clerk's office, judicial assistants, case managers, and court reporting managers. Major factors that impact how proceedings are scheduled include: the type of case, the type of proceeding, judicial schedules, judicial room assignments, room configurations, technology equipped in rooms, and location of defendants (i.e., jails, mental health facilities, etc.).

**Assign Coverage**

The next step is to assign court reporters to monitor the proceedings. Assigning coverage is typically the responsibility of a court reporting manager or other court administration professional. In some areas of the state, a contract provider may be responsible for assigning coverage. Typically, once proceedings have been scheduled, the docket is transmitted electronically or by paper to the court reporting manager. Depending on several factors, including the type of case, type of proceeding, presiding official, and availability of technology in the proceeding location; the court reporting manager will assign an employee or contract court reporter to monitor the proceedings.

**Monitor Proceedings**

Monitoring proceedings in Florida's trial courts is performed using several different service delivery models and staffing models. The most commonly used models are described below.

*Service Delivery Models*

**Stenography** - The stenograph machine, introduced in 1913, essentially mechanized shorthand, or manual stenography. Using a stenograph machine, a stenographer presses a system of keys, which in turn creates a series of codes on a scrolling paper tape. Today, stenograph machines may also be paperless and/or wireless.

**Computer-Aided Transcription** - The emergence of small computers in the late 1970s and 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 file may then be translated into unedited text by the computer.

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

**Analog Audio/Video Recording** - The development of audio recording technology in the 20th century made it possible to directly capture and preserve the actual sounds of spoken words. By the 1960s, some courts were using tape recorders. The best technology at the time was magnetic/analog cassette recording. Cassette tape recorders are still used in Florida's trial courts today, most commonly in proceedings that are not likely to need transcripts. For analog cassette recording, the courtroom must be equipped with a cassette recorder and suitable microphones. Another more recent method for capturing the proceeding is analog video recording (i.e., VHS). For analog video recording, the courtroom may be equipped with microphones, cameras, and be wired for video recording either within the courtroom or from another location. Both forms of analog recording do not require the presence of a trained court reporter. While someone must operate the machine, including reloading, marking, and storing the tapes; the skills required are far less than those expected for a stenographer or digital court reporter. Analog recorders are often operated by personnel who have other duties in the courtroom, such as clerk staff, a bailiff, or even a judge or magistrate.

**Voice Writing** - Voice writing involves a court reporter speaking directly into a voice silencer, which is a hand-held mask containing a microphone. The court reporter repeats the words spoken in a proceeding into the mask which prevents the reporter from being heard. Voice writers record everything verbalized by judges, witnesses, attorneys, and other parties and may also record gestures and emotional reactions.

**Digital Audio/Video Recording** - The current state of the art technology for audio recording employs digital recording instead of analog tape. Digital court recording is the audio, and often video, recording of a court proceeding using digital technology that may be saved to a CD, DVD, network drive, or server. With most digital court recording technology, microphones are strategically placed in areas of a courtroom where judges, attorneys, parties, witnesses, and juries are located. Video cameras may also be placed in order to visually capture proceedings.

There are three basic types of digital court recording operating technology. The first type is a portable device such as a lap-top or hand-held device (MP3 player). These devices allow for recording in one location at a time and are typically operated by a

digital court reporter, judge, or magistrate. The next type is a non-portable stand-alone system or workstation that is permanently located in a courtroom or hearing room. These systems are typically operated by a digital court reporter. The third type is a remote system in which the audio/video is recorded to a server and monitored by a digital court reporter from another room (central control) located on or off-site.

Digital court reporters perform several critical tasks when monitoring proceedings. They “tag” the case number, participant names, and key events of the proceeding. These “tags” are digitally saved with the recording and act as an index for playback and for creating the transcript. The digital court reporter may also provide playback during a proceeding when directed to do so by the judge.

Every circuit in Florida currently uses both stenographic and digital court reporting service delivery models. Eight circuits also use analog recording. In FY 2005-06, approximately 190,000 proceeding hours were recorded by stenographers and approximately 400,000 proceeding hours were recorded by digital court reporters in Florida's trial courts at state expense. It should be noted that due to a lack of resources, technology, or both; all proceedings recorded at state expense in Florida's trial courts are not always actively monitored by a court reporter. Both analog and digital recording systems may be set-up to record multiple proceedings without the presence of a court reporter, though they typically require personnel to periodically “check-in” on the recording process.

### ***Staffing Models***

**Contract Model** – Under this model, court reporters, whether employed by a firm or working individually, provide services on a fee basis. Hiring, firing, supervision, terms and conditions of employment and compensation are determined by contract and/or circuit administrative order. Contracts may be used for all court reporting service delivery models. The majority of circuits in Florida currently use contractual funding to cover a significant portion of court reporting services.

**Employee Model** – Under an entirely employee-operated system, all services are provided by court personnel. Such a model may be used for all service delivery models. Currently, only one judicial circuit in Florida uses a pure employee model to provide court reporting services.

**Hybrid Model** – Almost all judicial circuits combine features of the contract model and the employee model to provide services. For instance, a circuit may use employees for digital court reporting in some divisions of the court and contract with

stenographers to record proceedings in other divisions. Alternatively, a circuit may use contract digital court reporters and employee stenographers.

It should be noted that in some counties, clerk of court staff are performing court reporting functions. The functions performed by clerk staff range from monitoring proceedings recorded using cassette tapes to operating digital recording equipment and tagging recordings. Some circuits contract for these services from the clerk's office, whereas in other circuits, clerks provide services free of charge.

**Store  
Notes/  
Recordings**

Once a proceeding has been recorded, the stenographic paper tape/notes, unedited CAT/real-time text, analog recording, or digital recording must be stored. When a proceeding is monitored by a stenographer, including real-time or CAT, the unedited text produced may or may not be stored by the court. Stenographic paper tapes, notes, and electronic files may remain in the physical custody of the individual stenographer or their employing firm. This may vary depending on whether a stenographer is an employee or contract provider of the court. Analog and digital recordings are typically stored by the court, however there are some circuits with a digital recording contract in which the contract provider stores the recordings.

If the court is responsible for storing the paper tapes, notes, electronic files, transcripts, analog or digital recordings, either the clerk or court administration may be involved in this step of the process. Clerks may be responsible for storing these documents in the same manner as other court records. Court administration is typically responsible for storing digital recordings. The manner in which digital recordings are preserved depends on the type of operating technology and back-up procedures used by a circuit. When using portable devices, procedures may be in place for later downloading digital recordings to a court server. When a non-portable stand-alone system is used, these systems are typically linked to a server. When proceedings are remotely or centrally monitored, the digital recordings are automatically recorded to a server.

**Request for  
Transcript/  
Recording**

For the majority of proceedings recorded, a transcript or copy of the recording is never requested. However, if a transcript is requested and the proceeding was recorded by a stenographer, he or she produces a transcript, as designated. If the proceeding was recorded using analog or digital technology, a copy of the audio/video cassette or a CD/DVD may be provided as an alternative, from which the requestor may have a transcript produced. Procedures for requesting a transcript/recording vary throughout the trial courts. This depends on where the notes/unedited text or audio files are stored (with the clerk, court administration, or contract service provider) and who is requesting the copy. Judges and

other court staff may have direct access to digital audio/video files on servers. They may also contact the clerk or court administration and have a copy e-mailed or otherwise provided to them. External users such as attorneys, parties, and the general public may be required to submit a written request or form to the applicable entity. They may also be charged for transcripts or media and be required to submit all or partial payment in advance.

**Create or  
Retrieve  
Transcript/  
Recording**

For proceedings recorded using traditional stenography (not real-time or CAT), a stenographer, transcriptionist, or scopist will translate the paper tape/notes into a hard-copy transcript. For proceedings recorded using real-time or CAT stenography, the process is similar, the difference being that the unedited text is already in the form of an electronic file ready to be translated. If a proceeding was recorded using analog or digital technology and a transcript is requested, the recording is played back and transcribed. With digital recordings, reporters may “tag” the events of a proceeding as they take place which are then available to assist with the transcription process. If a proceeding was recorded using analog or digital technology and a transcript is *not* requested, clerk staff, court administration, or a contract service provider may copy the recording to the appropriate media type for the requestor. Circuits vary in the procedures used for making media copies. Some circuits review and remove sections that do not relate to the proceeding or are not otherwise public record before they are released, others do not.

Finally, if a proceeding was recorded by a voice writer, transcripts may be produced similar to real-time or CAT as some voice writers use computer speech recognition technology that automatically produces unedited text. Other voice writers transcribe voice files similar to the way in which audio recordings are transcribed. In FY 2005-06, approximately 980,000 transcript pages and 9,700 media file copies were produced in Florida's trial courts using state resources.

**Transmit  
Transcript/  
Recording**

Prior to transmittal, the person preparing the transcript/recording typically certifies that the transcript or recording is a true and correct representation of events occurring in the proceeding. The clerk, court administration, or contract service provider then forwards the transcript/recording to the requestor. Transcripts for appeal, both in paper and electronic form, are filed by the stenographer with the clerk of the applicable appellate venue. The clerk or stenographer may be responsible for serving copies of the transcript to the parties of a case, as designated. Per court rule, audio recordings of a proceeding may not be submitted in place of a transcript to an appellate court for the purpose of appeal.

## Rule and Statutory Revisions

*Note: Actual rule and statutory revision language may be found in Appendix A and B. This analysis and the rule revision proposals will be submitted to the Supreme Court in a separate rule petition. The statutory revision proposal is submitted to the Supreme Court as part of this report.*

Recent legal challenges to the use of digital recording technology have focused on the shift away from trained court reporters toward the use of untrained transcriptionists, and the potential presence of confidential information on digital recordings. In *Holt v. Chief Judge of the Thirteenth Judicial Circuit*, 920 So.2d 814 (Fla. 2d DCA 2006), and *Moorman v. Hatfield and Conway*, 958 So.2d 396 (Fla. 2d DCA 2007), claims were made that transcriptionists prepared inaccurate transcripts from recordings, and that confidential conversations could be heard on the recordings, potentially triggering violation of section 934.03(1), Florida Statutes, prohibiting the intentional interception and disclosure of oral communications. While use of digital recording technology was upheld in both *Holt* and *Moorman*, concerns were expressed by the district court about the potential disclosure of confidential conversations captured on digital recordings and the quality of transcripts produced by untrained individuals who are not officers of the court. See also *R.P. v. Department of Children and Family Services*, --- So.2d ----, 2007 WL 865807 (Fla. 2d DCA March 23, 2007)(noting that the transcript prepared from a digital recording was “dismal”). These cases highlighted the need for examination of a number of legal issues, including whether unedited digital recordings constitute the official record of judicial proceedings; whether digital recordings are subject to disclosure as public records; whether recordings used to back up the primary recording equipment are subject to public disclosure; what type of control the court is authorized to exercise over access to digital recordings and transcript preparation in cases required by law to be reported at public expense, and what rule and statutory changes are needed to accommodate the use of digital recording technology. Following are summaries of the conclusions approved by the TCP&A based on the legal subcommittee's recommendations on these issues.<sup>1</sup>

### I. Digital recordings are not the official record or the public record

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<sup>1</sup> The legal subcommittee included the following members: The Honorable Anne H. Kaylor, Polk County Judge; The Honorable Robert K. Rouse, Jr., Circuit Judge, Seventh Judicial Circuit; Thomas Genung, Trial Court Administrator, Nineteenth Judicial Circuit; Barbara Dawicke, Trial Court Administrator, Third Judicial Circuit; Dave Rowland, Court Counsel, Thirteenth Judicial Circuit; Elaine New, Court Counsel, Sixth Judicial Circuit; Robin Berghorn, Court Counsel, Ninth Judicial Circuit; Les Davis; Court Technology Officer, Fifteenth Judicial Circuit; Jonathon Lin, Court Technology Officer, Fifth Judicial Circuit; and The Honorable Susan W. Wright, Clerk of Court, Fifth District Court of Appeal.

Rule 2.420, Florida Rules of Judicial Administration, Public Access to Judicial Branch Records, implements the constitutional right of access to public records contained in Article I, section 24, Florida Constitution, and specifies the judicial branch records that are exempt from disclosure. Subdivision (b)(1)(A) of rule 2.420 defines court records as the contents of the court file, with enumeration of documents, exhibits and other items that may become part of the file, including “electronic records, videotapes, or stenographic tapes of court proceedings.” Digital recordings of judicial proceedings that have not been filed with the clerk of court and are not part of the court file do not meet the definition of court records. In order to clarify this point, amendment to the rule to delete the phrase “and electronic records, videotapes, or stenographic tapes of court” from the subdivision (b)(1)(A) definition of court records has been proposed.

Because unreviewed, unedited digital recordings that may contain privileged attorney-client conversations and matters made confidential by statute or rule, as well as matters extraneous to the judicial proceeding, are not the “final evidence of the knowledge to be recorded,” they may be characterized as preliminary to the final record of a judicial proceeding, which in all instances is the official transcript. See *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633 (Fla. 1980)(rough drafts and handwritten notes that are not circulated for comment or review are preliminary and do not fall within the definition of public record). Digital recordings are the equivalent of a stenographic court reporter’s backup audio recording made to assist with preparation of the official transcript. See *Holt v. Allen*, 677 So.2d 81 (Fla. 2d DCA 1996)(backup audio recording not a public record). As such, digital recordings are not public record, and are not required to be provided in response to a public records request. In a proper case and in the discretion of the court, however, digital recordings may be provided under restrictions specified by the court.

For the same reason that digital recordings of judicial proceedings do not meet the definition of a public record, continuously operating secondary recordings that function as a backup to primary recordings in the event of an equipment failure also are not public record because they are “not the final evidence of the knowledge to be recorded.”

Challenges to the use of digital recording technology in judicial proceedings have asserted that inadvertent capture of privileged attorney-client conversations on the recordings violates section 934.03, Florida Statutes, prohibiting the intentional interception of oral communications. The court in *Holt* expressed concerns about this issue. In response to those concerns, amendment to section 934.03(2) has been proposed to make the interception of oral communications through “authorized electronic court reporting services in capturing the record of judicial proceedings” a lawful act.

II. The court owns the record of a judicial proceeding, and has the authority and responsibility to control access to the record

A number of concerns have been expressed about unrestricted dissemination of digital recordings of judicial proceedings. These include: (1) the possibility of the presence of audible confidential communications on the recordings; (2) the possibility of modification of the recordings; (3) the possibility of multiple versions of the "official record" of a proceeding; (4) preparation of transcripts from recordings by untrained persons who are not "officers of the court," and therefore have no ethical obligation to prepare the record without misrepresentation, bias or omissions; and (5) loss of court control over recordings and the possibility of misuse outside the courtroom to embarrass or humiliate individuals.

Clearly, confidential information captured on digital recordings must be protected from disclosure. Such information may include not only privileged attorney-client conversations, but also information protected from disclosure by court rule or statute. Subsections (c)(7) and (8) of Rule 2.420, Florida Rules of Judicial Administration, protect records that are made confidential under the Florida and United States constitutions and Florida and federal law; or are made confidential by court rule, by Florida Statutes, by prior Florida case law, and by rules of the Judicial Qualifications Commission. Section 119.0714, Florida Statutes (2007), expressly applies a number of chapter 119 statutory exemptions to court records. These include attorney work product; data processing software that is obtained under a license and is protected by a trade secret, or agency-produced software that is sensitive; information about confidential informants or sources, surveillance techniques, procedures or personnel, or undercover personnel; inventories of law enforcement resources; the substance of a confession; information that may reveal the identity of a victim of a sexual offense; and social security and financial account numbers.

The Supreme Court Committee on Access to Court Records has been charged with the task of identifying a list of statutory exemptions that will automatically and logically apply to court records and will be easily identifiable by the clerks of court. The committee's work on this issue is not yet complete. Statutory and court rule exemptions that apply to court records may seal entire court files and the progress docket, seal only the court file, seal specific court records or seal information contained in a court record. These exemptions may apply to information contained on digital recordings if protected information or records are referenced or discussed during a judicial proceeding. In such instances, confidential information must be redacted from the recording in accordance with statutory or rule requirements if the recording is requested by individuals or entities not authorized by law to have access to the information.

The experience of many courts has been that post-recording review of digital recordings to detect information protected from disclosure by statute or rule or privileged attorney-client conversations has been time consuming, costly and difficult. Pre-recording standards and protocols, such as adequate notice to courtroom participants that proceedings are being recorded, training of court personnel and placement of the burden for protecting

confidential information and privileged communications upon attorneys and *pro se* litigants appear to be the best approach to protecting the integrity of the recording.

A number of statutory and rule provisions support a conclusion that the court owns the record, and has the authority and responsibility to control the production of, and access to, the court record. Section 29.004(3), Florida Statutes, defines court reporting and transcription services necessary to meet constitutional requirements as an element of the state courts system to be funded by state revenues. The court by rule and statute is required to provide court reporting and transcription of certain proceedings at public expense in protection of constitutional due process and equal protection rights. Rule 2.535, Florida Rules of Judicial Administration, imposes an obligation on the chief judge to create a circuit wide plan for the reporting of all proceedings required to be reported at public expense, and that plan must ensure that services are provided by qualified persons.

Rule 2.535(g) authorizes electronic recording and transcription of court proceedings without a court reporter. The rule requires the chief judge to establish procedures delineating responsibilities for support personnel to ensure the creation of a reliable record; providing a means to have the recording transcribed; and providing for the safekeeping of recordings.

The overarching purpose of reporting court proceedings is to ensure the creation of a reliable record for complete and meaningful appellate review. In light of that purpose, a compelling argument can be made that the court must own the record, and must control access to and use of digital recordings.

In recognition of that authority and responsibility, amendments to rule 2.535 have been proposed to assert the court's authority over access to and dissemination of digital recordings, and to address concerns about the integrity of transcripts prepared from digital recordings. Proposed new definitions of "approved transcriptionist" and "approved court reporter" require that individuals who provide court reporting and transcriptionist services in proceedings required to be reported at public expense meet court-specified standards for certification and training. Proposed rule language distinguishes "approved transcriptionists" and "approved court reporters" from "civil court reporters," who perform court reporting services in civil proceedings not required to be reported at public expense.<sup>2</sup> The proposed definition of "official record" clarifies that a written transcript is the official record. Proposed amendments to the rule clarify that approved transcriptionists and court reporters governing their participation in judicial proceedings.

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<sup>2</sup> Section 27.0055, Florida Statutes (2006), as well as a number of other statutes, use the term "official court reporter." Proposed amendments to rules 2.535, 9.140 and 9.200 and form 9.900(h) replace the term "official" with "approved."

A proposed new subdivision entitled “Electronic Record,” provides that “in a proper case as determined by the chief judge in his or her discretion,” copies of the electronic record may be made available to state attorneys, public defenders, court-appointed counsel and other attorneys of record in proceedings required to be reported at public expense or for the court’s own use, provided copies are not used to prepare the official record, unless such use is authorized by the chief judge; are not used in subsequent court proceedings; are not disseminated or disclosed outside the offices of the state attorneys, public defenders, court-appointed counsel or attorneys of record; and are not enhanced or modified to reveal confidential information that otherwise would not be audible. The proposed language requires all officers of the court to comply with these restrictions. In addition, the proposed language allows attorneys of record to object to dissemination of a digital recording to opposing counsel. Such objections must be made by written motion stating the specific grounds for objection.

The proposed rule language also permits the court, in its discretion, to make digital recordings available to the public, including self-represented litigants, after review to ensure that information made confidential by statute or rule and privileged attorney-client conversations are protected from disclosure.<sup>3</sup> Attorneys of record are permitted access to unreviewed recordings only with specific restrictions on use of the recordings, and opposing counsel are afforded the right and opportunity to object to such access. In addition, proposed rule language requiring attorneys to assume the burden of taking all reasonable and available measures to ensure that confidential conversations are not recorded is intended to prevent the recording of privileged attorney-client conversations in the first place. Under the proposed rule language, attorneys are required to take precautions, such as muting microphones or discussing confidential matters in a designated location that is inaccessible to recording equipment. The proposed language also requires court personnel to provide notice to participants in judicial proceedings that electronic recording equipment is in use.

### III. Transcripts may be prepared by approved court reporters or approved transcriptionists

Judge Altenbernd’s concurring opinion in *Moorman v. Hatfield* noted that the appellate rules presently do not authorize the preparation of official transcripts by individuals who are not official court reporters. Proposed changes to rules 9.140 and 9.200, and Form 9.900(h), Florida Rules of Appellate Procedure, incorporate the terms “approved transcriptionist” and “approved court reporter.” The intent of these changes is to allow preparation of the official record by approved court reporters and approved transcriptionists who meet the circuit’s training and certification standards.

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<sup>3</sup> There will be instances in which, by operation of statute or court rule, self-represented litigants, as parties to the proceeding, are authorized to have access to information that is made confidential with respect to the public.

## Standards of Operation and Best Practices

As used below, a “standard of operation” is a *mandatory* practice and a “best practice” is a *suggested* practice for adoption in all judicial circuits in order to improve the effectiveness, efficiency, or timeliness of court reporting operations in the trial courts. A summary table of the standards of operation and best practices may be found in Appendix C.

*Note: The TCP&A endorses those policies that have been established by the TCBC to support the efficiency of court reporting services including: prohibiting the use of state funded court reporting resources for the recording or transcription of depositions; mandating that when a circuit discovers they no longer need a position due to the implementation of digital court reporting that the position will be credited to the statewide due process bank; establishing a target unit cost in order to provide an equitable methodology for allocating recurring court reporting resources to the circuits; mandating that no circuit shall have more than one Manager of Court Reporting Services and no more than one Digital Court Reporting Manager; and limiting court reporting due process contractual funding to the procurement of court reporting contractual services including equipment maintenance. However, it is unnecessary to create duplicative standards of operation or best practices referencing these already established policies.*

### ***I. Court Reporter Qualifications***

#### ***Standard of Operation:***

**Court reporting employees and contract service providers shall meet all professional standards and training requirements established by Florida statute, court rule, the State Courts System, and the chief judge of the circuit.**

#### ***Best Practices:***

**Court employees or contractors providing stenographic services for the State Courts System will achieve and maintain the designation of Registered Professional Reporter (RPR) as defined by the National Court Reporters Association.**

**Court employees or contractors providing digital court reporting or transcript services for the State Courts System will achieve and maintain certification with the American Association of Electronic Reporters and Transcribers (AAERT).**

**Court employees or contractors providing voice-writing services for the State Courts System will achieve and maintain certification with the National Verbatim Reporters Association (NVRA).**

**Judicial circuits shall ensure availability to real-time stenographic services, either through the use of court employees or contract service providers.**

### *Discussion*

The qualifications of court reporters have a significant impact on the effectiveness of court reporting services from the actual monitoring of a proceeding to the production of a quality transcript. The TCP&A, the Article V Indigent Services Advisory Board (January 2004 Final Report), and several circuits' administrative orders provide recommendations regarding court reporter qualifications. The most common is that stenographic court reporters achieve and maintain the designation of Registered Professional Reporter (RPR), as defined by the National Court Reporters Association. Some circuits recommend that stenographers receive a Certificate of Merit and/or real-time certification. Another common recommendation is for digital court reporters and transcribers to achieve and maintain certification with the American Association of Electronic Reporters and Transcribers (AAERT).

Florida Statutes have addressed standards for court reporters, procedures, and rules of professional conduct since 1995 in section 25.383, which currently states:

The Supreme Court shall establish minimum standards and procedures for qualifications, certification, discipline, and training for court reporters. The Supreme Court shall determine the amount of fees to charge applicants for certification and renewal of certification. Fees shall be set in an amount necessary to recover the full cost of administering the certification process. All proceeds from fees collected pursuant to this section shall be deposited into the Operating Trust Fund within the state courts. The Supreme Court may appoint or employ such personnel as are necessary to assist the court in exercising its powers and performing its duties under this section.

Establishing a court reporter certification program has been deliberated by the Supreme Court for many years, however, a program has yet to be instituted. The primary cause being the lack of positions appropriated by the legislature to perform the necessary duties involved in establishing and maintaining the program. Positions were requested on behalf of the Office of the State Courts Administrator during several budget years through the 1990's. These repeated requests proved unsuccessful. Subsequently, in June 1999, the Supreme Court held the rules of court associated with court reporter certification (rules 13.010 – 13.190) in abeyance pending adequate funding by the legislature. Since this time,

due to the focus on Revision 7 and due to the momentous effort required to initiate a court reporting certification program, requesting funding for the program has not been considered a priority.

The importance of using qualified employees and contractors cannot be overemphasized as a best practice, yet there are valid concerns about the high cost of achieving professional certification, when the cost of such certification is not funded by the state (pursuant to 216.345, Florida Statutes, professional and occupational fees are not an allowable expense) and because Florida does not have a court-sponsored certification program. Thus, mandating the certification of stenographers, digital court reporters, and transcribers as a standard of operation as opposed to a best practice is simply not realistic at this time. Similarly, real-time certification for court employees should not be mandated. However, circuits should at least ensure the availability of real-time contract service providers, should the need arise.

## *II. Oversight*

### *Standards of Operation:*

**Court reporting program employees and contract service providers are officers of the court and must comply with all applicable Florida statutes, court rules, and other requirements as established by the State Courts System and the chief judge of the circuit.**

**Judicial circuits shall comply with court reporting contracting requirements as established by the State Courts System.**

### *Discussion*

According to rule 2.535, Florida Rules of Judicial Administration, court reporters are considered officers of the court. Further, many circuit administrative orders address the use and status of contract service providers specifically stating that contractors, as officers of the court, must comply with all applicable rules, statutes, and other requirements as determined by the court. In order to effectuate adequate oversight and management of the court reporting process, both court employees and contract service providers should be considered officers of the court.

Recommendations have been made by several entities regarding contracting practices. In October 2004, the TCP&A sponsored a digital court reporting technical work session with court participants from around the state. The work session participants recommended

creating a centralized pool of contract stenographers, including those that specialize in real-time. The Florida Department of Management Services recommended in *Achieving Contracting Efficiencies in the State Courts System (January 2005)*, that a strategic sourcing methodology be used to develop a statewide contract to funnel volume to a single vendor. In its 2005 report, the TCP&A recommended that court reporting contracts be standardized statewide. Although implementing these or similar recommendations are not immediately feasible, circuits should comply with any requirements established by the State Courts System as they are developed.

### *III. Use of Clerk of Court Staff*

#### *Standard of Operation:*

**Judicial circuits shall not engage clerk of court staff to provide court reporting services, other than those services or responsibilities established by Florida statute, court rule, and the State Courts System.**

#### *Discussion*

In 2005, the TCP&A recommended that circuits not rely on clerk staff to facilitate the recording of court proceedings. During Revision 7 implementation, the role of the clerk was clearly differentiated from that of court administration and the judiciary. The taking of the official record of court proceedings at state expense was deemed the sole responsibility of the court. Further, during the Revision 7 transition, clerks began to either pull back from providing recording services or began to significantly increase their fees for continuing such services.

As of February 2007, approximately seven circuits still utilize clerk staff to perform court reporting duties. The duties performed by clerk staff range from monitoring proceedings recorded using cassette tapes to operating digital recording equipment and tagging recordings. Most clerks perform this work free of charge while in two circuits, the clerk is a contract service provider. Explanations for continuing to use clerk staff include: the long history of clerks providing these services prior to Revision 7; the cost-efficiencies experienced by courts whose clerks do not charge for these services; and the lack of employees or contractual funding required to take over these duties. Nevertheless, the use of clerk staff for court reporting services should be discontinued based on the principle that providing court reporting services is the responsibility of the court.

#### *IV. Cross-training*

##### *Best Practice:*

Judicial circuits shall explore cross-training initiatives with their court reporting employees for the provision of court reporting services.

##### *Discussion*

The October 2004, technical work session recommendations and some circuit administrative orders discuss cross-training court reporting employees. Specific recommendations include requiring digital court reporters to transcribe recordings when they are not monitoring proceedings and training stenographers to perform digital court reporting duties when proceedings may not require stenographic reporting. Cross-training, as a best practice, may assist certain circuits in attaining greater efficiency in their operations.

#### *V. Assigning Coverage*

##### *Best Practice:*

Court staff responsible for scheduling hearings and preparing dockets will provide dockets to the court reporting manager or other designated court administration professional or contract service provider as far in advance as possible to ensure adequate time to assign appropriate court reporting coverage of proceedings.

##### *Discussion*

Some circuit administrative orders address the need for the timely assignment of court reporting coverage. For example, administrative orders specify that those involved in scheduling hearings, provide dockets to the court reporting manager as far in advance as possible to ensure the timely scheduling of court reporters to cover hearings.

#### *VI. Eliminating Analog Recording*

##### *Best Practice:*

Judicial circuits shall refrain from utilizing analog audio recording and should attempt, where practical, to replace analog with digital recording capability.

### *Discussion*

Currently, eight judicial circuits are recording proceedings using analog tapes. In 2005, the TCP&A recommended that analog technology be replaced with digital recording technology for several reasons. First, digital audio quality is superior to analog in the way music on a CD is clearer and crisper than a cassette tape. With analog, audio quality frequently suffers when there is excessive background noise or a witness or defendant does not speak clearly and loudly. Second, analog tapes, often reused a number of times, deteriorate in quality to a point where they may become practically inaudible. Third, digital systems use higher quality microphones and employ sound-enhancing techniques such as speaker-isolation, which allow the court reporter to screen out superfluous sounds, and utilize clean-up processes to filter out background noise. Fourth, digital recordings may be inexpensively stored to a server where the quality of the recording does not deteriorate, while analog tapes consume considerable storage space and are easily damaged. Perhaps most importantly, analog recording does not allow for tagging and thus does not provide the same benefits for playback and transcription. There are fiscal implications of replacing analog recording with digital capability; however the elimination of analog recording should be pursued as funding permits.

### *VII. Service Delivery Models*

#### *Best Practice:*

Judicial circuits shall implement procedures for assigning court reporting coverage of proceedings recorded at public expense as follows:

#### **Circuit Criminal**

- Trials- *real-time, CAT, or digital recording*
- Capital cases- *real-time or CAT*
- All other proceedings- *stenography or digital recording*

#### **County Criminal**

- Trials- *digital recording*
- All other proceedings- *digital recording*

#### **Family Court**

- Delinquency- *stenography or digital recording*
- Dependency- *stenography or digital recording*
- Termination of Parental Rights- *stenography or digital recording*
- Crossover cases- *stenography or digital recording*

Domestic Violence Injunctions, all proceedings- *digital recording*

Baker Act/Marchman Act/Guardianship/Jimmy Ryce, all proceedings- *digital recording*

General Magistrate/Hearing Officer proceedings- *digital recording*

Proceedings taking place outside of regular court hours- *digital recording*

### *Discussion*

Since Revision 7, both the TCP&A and the TCBC have supported the concept that quality court reporting services should be provided in the most cost-efficient manner possible. The TCP&A specifically recommended in 2005 that the use of stenographic reporting and digital recording be balanced to maximize service delivery and minimize expenditures. Many circuit administrative orders reflect this same goal. The National Association of Court Management also addressed this issue in a *Mini-Guide on Making the Verbatim Court Record* issued in June 2007. Specifically, this publication provides decision criteria for identifying the most appropriate and cost effective method for producing the verbatim record. The criteria offered as decision factors in choosing between stenographic reporting and digital reporting for individual cases includes the probability that a transcript will be requested and the likelihood that transcripts will be requested on a daily basis.

From an effectiveness standpoint, 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 level. The transcript of the words spoken in open court is essential to attorneys in preparing arguments for appeal, as well as for the court in reviewing the appeal. Therefore, court proceedings must be recorded in a manner that allows for the production of a quality transcript if the need to appeal arises. Up until the last decade or so, stenography has been the only court reporting method readily available to the courts. Currently, digital technology is not only readily available, but is widely used throughout the trial courts. Despite the method used, the court system must ensure that all service delivery models are steadfast in the ability to accurately capture the events of a proceeding. Standards and best practices throughout this report speak to this necessity.

From a cost-efficiency standpoint, the court system must be accountable for the resources it expends on court reporting services. As less than 2% of trial court cases are appealed, including county cases appealed to circuit court, the need for transcription is also extremely low when compared to the total number of proceedings recorded. With this in mind, the court system is in a position to prioritize the use of certain service-delivery models in order to maximize resource utilization. For instance, the main advantage of real-time and

CAT stenography is the ease in producing a transcript, given that these types of stenographers are available and will perform these services at an affordable price. Thus, for proceedings with a greater likelihood of a transcript being requested, it is logical to prioritize those proceedings for real-time or CAT coverage. However, the consensus appears to be that most proceedings recorded at public expense should be covered with digital recording technology. The reasoning behind this relates to the ability of digital technology to provide expanded coverage of proceedings, decrease workload demands, and reduce the cost of staff.

First, digital technology allows for multiple proceedings to be monitored simultaneously by a digital court reporter, as opposed to having a stenographer in each room covering one proceeding at a time. Further, given transcripts are not provided for the majority of proceedings, it is unnecessary for stenographers to record all proceedings. The accessibility of digital recordings also allows for a media copy to be provided as an alternative to a transcript, thus reducing the overall workload of state funded employees or contractors. Additionally, providing media copies may significantly reduce the time between the request and transmittal. This is mainly due to the fact that digital recordings are stored on servers or back-up media. Those internal to the court, such as court reporting managers and judges, may have almost immediate access to files stored on the server. For those external to the court, a copy of the recording may be downloaded to a CD/DVD within minutes. However, the need to review a recording and remove confidential information increases the workload and time to prepare a media copy for public release. Finally, digital court reporters salaries are comparably lower and they are becoming more widely available than stenographers. In Florida's trial courts, a digital court reporter minimum salary is approximately \$11,000 less annually than a lower level stenographer (Court Reporter I) and \$15,000 less than a higher level stenographer (Court Reporter II). Several circuits have reported difficulty in hiring employee and contract stenographers who are willing to monitor proceedings and produce transcripts for a salary or fee the court is able to pay.

Another consideration in recommending service delivery models is the market conditions of circuits across the state. For instance, some circuits have ample access to employee or contract stenographers who are willing to work at prices the court can afford, other circuits may not. Some circuits may have access to a digital court reporting contractor that provides extremely competitive rates while other circuits may not. For transcript production in particular, some circuits may find it more timely and cost-efficient to have digital court reporters or contractors produce transcripts instead of employee stenographers, while other circuits may have the opposite experience. These variations are the current reality of court reporting in Florida. At this point in time, mandating one service delivery model for all circuits would not guarantee a positive or equitable impact on the effectiveness, efficiency, and timeliness of the court reporting process across Florida's trial courts.

Due to the variation in market conditions around the state, circuits need to maintain a certain amount of flexibility in determining what type of service delivery model is most efficient and effective for their courts. However, for the court system to be accountable for state-funded resources, there is a need for best practices to be identified regarding the use of each service delivery model. Thus, digital court reporting *alone* should be used for county criminal, domestic violence injunction, Baker Act, Marchman Act, guardianship, Jimmy Ryce, and general magistrate/hearing officer proceedings. Digital court reporting is also recommended for proceedings that take place outside of the regular business hours of the court. In other words, digital technology should be used at times when proceedings are not typically scheduled, such as late at night or on weekends, and the cost of court reporting services may be particularly expensive. Either stenography *or* digital court reporting should be used for circuit criminal, delinquency, dependency, termination of parental rights, and crossover cases (Unified Family Court cases). Real-time or CAT stenography should be prioritized for circuit criminal trials and capital cases.

### ***VIII. Monitoring Ratios***

#### ***Best Practice:***

Judicial circuits shall implement procedures for assigning the monitoring of proceedings recorded at public expense using the following ratios of the number of proceedings vs. court reporters.

#### **Circuit Criminal**

- Trials- ***1:1***
- Capital cases- ***1:1***
- All other proceedings- ***3:1***

#### **County Criminal**

- Trials- ***1:1***
- All other proceedings- ***3:1***

#### **Family Court**

- Delinquency- ***2:1***
- Dependency- ***2:1***
- Termination of Parental Rights- ***1:1***

**Domestic Violence Injunctions, all proceedings- *3:1***

Baker Act/Marchman Act/Guardianship/Jimmy Ryce, all proceedings- *4:1*

General Magistrate/Hearing Officer proceedings- *4:1, if monitored by a digital court reporter as opposed to the presiding magistrate or hearing officer*

### *Discussion*

Appropriate monitoring ratios are critical in ensuring the quality of the record. At the October 2004 technical work session, participants recommended that standardized monitoring ratios be established for digital court reporting. The TCP&A endorsed this recommendation in 2005. The technical work session participants and the TCP&A recommended that digital court reporters provide simultaneous coverage of only the number of proceedings that allow them to effectively monitor and tag the recordings of those proceedings. Technical work session participants recommended the standard of two proceedings monitored for every one digital court reporter (2:1), except for circuit criminal proceedings, in which the ratio would be one proceeding monitored for every one digital court reporter (1:1). The work session participants also discussed the possibility that for proceedings of very low complexity or with a very low likelihood that a transcript will be requested, a ratio of up to 4:1 may be acceptable. Further, the TCBC has recently expressed interest in pursuing standardized monitoring ratios for use in the analysis of legislative budget requests and to support the equitable allocation of resources across circuits.

Thus, to ensure the effective monitoring of proceedings and to support the statewide equitable allocation of resources, there is a need for best practices to be identified regarding monitoring ratios. Proceedings monitored by a stenographer will automatically be a 1:1 ratio, although digital court reporters may also monitor at a 1:1 ratio. Any ratio above 1:1 equates to those proceedings being monitored using digital technology.

Circuit criminal trials, capital cases, county criminal trials, and termination of parental rights proceedings should be monitored at a 1:1 ratio. Delinquency and dependency proceedings should be monitored at a 2:1 ratio. All other circuit and county criminal proceedings and domestic violence injunction proceedings should be monitored at a 3:1 ratio. Baker Act, Marchman Act, guardianship, and Jimmy Ryce proceedings should be monitored at a ratio of 4:1. However, this ratio may be lowered to 1:1 if these proceedings are held offsite and/or the presiding judicial officer is using a portable digital device. General magistrate/hearing officer proceedings should also be monitored at a ratio of 4:1, if monitored by a digital court reporter as opposed to the presiding magistrate or hearing officer.

The above ratios are recommended as a best practice with the understanding that there will often be exceptions, especially in consideration of the various types of proceedings that may occur under each case type such as motion hearings and evidentiary hearings held prior to trial in criminal cases. It is also important to note that monitoring is only one part of the court reporting function. When reviewing the actual monitoring practices of a circuit, especially in the evaluation of resources requests, consideration should also be given to the time required for coordination and transcript activities to provide a comprehensive view of a court's staffing complement. In the future, further analysis should be conducted regarding the efficiency and effectiveness of certain staffing models within existing market conditions around the state.

## ***IX. Participant Responsibilities***

### ***Standard of Operation:***

Judicial circuits shall codify the responsibilities of all participants during a proceeding to ensure the quality of the official record.

### ***Best Practices:***

Judges, general magistrates, and hearing officers shall: notify participants of the method of recording being utilized, remind participants to speak into the microphone at a sufficient volume and answer verbally; ask participants to identify themselves and spell their names for the record; notify court administration, the clerk, or contract service provider if equipment has been tampered with or is not functioning; remind participants to protect the equipment; signify when it is appropriate for attorneys to utilize mute buttons; and recess periodically during lengthy proceedings so that court reporters may remain alert and effective.

Attorneys shall inform their clients of the method of recording being utilized and take necessary precautions to protect disclosure of confidential communications during the proceeding.

Court reporters shall monitor equipment during a proceeding to ensure adequate operation and immediately notify the presiding judicial officer of problems with the equipment.

Bailiffs 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.

### *Discussion*

Many circuit administrative orders already provide for clarification on the role of the various participants during a proceeding. Judges, magistrates, and hearing officers are responsible for: reminding participants to speak into the microphone at a sufficient volume and to answer verbally; asking participants to identify themselves and spell their names for the record; notifying court administration, the clerk, or service provider if equipment has been tampered with or is not functioning; reminding participants to protect the equipment, and signifying when it is appropriate for attorneys to utilize mute buttons. Judges, magistrates, and hearing officers are also encouraged to recess periodically during proceedings so that court reporters may remain alert and effective. Bailiffs are often held responsible for ensuring that participants refrain from tampering with equipment. Court reporters are responsible for monitoring equipment during a proceeding to ensure adequate operation and for immediately notifying the presiding judicial officer of problems with equipment. Many of these responsibilities apply not only to digital court reporting, but to all court reporting methods.

Requiring circuits to codify participant responsibilities, whether through circuit administrative order or by other means, is useful in educating stakeholders of their role during a proceeding. The documentation should also include the responsibilities of attorneys, especially related to protecting confidential attorney/client communications per the proposed revision to rule 2.535, Florida Rules of Judicial Administration.

## ***X. Preventing the Recording of Confidential Communications***

### ***Standard of Operation:***

**Judicial circuits shall post signs inside and outside of all rooms in which proceedings are recorded using audio technology. The signs shall provide notice to all who enter that any conversations occurring in the room may be recorded.**

### ***Best Practices:***

**Judicial circuits shall post signs at attorney tables within rooms in which audio technology is used to record proceedings. The signs shall caution attorneys and their clients that their conversations may be recorded.**

**Judicial circuits shall install microphones with “hold-to-mute” capability for those microphones used by attorneys or presiding judicial officers in proceedings recorded using non-portable digital technology.**

Judicial circuits shall conduct periodic training for stakeholders commonly coming into contact with the use of audio recording technology. The training shall include a description of how the technology is operated and tips for effective courtroom behavior specific to the stakeholder.

Judicial circuits shall distribute and/or make readily available audio recording resource materials (i.e., pamphlets, guide books, operator manuals, etc.) for stakeholders to assist with ensuring the quality of the official record.

### *Discussion*

Many courts post signs outside of all rooms in which proceedings are recorded using audio technology. The signs provide notice to all who enter that any conversations occurring in the room may be recorded. Signs may also be placed at attorney tables to remind them that conversations with their clients will be recorded unless mute buttons are activated (many circuits provide mute buttons at the attorney tables). Judges may also have mute capabilities or “kill switches” at the bench in order to protect “off the record” discussions occurring in the courtroom and at the bench. Some circuits, especially at first implementation of digital technology, provide training to court stakeholders such as state attorneys, public defenders, court-appointed counsel, and others regarding how the technology works. The trainings also provide a forum for explaining the sensitivity of microphones and how to avoid the digital system picking up private conversations.

The prevalence of confidential communications being inadvertently captured by digital recording systems is unknown. What is known is that since the inception of digital recording in Florida's trial courts over a decade ago, a number of cases have been filed at the appellate level pertaining to this issue. Therefore, every effort should be taken to inform and educate stakeholders so as to prevent the recording of confidential communications. Most circuits already post signs regarding the use of digital technology and as such, this should be a standard of operation. The other techniques suggested as best practices above, along with those mentioned under the “responsibilities of participants,” will reduce the possibility that confidential communications will be recorded.

## *XI. Operating Digital Recording Equipment*

### *Standards of Operation:*

Digital recording systems shall comply with all statewide standards for digital court recording as established by the Florida Courts Technology Commission.

Judicial circuits shall implement procedures for regular testing of digital court recording systems to ensure proper operation.

*Discussion*

The FCTC and several circuit administrative orders provide standards for operating digital recording equipment to ensure that proceedings are accurately captured. In June 2003, the FCTC released *Standards for Integrated Digital Court Recording Technology* providing significant detail on the requirements for digital operating systems. The TCP&A endorsed these standards in 2005. Numerous circuit administrative orders generally refer to operating digital equipment in a manner to ensure appropriate “audio levels and sound quality” so as to protect the integrity of the record. Some circuits require that at the beginning of each court session, all equipment be tested to establish that all microphones, appliances and peripherals are operating appropriately.

***XII. Tagging the Digital Recording***

***Standards of Operation:***

Judicial circuits shall ensure appropriate tagging of digital recordings is performed for proceedings in which there is a significant likelihood that transcripts will be requested.

Judicial circuits shall establish standardized “tags” and produce a reference document of same to be distributed to all circuit court reporting staff, contract service providers, and approved transcriptionists.

*Discussion*

As previously discussed with monitoring ratios, tagging the digital recording is critical to ensure the effectiveness of the court reporting process. Digital court reporters tag case identifiers and the events of the proceeding that are digitally saved with the recording. The tags literally act as an index for playback and allow the user to quickly move to a specific part of the recording such as when a particular witness took the stand. The tags also assist in creating a transcript, if one is necessary. To assist with the production of transcripts, circuits should ensure that tagging is performed for proceedings in which there is a greater likelihood that transcripts will be requested. Further, as the person monitoring a proceeding is often not the same person that will be producing the transcript, circuits should develop and use standard tags so that other court employees or contract service providers may easily interpret tags created by another person. This will increase productivity, timeliness, and quality of the

transcript produced from digital recordings.

### *XIII. Ownership of the Official Record*

#### *Standard of Operation:*

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

#### *Discussion*

Historically, there has been a lack of clarity as to ownership of records produced at state expense. If a contract service provider records proceedings and/or stores notes, transcripts, or audio recordings, questions have been raised as to whether the contractor owns these documents. In 2005, the TCP&A clarified that the court should maintain ownership and control of the record. The Article V Indigent Services Advisory Board also determined in its January 2004 Final Report that, "courts must have the ability to maintain control and ownership of the record of court proceedings." Therefore, in conjunction with the proposed revision to rule 2.535, Florida Rules of Judicial Administration, this standard clarifies the ownership of the record. This standard also clarifies that the court reserves the right to full and complete access to unedited notes, paper tapes, electronic files, and audio or video recordings used to create the official record. This is especially critical in situations where there is difficulty in obtaining the transcript of a proceeding, such as when a contracted court reporter or firm permanently closes for business.

### *XIV. Storage*

#### *Standards of Operation:*

Judicial circuits, contract service providers, and vendors of digital technology shall comply with all storage and retrieval standards for digital court recording as established by the Florida Courts Technology Commission and otherwise established by the State Courts System and the chief judge of the circuit.

Judicial circuits shall codify record retention protocols to be applied to stenographic paper tape/notes, unedited CAT/real-time text, analog and digital recordings in accordance with rule 2.430, Florida Rules of Judicial Administration.

Judicial circuits shall implement storage and retrieval procedures to ensure timely and secure access to transcripts, analog or digital recordings, and any supporting materials related to the production of the official record.

*Best Practices:*

Judicial circuits shall examine the provision of secure and direct access to a network of electronic files and digital recordings related to the official record for certain internal stakeholders of the court such as court reporting employees, judges, general magistrates, and hearing officers. Circuits shall also examine the feasibility of providing limited and secure access to other stakeholders such as state attorneys, public defenders, and court-appointed counsel.

Judicial circuits shall not disclose back-up recordings of proceedings to persons not employed or contracted by the court.

*Discussion*

The physical storage of transcripts, analog or digital recordings, and any supporting materials is directly related to protecting the official record or the ability to create the record if needed. The FCTC has approved standards (see Appendix D) regarding back-up, storage, and archiving of digital recordings in order to ensure that integrity is maintained. These standards, which go into significant detail, were endorsed by the TCP&A in 2005. Generally, when using remote/centralized or stand-alone systems, redundant back-up recording is required to ensure failsafe recording of the proceeding. This back-up system must operate independently of the primary recording with fault tolerant operations. To protect the failsafe recording process, participants in the proceeding should *not* have the capability to turn off or mute back-up systems.

According to the FCTC standards, digital recordings must be stored/archived to servers using a relational database management system containing a centralized and distributed index that is also redundant and failsafe. Security controls must also be in place to prevent unauthorized access and the system must support the ability to seal all or portions of the captured recordings utilizing authorization, encryption, and seal keys.

The timeliness of access to stored transcripts, analog or digital recordings and other supporting materials is also of importance. The FCTC and some circuit administrative orders provide that documents and recordings be stored in accordance with court rule and in a manner that allows for quick and easy access. The FCTC specifically requires that digital recordings be indexed using an automatic numbering scheme for labeling and easy identification for retrieval. Some circuits currently provide access to digital recordings on a

network for internal court personnel and with limited access for attorneys of record. This reduces the amount and time required to create media copies and transcripts in these circuits.

Circuits, along with contractors and digital technology vendors, should be mandated to adhere to FCTC storage and retrieval standards. Circuits should also be required to codify related procedures and retention schedules in their court reporting administrative order or by other means. To improve the efficiency and timeliness of the court reporting process, circuits should consider providing direct and secure access to court reporting files stored on the court network for internal court personnel and providing limited access to attorneys. Finally, to protect the need for redundant failsafe recording of court proceedings, back-up recordings should not be subject to disclosure per the proposed revision to rule 2.535, Florida Rules of Judicial Administration.

## *XV. Transcript Production*

### *Standards of Operation:*

**Transcripts may only be produced by employee or contract court reporters and transcriptionists approved by the court in accordance with rule 2.535, Florida Rules of Judicial Administration.**

**All persons approved by the court to perform court reporting transcription services shall comply with all applicable court rules and standards established by the State Court System and the chief judge of the circuit.**

**All judicial circuits shall codify protocols for transcript production in accordance with court rule and standards established by the State Court System. These protocols shall include, but are not limited to: procedures preventing transcription of off-the-record discussions, sidebar conferences, and attorney-client conversations; the court's process for approving transcription services; and certification of the transcript for correctness.**

**Judicial circuits shall 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 in accordance with rule 2.535, Florida Rules of Judicial Administration.**

**All persons approved by the court to perform court reporting transcription services shall give priority to capital cases in the production of transcripts.**

Judicial circuits shall prohibit the “loaning out” of stenographic notes in capital cases to ensure the court reporter has immediate access to the notes for production of the transcript.

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 (if applicable).

Judicial circuits shall incorporate requirements related to expedited transcript requests in court reporting service contracts.

Judicial circuits shall specify consequences for contractors who fail to meet expedited transcript requirements in court reporting service contracts.

*Best Practices:*

Judicial circuits shall encourage collegiality between all persons involved in expediting transcripts for capital cases.

Judicial circuits shall collaborate with appellate courts regarding the oversight and management of the court reporting process, with particular emphasis on the production of transcripts for capital, dependency, and termination of parental rights cases.

When requested, judicial circuits may provide a transcript for: appellate review, other purposes in which a transcript is considered a necessity by the court in the best interest of justice, or if an audio/video file is unavailable. A copy of the audio/video file, if available, shall be provided for all other purposes to the extent allowable under court rule.

*Discussion*

Standards and procedures for transcript production have been thoroughly covered in court rules. Rules of Appellate Procedure require that transcripts be submitted, in both a paper and electronic format, as a part of the record for the purpose of appeal. Clearly, the quality of appellate review is highly dependent on the quality of the transcript. Thus, most circuit administrative orders have requirements for producing transcripts. These administrative orders provide for a number of recommendations including: transcripts shall be produced in accordance with court rule and procedures designated by court administration (including procedures for transcribing off-the-record discussions, sidebar conferences, and attorney-client conversations); transcripts will not be produced without

approval of the court; transcripts shall be certified for correctness; and transcripts may only be produced by court reporters or transcriptionists approved by the court.

Rule 2.535(h), Rules of Judicial Administration, provides the following language pertaining to capital cases:

The chief judge, after consultation with the circuit court judges in the circuit, shall enter an administrative order developing and implementing a circuitwide plan for court reporting in all trials in which the state seeks the death penalty and in capital postconviction 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.

Circuit administrative orders pertaining to capital cases provide a variety of measures to ensure expedited preparation of transcripts for these proceedings. These measures include dictating that transcript production in these cases will have priority over all other transcription requests; mandating collegiality between all persons involved in expediting these transcripts; prohibiting the "loaning out" of transcription notes to anyone including attorneys, judges, or clerks in order to ensure the court reporter will have immediate access to produce the transcript; upon the return of the verdict- requiring judges to give immediate instruction to the court reporter to begin transcription; providing immediate court order approving the production of the transcript; setting requirements for contract service providers in expediting transcripts; and specifying consequences for contractors who fail to meet expedited transcript requirements.

In dependency and termination of parental rights (TPR) cases, both the American Bar Association (ABA) and the National Council of Juvenile and Family Court Judges (NCJFCJ) have proposed timelines for record transmittal between the trial and appellate court. The ABA recommends transmittal within a maximum of 20 days of filing a notice of appeal while the NCJFCJ recommends a standard of 30 days. These standards were recently discussed in a preliminary and a supplemental report submitted to the Supreme Court by the Commission on District Court of Appeal Performance and Accountability (DCAP&A) pertaining to delay in child dependency and TPR appeals. In their examination of each of Florida's districts, the DCAP&A found that these standards were not being met for the majority of dependency and

TPR appeals filed but are beginning to improve as awareness regarding this issue increases. One conclusion of the DCAP&A was that a significant portion of delay on appeal occurs in the time required to obtain the record, transcript and briefs of the parties. The DCAP&A has recommended that “court reporters and transcriptionists must be made aware that these cases are to be given priority over other cases...such directives must be made in the rules and enforced by the judges.” The DCAP&A recommended that the directions to the clerk and the designations to the court reporter be filed at the same time that the notice of appeal is filed and that the Rules of Judicial Administration include a provision requiring that transcription of hearings for these appeals be given priority over the transcription of all other proceedings both in the trial and appellate court.

As may be noted from the above discussion, a significant amount of thought has been given to the quality and timeliness of transcript production. Less focus has been given to determining when it may be necessary to produce a transcript. This report recommends the use of digital technology based on effectiveness, cost-efficiency, and timeliness factors. In order for Florida's trial courts and the State Courts System as a whole to attain the optimum benefit from the use of digital technology, the trial courts must examine when and why they produce a transcript versus providing a media copy.

It is clear from court rule that there is a legal requirement for a transcript to be produced for the purpose of appellate review. Other situations may also require a transcript to be produced such as when motions to suppress are filed, for plea and sentencing hearings, etc. The need to produce a transcript could also vary by the person requesting the transcript. For internal stakeholders such as judges, providing a copy of a digital recording or providing access to the network is less costly and provides quicker access. If a member of the public requests a transcript, a media copy may also be a viable option unless the person in question is filing an appeal pro se' or does not have access to the technology required for playback such as a CD or DVD player (e.g., prison inmate). However, for the general population and certainly the press, providing media copies would be a viable option. For attorneys, providing a media copy or limited access to the network would also be a viable option unless they require the transcript for appeal or in other situations that the court deems a necessity. Overall, in the majority of cases, media copies are a viable alternative to providing a transcript and allow for the greatest maximization of resources.

## *XVI. Producing Copies of Recordings*

### *Standard of Operation:*

**All judicial circuits shall codify protocols for producing copies of audio/video recordings in accordance with court rule and standards established by the State Court**

System. These protocols shall include, but are not limited to: procedures preventing the release of off-the-record discussions, sidebar conferences, and attorney-client conversations to the public; the court's process for ensuring the accuracy of the recording; and certification of the recording for correctness.

### *Discussion*

The only absolute method for preventing the release of confidential information on audio/video recordings to the public is to review the recording before it is copied and provided. The workload and fiscal implications of this recommendation may be far reaching for Florida's court system. However, the proposed standards and best practices under "participant responsibilities" and "preventing the recording of confidential information" should help curtail this fiscal impact on the front-end of the court reporting process. Thus, in relation to the proposed revision to rule 2.535, Florida Rules of Judicial Administration, circuits should codify protocols for producing copies of audio/video recordings.

## *XVII. Cost Sharing*

### *Best Practices:*

Judicial circuits using state funded court employees to provide transcription services for public defenders, state attorneys, and court-appointed counsel shall operate under the cost sharing arrangement.

When requested, judicial circuits operating under the cost sharing arrangement may provide transcripts to the state attorneys, public defenders, and court-appointed counsel for: appellate review, other purposes in which a transcript is considered a necessity by the court in the best interest of justice, or if an audio/video file is unavailable. A copy of the audio file, if available, shall be provided to these entities for all other purposes to the extent allowable under court rule.

Judicial circuits operating under the cost sharing arrangement are required to provide a "statement of services provided" to local state attorneys and public defenders, the Justice Administrative Commission, and the Office of the State Courts Administrator. The "statement of services provided" shall include those services that will or will not be provided by state-funded court employees versus those services that may be purchased independently from contractors. This documentation shall also include services provided or not provided by division of court, proceeding type, and any variation that exists by county and/or courthouse. The "statement of services

provided” shall include a corresponding time period in which these terms are in effect and shall be no less than one fiscal year (July 1 – June 30).

### *Discussion*

Since July 1, 2004, the legislature has authorized cost sharing for court reporting transcription services that the trial courts provide to the state attorneys, public defenders, and the Justice Administrative Commission (on behalf of court-appointed counsel). Quarterly payments from these entities to the State Courts System are mandated via proviso language in the General Appropriations Act and have totaled approximately \$4 million annually in FY 2005-06 and FY 2006-07. This funding is intended to cover a portion of the cost of court employees and is applied to trial court payroll obligations. The cost sharing funding formula is \$7 multiplied by the number of transcript pages produced by the court for each entity.

During the 2006 Legislative Session, the State Courts System requested an increase in the funding received from these entities based on an updated count of transcript pages from FY 2005-06. The legislature did not approve this request. Further, during the 2007 Legislative Session, the legislature decreased the amount that the Justice Administrative Commission is required to submit to the State Courts System by approximately \$800,000 on behalf of newly formed regional counsels. However, according to the FY 2007-08 General Appropriations Act, the legislature allowed for this funding to be recouped by the court system through cost recovery collections.

Fourteen circuits are included in the current cost sharing arrangement. The circuits included are those that use court employees to produce transcripts for state attorneys, public defenders, and court appointed-counsel (as reported by the circuits in a March 2004 survey). In the other six circuits, these entities are directly responsible for having transcripts produced and paying for those transcripts. Section 29.0195, F.S. dictates that the courts may not charge state attorneys, public defenders, and court-appointed counsel for transcript production. However, the cost sharing arrangement was designed so that these outside entities could have access to transcripts for proceedings monitored by court employees and the court system could be reimbursed for transcripts produced on their behalf. This arrangement also requires each entity to pay for their share of the work and allows the State Courts System to justify the number of court reporting staff employed in the circuits.

Aside from the difficulty experienced by the court system in receiving the appropriate level of funding from these entities, certain concerns have arisen with regard to the cost sharing arrangement. First, of the circuits *not* participating in the cost sharing arrangement, some provide state-funded transcription services for the public defender, state attorney, and court-appointed counsel using court resources. This basically equates to the court system

providing free services to these entities without compensation. Second, even though the cost sharing arrangement was intended, on the part of the court, to cover costs associated with *employees* producing transcripts; many circuits find it to be an operational necessity that at least some portion of transcripts produced for these entities be provided by contract service providers. This in essence equates to some trial courts acting as the “middle man” between outside entities and the contract provider. Further, the funding received at the state level from these entities reimburses employee costs, not contractual costs. Thus, there may be difficulty reconciling the need for contractual resources to cover services performed for these entities.

Third, for circuits participating in the cost sharing arrangement, when a transcript of a proceeding has been requested by the state attorney, public defender, or conflict counsel; some circuits provide a transcript and some provide a media copy. If a media copy is provided, the entity in question may then be responsible for the preparation and payment of the transcript independent of the court. Practices vary across the state depending on proceeding type, service delivery model, and staffing model and have been a moving target over the last few years with the increased implementation of digital technology. These variations in practice cause significant confusion as to what services are being covered through the quarterly payments provided at the state level. In fact, the State Courts System has been questioned about possible “double billing” because of this confusion. Fourth, limited documentation exists as to the specific terms (types of proceedings, employee v. contract, etc.) of the cost sharing arrangement both at the state and local levels. This is a major contributing factor to the confusion experienced regarding the overall cost sharing arrangement.

The relationship between the trial courts and the state attorneys, public defenders, and Justice Administrative Commission in dealing with transcription services is directly linked to the overall efficiency and effectiveness of the court reporting process. However, the future of the cost sharing arrangement is currently unclear. Several potential scenarios may occur including:

- continuation of the cost sharing arrangement under an *employee only* or *employee/contractor* model;
- creating a cost recovery arrangement under an *employee only* or *employee/contractor* model; or
- moving the cost sharing dollars or absorbing the expenses related to cost sharing into the court's budget under an *employee only* or *employee/contractor* model.

Continuing the cost sharing arrangement under an *employee only* model is based on the idea that the court is not responsible for directly overseeing the production of all transcripts as long as the court approves those permitted to produce transcripts. Further, this

model is also based on the courts not acting as the “middle man” between the contractor and the state attorneys, public defenders, and court-appointed counsel. Under this scenario, the eight circuits currently using contractors to provide transcription services to state attorneys, public defenders, and court-appointed counsel would no longer be able to continue this practice. They would instead instruct these entities to directly contact the contractor to request and pay for a transcript. For this reason, these circuits would need less contractual funding to cover court reporting services. For most circuits, the change would likely be minimal as they do not use a significant amount of contractual funding to cover transcription services for these outside entities. For one circuit with a considerable contractual model, this could equate to a major adjustment in their contractual costs and may even lead to a long-term change in their service delivery and staffing models.

Continuing the cost sharing arrangement under an *employee/contractor* model supports the idea that the court should have direct oversight of the production of all transcripts and thus should act as the “middle man.” Under this scenario, the majority of circuits in the state would be required to provide transcription services for the state attorneys, public defenders, and court-appointed counsel that they are not currently providing, as these circuits provide media copies and/or have the outside entities deal directly with contractors for transcript production. This scenario could equate to a significant increase in the amount of resources that the circuits would need in order to provide transcription services directly for the state attorneys, public defenders, and court-appointed counsel.

Creating a cost recovery arrangement supports the idea that outside entities should be separately responsible and accountable for the resources expended for transcript production. The court system would not have to request that the legislature approve the quarterly transfer of funding at the state level each year. Instead, the courts would receive direct payment from the state attorneys, public defenders, and court-appointed counsel as transcripts are requested. The outside entities would then be directly responsible for requesting the resources they need from the legislature for transcript production. However, section 29.0195, F.S. would need to be amended to allow the court system to collect cost recovery from these entities. Further, the significant increase in cost recovery transactions may be a workload issue for court administration at both the state and local levels.

Permanently moving the cost sharing dollars to the court's budget also lessens the burden on the court system, year after to year, in requesting that the legislature approve quarterly payments from the state attorneys, public defenders, and the Justice Administrative Commission. However, the court system would be taking on the full burden of accountability for resources expended in the production of transcripts for these outside entities. This is a position the courts have attempted to move away from since Revision 7. If the court system absorbs cost sharing expenses into the trial court budget, it is even more

critical that the trial courts clarify and refine policies related to transcription services for these entities, especially as they relate to cost-efficiency.

Some of the same implications discussed above regarding the *employee only* vs. *employee/contractual* models would be similar under a cost recovery arrangement or if the courts absorb cost sharing expenses. Instead of requiring the circuits to operate under one of the models, it may be possible to allow the circuits flexibility as to what model they use. However, the circuits should be required to document a detailed breakdown of the services provided and not provided and communicate this to the local state attorneys and public defenders, the Justice Administrative Commission, and the Office of the State Courts Administrator.

Without having access to the detailed fiscal implications, but following a general review of these scenarios, the TCP&A recommends continuing the cost sharing arrangement under an *employee only* model and offers the best practices noted above. Even if one of the other scenarios is applied, the recommended best practices may be adjusted while still retaining the basic principles listed below.

- All circuits providing transcription services to the state attorneys, public defenders, and court-appointed counsel should be required to operate under the arrangement.
- A transcript should only be provided to these entities if requested for appellate review, for other purposes in which a transcript is considered a necessity by the court, or if an audio/video file is unavailable.
- A “statement of services provided” should be developed by each circuit and communicated to state attorneys, public defenders, the Justice Administrative Commission, and the Office of the State Courts Administrator.

## Appendix A – Rule Revisions

### **RULE 2.420, FLORIDA RULES OF JUDICIAL ADMINISTRATION Public Access to Judicial Branch Records**

(a) GENERALLY. Subject to the rulemaking power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern public access to the records of the judicial branch of government. The public shall have access to all records of the judicial branch of government, except as provided below.

(b) DEFINITIONS.

(1) "Records of the judicial branch" are all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of:

(A) "court records," which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, ~~and electronic records, videotapes, or stenographic tapes of court proceedings;~~ and

(B) "administrative records," which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity, except electronic records of court proceedings that are governed by rule 2.535.

(2) "Judicial branch" means the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all other entities established by or operating under the authority of the supreme court or the chief justice.

(3) "Custodian." The custodian of all administrative records of any court is the chief justice or chief judge of that court, except that each judge is the custodian of all records that are solely within the possession and control of that judge. As to all other records, the custodian is the official charged with the responsibility of maintaining the office having the care, keeping, and supervision of such records. All references to "custodian" mean the custodian or the custodian's designee.

(c) EXEMPTIONS. The following records of the judicial branch shall be confidential:

(1) Trial and appellate court memoranda, drafts of opinions and orders, court conference records, notes, and other written materials of a similar nature prepared by judges or court

staff acting on behalf of or at the direction of the court as part of the court's judicial decision-making process utilized in disposing of cases and controversies before Florida courts unless filed as a part of the court record;

(2) Memoranda or advisory opinions that relate to the administration of the court and that require confidentiality to protect a compelling governmental interest, including, but not limited to, maintaining court security, facilitating a criminal investigation, or protecting public safety, which cannot be adequately protected by less restrictive measures. The degree, duration, and manner of confidentiality imposed shall be no broader than necessary to protect the compelling governmental interest involved, and a finding shall be made that no less restrictive measures are available to protect this interest. The decision that confidentiality is required with respect to such administrative memorandum or written advisory opinion shall be made by the chief judge;

(3) (A) Complaints alleging misconduct against judges, until probable cause is established;

(B) Complaints alleging misconduct against other entities or individuals licensed or regulated by the courts, until a finding of probable cause or no probable cause is established, unless otherwise provided. Such finding should be made within the time limit set by law or rule. If no time limit is set, the finding should be made within a reasonable period of time;

(4) Periodic evaluations implemented solely to assist judges in improving their performance, all information gathered to form the bases for the evaluations, and the results generated therefrom;

(5) Only the names and qualifications of persons applying to serve or serving as unpaid volunteers to assist the court, at the court's request and direction, shall be accessible to the public. All other information contained in the applications by and evaluations of persons applying to serve or serving as unpaid volunteers shall be confidential unless made public by court order based upon a showing of materiality in a pending court proceeding or upon a showing of good cause;

(6) Copies of arrest and search warrants and supporting affidavits retained by judges, clerks, or other court personnel until execution of said warrants or until a determination is made by law enforcement authorities that execution cannot be made;

(7) All records made confidential under the Florida and United States Constitutions and Florida and federal law;

(8) All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission;

(9) Any court record determined to be confidential in case decision or court rule on the grounds that

(A) confidentiality is required to

(i) prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;

(ii) protect trade secrets;

(iii) protect a compelling governmental interest;

- (iv) obtain evidence to determine legal issues in a case;
  - (v) avoid substantial injury to innocent third parties;
  - (vi) avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed;
  - (vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law;
  - (B) the degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect the interests set forth in subdivision (A);
  - (C) no less restrictive measures are available to protect the interests set forth in subdivision (A); and
  - (D) except as provided by law or rule of court, reasonable notice shall be given to the public of any order closing any court record.
- (10) The names and any identifying information of judges mentioned in an advisory opinion of the Committee on Standards of Conduct for Judges.

(d) REVIEW OF DENIAL OF ACCESS REQUEST. Expedited review of denials of access to records of the judicial branch shall be provided through an action for mandamus, or other appropriate appellate remedy, in the following manner:

- (1) Where a judge who has denied a request for access to records is the custodian, the action shall be filed in the court having appellate jurisdiction to review the decisions of the judge denying access. Upon order issued by the appellate court, the judge denying access to records shall file a sealed copy of the requested records with the appellate court.
- (2) All other actions under this rule shall be filed in the circuit court of the circuit in which such denial of access occurs.

(e) PROCEDURE. Requests and responses to requests for access to records under this rule shall be made in a reasonable manner.

- (1) Requests for access to records shall be in writing and shall be directed to the custodian. The request shall provide sufficient specificity to enable the custodian to identify the requested records. The reason for the request is not required to be disclosed.
- (2) The custodian shall be solely responsible for providing access to records of the custodian's entity. The custodian shall determine whether the requested record is subject to this rule and, if so, whether the record or portions of the record are exempt from disclosure. The custodian shall determine the form in which the record is provided. If the request is denied, the custodian shall state in writing the basis for the denial.
- (3) Fees for copies of records in all entities in the judicial branch of government, except for copies of court records, shall be the same as those provided in section 119.07, Florida Statutes (2001).

**RULE 2.535, FLORIDA RULES OF JUDICIAL ADMINISTRATION.**

**Court Reporting**

**(a) Definitions.**

(1) "Approved court reporter" means a court employee or contractor who performs court reporting services, including transcription, at public expense and who meets the court's certification, training, and other qualifications for court reporting.

(2) "Approved transcriptionist" means a court employee, contractor or other individual who meets the court's certification, training and other qualifications for transcribing proceedings.

(3) "Civil court reporter" means a court reporter who performs court reporting services in civil proceedings not required to be reported at public expense, and who meets the court's certification, training, and other qualifications for court reporting.

~~(1)~~(4) "Court reporting" means the act of making a verbatim record of the spoken word, whether by the use of written symbols, stenomask equipment, or electronic devices, in any proceedings pending in any of the courts of this state, including all discovery proceedings conducted in connection therewith, ~~and any proceedings reported for the court's own use,~~ and all proceedings required by statute to be reported by an certified or official approved court reporter or civil court reporter. It does not mean ~~either the act of taking witness statements not intended for use in court as substantive evidence, or the act of electronic recording and transcription of proceedings as provided for in subdivision (g)(3).~~

5) "Electronic record" means the audio, analog, digital or video record of a court proceeding.

(6) "Official record" means the transcript, which is the written record of court proceedings and depositions prepared in accordance with the requirements of subsection (f).

(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, but this requirement shall not preclude the taxation of costs as authorized by law.

(c) **Record.** When trial proceedings are being reported, no part of the proceedings shall be omitted unless all of the parties agree to do so and the court approves the agreement. When a deposition is being reported, no part of the proceedings shall be omitted unless all of the parties and the witness so agree. When a party or a witness seeks to terminate or suspend the taking of a deposition for the time necessary to seek a court order, the court reporter shall discontinue reporting the testimony of the witness.

**(d) Ownership of the Record.** The court is the owner of the record made by an official court reporter or quasi-judicial officer in proceedings required to be reported at public expense and proceedings reported for the court's own use.

~~(d)~~ **(e) Fees.** The chief judge shall have the discretion to adopt an administrative order establishing maximum fees for court reporting services ~~not covered in the plan adopted pursuant to subdivision (g).~~ Any such order must make a specific factual finding that the setting of such maximum fees is necessary to ensure access to the courts. Such finding shall include consideration of the number of court reporters in the county or circuit, any past history of fee schedules, and any other relevant factors.

~~(e)~~ **(f) Transcripts.** Transcripts of all judicial proceedings, including depositions, shall be uniform in and for all courts throughout the state. The form, size, spacing, and method of printing transcripts are as follows:

(1) All proceedings shall be printed on paper 8 1/2 inches by 11 inches in size and bound on the left.

(2) There shall be no fewer than 25 printed lines per page with all lines numbered 1 through 25, respectively, and with no more than a double space between lines.

(3) Font size or print shall be 9 or 10 pica, 12-point courier, or 12-point Times New Roman print with no less than 56 characters per line on questions and answers unless the text of the speaker ends short of marginal requirements.

(4) Colloquy material shall begin on the same line following the identification of the speaker, with no more than 2 spaces between the identification of the speaker and the commencement of the colloquy. The identification of the speaker in colloquy shall begin no more than 10 spaces from the left margin, and carry-over colloquy shall be indented no more than 5 spaces from the left margin.

(5) Each question and answer shall begin on a separate line no more than 5 spaces from the left margin with no more than 5 spaces from the "Q" or "A" to the text. Carry-over question and answer lines shall be brought to the left margin.

(6) Quoted material shall begin no more than 10 spaces from the left margin with carry-over lines beginning no more than 10 spaces from the left margin.

(7) Indentations of no more than 10 spaces may be used for paragraphs, and all spaces on a line as herein provided shall be used unless the text of the speaker ends short of marginal requirements.

(8) One-line parentheticals may begin at any indentation. Parentheticals exceeding 1 line shall begin no more than 10 spaces from the left margin, with carry-over lines being returned to the left margin.

(9) Individual volumes of a transcript, including depositions, shall be no more than 200 pages in length, inclusive of the index.

(10) Deviation from these standards shall not constitute grounds for limiting use of transcripts in the trial or appellate courts.

~~(f)~~ **(g) Reporter as Officers of the Court.**

~~An Approved court reporters, civil court reporters and approved transcriptionists are is an~~ officers of the court for all purposes while acting as a reporters in a judicial proceedings or discovery proceedings or as transcriptionists. ~~The Approved court reporters, civil court reporters and approved transcriptionists shall comply with all rules and statutes governing the proceeding that are applicable to court reporters and approved transcriptionists.~~

~~g)~~ **(h) Court Reporting Services Provided in Mental Health Proceedings or at Public Expense.**

~~(1) When Reporting Is Required. All proceedings required by law, court rule or administrative order to be reported shall be reported at public expense.~~

~~(2) When Reporting may be required. Proceedings reported for the court's own use may be reported at public expense.~~

~~(2)(3) Circuit Plan. The chief judge, after consultation with the circuit court and county court judges in the 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. The plan shall ensure that all court reporting services are provided by qualified persons. This plan may provide for multiple service delivery strategies if they are necessary to ensure the efficient provision of court reporting services. Each circuit's plan for court reporting services shall be developed after consideration of guidelines issued by the Office of the State Courts Administrator.~~

~~(3)(4) 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 approved court reporters or approved transcriptionists ~~persons other than court reporters~~, of any judicial proceedings, including depositions, that are otherwise required to be reported by a court reporter. Appropriate procedures shall be prescribed in the order which shall:~~

~~(A) set forth and responsibilities for the court's support personnel to ensure a reliable record of the proceedings;~~

~~(B) provide a means to have the recording transcribed by approved transcriptionists, either in whole or in part, when necessary for an appeal or for further use in the trial court; and~~

~~(C) provide for the safekeeping of such recordings.~~

~~(4)(5) Electronic Record~~

~~(a) The electronic record is not the official record of a proceeding and is not subject to disclosure except as follows:~~

~~(i) In a proper case as determined by the chief judge in his or her discretion, copies of electronic recordings may be made available to state attorneys, public defenders, court-appointed counsel and other attorneys of record in proceedings required to be reported at public expense or reported for the court's own use, provided the copies are not used to prepare the official record except as may be authorized by the chief judge, are not used in subsequent court proceedings, are not disseminated or otherwise disclosed outside the offices of the state attorney, public defender or other attorneys of record, and are not enhanced or~~

modified to reveal confidential information that otherwise would not be audible. All officers of the court must comply with these restrictions. Public defenders, state attorneys, court-appointed counsel and other attorneys of record may object to disclosure of the electronic record to opposing counsel by filing a written motion stating grounds for the objection.

(ii) The court may make copies of the electronic record available to the public, including self-represented litigants, after review to ensure that matters protected from disclosure by law are kept confidential. The court in its discretion may require that only the official transcript of a proceeding be made available to the public.

(iii) Backup recordings of primary electronic recordings of court proceedings are not the official record and are not subject to disclosure except in the discretion of the court.

(b) The electronic record may be transcribed only by an approved transcriptionist or approved court reporter in accordance with the requirements of subsection (f) and standards adopted by the circuit to ensure the accuracy of the transcript. A transcript prepared in accordance with this rule is an official transcript for purposes of appeal and for use in the trial court.

(6) Safeguarding Confidential Communications when Electronic Recording Equipment is Used in the Courtroom

(a) Court personnel shall provide notice to participants in a courtroom proceeding that electronic recording equipment is in use and that they should safeguard information they do not want recorded.

(b) Attorneys shall take all reasonable and available precautions to protect disclosure of confidential communications in the courtroom. Such precautions may include muting microphones or going to a designated location that is inaccessible to the recording equipment.

(c) Participants have a duty to protect confidential information.

~~The presiding judge in a specific case, however, may require a court reporter, if available, or either party may provide and pay for the cost of a court reporter. Such court reporter shall be subject to the orders of the court and directions to transcribe the record from all parties.~~

~~(4)~~ **(7) Grand Jury Proceedings.** Testimony in grand jury proceedings shall be reported by an approved court reporter, but shall not be transcribed unless required by order of court. Other parts of grand jury proceedings, including deliberations and voting, shall not be reported. The approved court reporter's work product, including stenographic notes, electronic recordings, and transcripts, shall be filed with the clerk of the court under seal.

~~(h)~~ **(i) Court Reporting Services in Capital Cases.** ~~On or before January 1, 2001,~~ The chief judge, after consultation with the circuit court judges in the circuit, shall 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 postconviction 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 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.

**RULE 9.140, FLORIDA RULES OF APPELLATE PROCEDURE**

**Appeal Proceedings in Criminal Cases**

(a) **Applicability.** Appeal proceedings in criminal cases shall be as in civil cases except as modified by this rule.

**(b) Appeals by Defendant.**

(1) *Appeals Permitted.* A defendant may appeal

(A) a final judgment adjudicating guilt;

(B) a final order withholding adjudication after a finding of guilt;

(C) an order granting probation or community control, or both, whether or not guilt has been adjudicated;

(D) orders entered after final judgment or finding of guilt, including orders revoking or modifying probation or community control, or both, or orders denying relief under Florida Rule of Criminal Procedure 3.800(a), 3.850, or 3.853;

(E) an unlawful or illegal sentence;

(F) a sentence, if the appeal is required or permitted by general law; or

(G) as otherwise provided by general law.

(2) *Guilty or Nolo Contendere Pleas.*

(A) *Pleas.* A defendant may not appeal from a guilty or nolo contendere plea except as follows:

(i) *Reservation of Right to Appeal.* A defendant who pleads guilty or nolo contendere may expressly reserve the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved.

(ii) *Appeals Otherwise Allowed.* A defendant who pleads guilty or nolo contendere may otherwise directly appeal only

a. the lower tribunal's lack of subject matter jurisdiction;

b. a violation of the plea agreement, if preserved by a motion to withdraw plea;

c. an involuntary plea, if preserved by a motion to withdraw plea;

d. a sentencing error, if preserved; or

e. as otherwise provided by law.

(B) *Record.*

(i) Except for appeals under subdivision (b)(2)(A)(i) of this rule, the record for appeals involving a plea of guilty or nolo contendere shall be limited to:

a. all indictments, informations, affidavits of violation of probation or community control, and other charging documents;

b. the plea and sentencing hearing transcripts;

c. any written plea agreements;

d. any judgments, sentences, scoresheets, motions, and orders to correct or modify sentences, orders imposing, modifying, or revoking probation or community control, orders assessing

costs, fees, fines, or restitution against the defendant, and any other documents relating to sentencing;

e. any motion to withdraw plea and order thereon;

f. notice of appeal, statement of judicial acts to be reviewed, directions to the clerk, and designation to the approved court reporter or approved transcriptionist.

(ii) Upon good cause shown, the court, or the lower tribunal before the record is transmitted, may expand the record.

(3) *Commencement*. The defendant shall file the notice prescribed by rule 9.110(d) with the clerk of the lower tribunal at any time between rendition of a final judgment and 30 days following rendition of a written order imposing sentence. Copies shall be served on the state attorney and attorney general.

(4) *Cross-Appeal*. A defendant may cross-appeal by serving a notice within 10 days of service of the state's notice or service of an order on a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). Review of cross-appeals before trial is limited to related issues resolved in the same order being appealed.

**(c) Appeals by the State.**

(1) *Appeals Permitted*. The state may appeal an order

(A) dismissing an indictment or information or any count thereof or dismissing an affidavit charging the commission of a criminal offense, the violation of probation, the violation of community control, or the violation of any supervised correctional release;

(B) suppressing before trial confessions, admissions, or evidence obtained by search and seizure;

(C) granting a new trial;

(D) arresting judgment;

(E) granting a motion for judgment of acquittal after a jury verdict;

(F) discharging a defendant under Florida Rule of Criminal Procedure 3.191;

(G) discharging a prisoner on habeas corpus;

(H) finding a defendant incompetent or insane;

(I) finding a defendant mentally retarded under Florida Rule of Criminal Procedure 3.203;

(J) granting relief under Florida Rule of Criminal Procedure 3.853;

(K) ruling on a question of law if a convicted defendant appeals the judgment of conviction;

(L) withholding adjudication of guilt in violation of general law;

(M) imposing an unlawful or illegal sentence or imposing a sentence outside the range permitted by the sentencing guidelines;

(N) imposing a sentence outside the range recommended by the sentencing guidelines;

(O) denying restitution; or

(P) as otherwise provided by general law for final orders.

(2) *Non-Final Orders.* The state as provided by general law may appeal to the circuit court non-final orders rendered in the county court.

(3) *Commencement.* The state shall file the notice prescribed by rule 9.110(d) with the clerk of the lower tribunal within 15 days of rendition of the order to be reviewed; provided that in an appeal by the state under rule 9.140(c)(1)(J), the state's notice of cross-appeal shall be filed within 10 days of service of defendant's notice or service of an order on a motion pursuant to rule 3.800(b)(2). Copies shall be served on the defendant and the attorney of record. An appeal by the state shall stay further proceedings in the lower tribunal only by order of the lower tribunal.

**(d) Withdrawal of Defense Counsel after Judgment and Sentence or after Appeal by State.**

(1) The attorney of record for a defendant in a criminal proceeding shall not be relieved of any professional duties, or be permitted to withdraw as defense counsel of record, except with approval of the lower tribunal on good cause shown on written motion, until either the time has expired for filing an authorized notice of appeal and no such notice has been filed by the defendant or the state, or after the following have been completed:

(A) a notice of appeal or cross-appeal has been filed on behalf of the defendant or the state;

(B) a statement of judicial acts to be reviewed has been filed if a transcript will require the expenditure of public funds;

(C) the defendant's directions to the clerk have been filed, if necessary;

(D) designations to the approved court reporter or approved transcriptionist have been filed for transcripts of those portions of the proceedings necessary to support the issues on appeal or, if transcripts will require the expenditure of public funds for the defendant, of those portions of the proceedings necessary to support the statement of judicial acts to be reviewed; and

(E) in publicly funded defense and state appeals, the lower tribunal has appointed the public defender for the local circuit court, who shall initially remain counsel for the appeal until the record is transmitted to the appellate court. In publicly funded state appeals, defense counsel shall additionally file in the appellate court a copy of the order appointing the local public defender. In non-publicly funded defense and state appeals, retained appellate counsel shall file a notice of appearance in the appellate court, or defense counsel of record shall file a motion to withdraw in the appellate court, with service on the defendant, that states what the defendant's legal representation on appeal, if any, is expected to be. Documents filed in the appellate court shall be served on the attorney general (or state attorney in appeals to the circuit court).

(2) Orders allowing withdrawal of counsel are conditional and counsel shall remain of record for the limited purpose of representing the defendant in the lower tribunal regarding any sentencing error the lower tribunal is authorized to address during the pendency of the direct appeal pursuant to Florida Rule of Criminal Procedure 3.800(b)(2).

**(e) Sentencing Errors.** A sentencing error may not be raised on appeal unless the alleged error has first been brought to the attention of the lower tribunal:

- (1) at the time of sentencing; or
- (2) by motion pursuant to Florida Rule of Criminal Procedure 3.800(b).

**(f) Record.**

(1) *Service.* The clerk of the lower tribunal shall prepare and serve the record prescribed by rule 9.200 within 50 days of the filing of the notice of appeal.

(2) *Transcripts.*

(A) If a defendant's designation of a transcript of proceedings requires expenditure of public funds, trial counsel for the defendant (in conjunction with appellate counsel, if possible) shall serve, within 10 days of filing the notice, a statement of judicial acts to be reviewed, and a designation to the approved court reporter or approved transcriptionist requiring preparation of only so much of the proceedings as fairly supports the issue raised.

(B) Either party may file motions in the lower tribunal to reduce or expand the transcripts.

(C) Except as permitted in subdivision (f)(2)(D) of this rule, the parties shall designate the approved court reporter or approved transcriptionist to file with the clerk of the lower tribunal the original transcripts for the court and sufficient copies for the state and all indigent defendants.

(D) Non-indigent defendants represented by counsel may designate the approved court reporter or approved transcriptionist to prepare only original transcripts. Counsel adopting this procedure shall, within 5 days of receipt of the original transcripts from the approved court reporter or approved transcriptionist, file the original transcripts along with securely bound copies for the state and all defendants. Counsel shall serve notice of the use of this procedure on the attorney general (or the state attorney in appeals to circuit court) and the clerk of the lower tribunal. Counsel shall attach a certificate to each copy certifying that it is an accurate and complete copy of the original transcript. When this procedure is used, the clerk of the lower tribunal upon conclusion of the appeal shall retain the original transcript for use as needed by the state in any collateral proceedings and shall not destroy the transcripts without the consent of the Office of the Attorney General.

(E) In state appeals, the state shall designate the approved court reporter or approved transcriptionist to prepare and file with the clerk of the lower tribunal the original transcripts and sufficient copies for all separately represented defendants. Alternatively, the state may elect to use the procedure specified in subdivision (f)(2)(D) of this rule.

(F) The lower tribunal may by administrative order in publicly-funded cases direct the clerk of the lower tribunal rather than the approved court reporter or approved transcriptionist to prepare the necessary copies of the original transcripts.

(3) *Retention of Documents.* Unless otherwise ordered by the court, the clerk of the lower tribunal shall retain all original documents except the original transcripts designated for appeal which shall be included in the record transmitted to the court.

(4) *Service of Copies.* The clerk of the lower tribunal shall serve copies of the record to the court, attorney general (or state attorney in appeals to circuit court), and all counsel appointed to represent indigent defendants on appeal. The clerk of the lower tribunal shall simultaneously serve copies of the index to all non-indigent defendants and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

(5) *Return of Record.* Except in death penalty cases, the court shall return the record to the lower tribunal after final disposition of the appeal.

(6) *Supplemental Record for Motion to Correct Sentencing Error Pursuant to Florida Rule of Criminal Procedure 3.800(b)(2).*

(A) The clerk of circuit court shall automatically supplement the appellate record with any motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2), any response, any resulting order, and any amended sentence. The clerk shall transmit the supplement to the appellate court within 5 days of the filing of the order ruling on the motion. If an order is not filed within 60 days from the filing of the motion, this time shall run from the expiration of the 60 day period, and the clerk shall supplement the record with the motion and a statement that no order was timely filed.

(B) If any appellate counsel determines that a transcript of a proceeding relating to such a motion is required to review the sentencing issue, appellate counsel shall, within 5 days from the transmittal of the supplement described in subdivision (A), designate those portions of the proceedings not on file deemed necessary for transcription and inclusion in the record. A copy of the designation shall be filed with the appellate court. The procedure for this supplementation shall be in accordance with this subdivision, except that counsel is not required to file a revised statement of judicial acts to be reviewed, the approved court reporter or approved transcriptionist shall deliver the transcript within 15 days, and the clerk shall supplement the record with the transcript within 5 days of its receipt.

(g) **Briefs.** Initial briefs shall be served within 30 days of service of the record or designation of appointed counsel, whichever is later. Additional briefs shall be served as prescribed by rule 9.210.

(h) **Post-Trial Release.**

(1) *Appeal by Defendant.* The lower tribunal may hear a motion for post-trial release pending appeal before or after a notice is filed; provided that the defendant may not be released from custody until the notice is filed.

(2) *Appeal by State.* An incarcerated defendant charged with a bailable offense shall on motion be released on the defendant's own recognizance pending an appeal by the state, unless the lower tribunal for good cause stated in an order determines otherwise.

(3) *Denial of Post-Trial Release.* All orders denying post-trial release shall set forth the factual basis on which the decision was made and the reasons therefore.

(4) *Review.* Review of an order relating to post-trial release shall be by the court on motion.

**(i) Scope of Review.** The court shall review all rulings and orders appearing in the record necessary to pass upon the grounds of an appeal. In the interest of justice, the court may grant any relief to which any party is entitled.

## **RULE 9.200, FLORIDA RULES OF APPELLATE PROCEDURE**

### **The Record**

#### **(a) Contents.**

(1) Except as otherwise designated by the parties, the record shall consist of the original documents, exhibits, and transcript(s) of proceedings, if any, filed in the lower tribunal, except summonses, praecipes, subpoenas, returns, notices of hearing or of taking deposition, depositions, other discovery, and physical evidence. The record shall also include a progress docket.

(2) In family law, juvenile dependency, and termination of parental rights cases, and cases involving families and children in need of services, the record shall include those items designated in subdivision (a)(1) except that the clerk of the lower tribunal shall retain the original orders, reports and recommendations of magistrates or hearing officers, and judgments within the file of the lower tribunal and shall include copies thereof within the record.

(3) Within 10 days of filing the notice of appeal, an appellant may direct the clerk to include or exclude other documents or exhibits filed in the lower tribunal. The directions shall be substantially in the form prescribed by rule 9.900(f). If the clerk is directed to transmit less than the entire record or a transcript of trial with less than all of the testimony, the appellant shall serve with such direction a statement of the judicial acts to be reviewed. Within 20 days of filing the notice, an appellee may direct the clerk to include additional documents and exhibits.

(4) The parties may prepare a stipulated statement showing how the issues to be presented arose and were decided in the lower tribunal, attaching a copy of the order to be reviewed and as much of the record in the lower tribunal as is necessary to a determination of the issues to be presented. The parties shall advise the clerk of their intention to rely on a stipulated statement in lieu of the record as early in advance of filing as possible. The stipulated statement shall be filed by the parties and transmitted to the court by the clerk of the lower tribunal within the time prescribed for transmittal of the record.

#### **(b) Transcript(s) of Proceedings.**

(1) Within 10 days of filing the notice, the appellant shall designate those portions of the proceedings not on file deemed necessary for transcription and inclusion in the record. Within 20 days of filing the notice, an appellee may designate additional portions of the proceedings. Copies of designations shall be served on the approved court reporter, civil court reporter or approved transcriptionist. Costs of the original and all copies of the transcript(s) so designated shall be borne initially by the designating party, subject to appropriate taxation of costs as prescribed by rule 9.400. At the time of the designation, unless other satisfactory arrangements have been made, the designating party must make a deposit of 1/2 of the estimated transcript costs, and must pay the full balance of the fee on delivery of the completed transcript(s).

(2) Within 30 days of service of a designation, or within the additional time provided for under subdivision (b)(3) of this rule, the approved court reporter, civil court reporter or approved transcriptionist shall transcribe and file with the clerk of the lower tribunal the designated proceedings and shall serve copies as requested in the designation. In addition to the paper copies, the approved court reporter, civil court reporter or approved transcriptionist shall file with the clerk of the lower tribunal and serve on the designated parties an electronic copy of the designated proceedings in a format approved by the supreme court. If a designating party directs the approved court reporter, civil court reporter or approved transcriptionist to furnish the transcript(s) to fewer than all parties, that designating party shall serve a copy of the designated transcript(s), in both electronic and paper form, on the parties within 5 days of receipt from the approved court reporter, civil court reporter or approved transcriptionist. The transcript of the trial shall be securely bound in consecutively numbered volumes not to exceed 200 pages each, and each page shall be numbered consecutively. Each volume shall be prefaced by an index containing the names of the witnesses, a list of all exhibits offered and introduced in evidence, and the pages where each may be found.

(3) On service of a designation, the approved court reporter, civil court reporter or approved transcriptionist shall acknowledge at the foot of the designation the fact that it has been received and the date on which the approved court reporter, civil court reporter or approved transcriptionist expects to have the transcript(s) completed and shall transmit the designation, so endorsed, to the parties and to the clerk of the appellate court within 5 days of service. If the transcript(s) cannot be completed within 30 days of service of the designation, the approved court reporter, civil court reporter or approved transcriptionist shall request such additional time as is reasonably necessary and shall state the reasons therefor. If the approved court reporter, civil court reporter or approved transcriptionist requests an extension of time, the court shall allow the parties 5 days in which to object or agree. The appellate court shall approve the request or take other appropriate action and shall notify the reporter and the parties of the due date of the transcript(s).

(4) If no report of the proceedings was made, or if the transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee, who may serve objections or proposed amendments to it within 10 days of service. Thereafter, the statement and any objections or proposed amendments shall be submitted to the lower tribunal for settlement and approval. As settled and approved, the statement shall be included by the clerk of the lower tribunal in the record.

**(c) Cross-Appeals.** Within 20 days of filing the notice, a cross- appellant may direct that additional documents, exhibits, or transcript(s) be included in the record. If less than the entire record is designated, the cross-appellant shall serve, with the directions, a statement of the judicial acts to be reviewed. The cross-appellee shall have 10 days after such service to

direct further additions. The time for preparation and transmittal of the record shall be extended by 10 days.

**(d) Duties of Clerk; Preparation and Transmittal of Record.**

(1) The clerk of the lower tribunal shall prepare the record as follows:

(A) The clerk of the lower tribunal shall not be required to verify and shall not charge for the incorporation of any transcript(s) into the record. The transcript of the trial shall be incorporated at the end of the record, and shall not be renumbered by the clerk. The progress docket shall be incorporated into the record immediately after the index.

(B) The remainder of the record, including all supplements and any transcripts other than the transcript of the trial, shall be consecutively numbered. The record shall be securely bound in consecutively numbered volumes not to exceed 200 pages each. The cover sheet of each volume shall contain the name of the lower tribunal and the style and number of the case.

(2) The clerk of the lower tribunal shall prepare a complete index to the record and shall attach a copy of the progress docket to the index.

(3) The clerk of the lower tribunal shall certify and transmit the record to the court as prescribed by these rules; provided that if the parties stipulate or the lower tribunal orders that the original record be retained, the clerk shall prepare and transmit a certified copy.

**(e) Duties of Appellant or Petitioner.** The burden to ensure that the record is prepared and transmitted in accordance with these rules shall be on the petitioner or appellant. Any party may enforce the provisions of this rule by motion.

**(f) Correcting and Supplementing Record.**

(1) If there is an error or omission in the record, the parties by stipulation, the lower tribunal before the record is transmitted, or the court may correct the record.

(2) If the court finds the record is incomplete, it shall direct a party to supply the omitted parts of the record. No proceeding shall be determined, because of an incomplete record, until an opportunity to supplement the record has been given.

(g) Return of Record. In civil cases, the record shall be returned to the lower tribunal after final disposition by the court.

**RULE 9.900, FLORIDA RULES OF APPELLATE PROCEDURE**

**Form (h)**

**(h) Designation to Approved Court Reporter, Civil Court Reporter or Approved Transcriptionist.**

IN THE (NAME OF LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED)

Case No. \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff/Appellant, )

v.

\_\_\_\_\_  
Defendant/Appellee)

**DESIGNATION TO APPROVED COURT REPORTER, CIVIL COURT REPORTER OR APPROVED TRANSCRIPTIONIST, AND REPORTER'S OR APPROVED TRANSCRIPTIONIST'S ACKNOWLEDGEMENT**

**I. DESIGNATION**

Plaintiff/Appellant, \_\_\_\_\_, files this Designation to Approved Court Reporter, Civil Court Reporter or Approved Transcriptionist and directs .....(name of approved court reporter, civil court reporter or approved transcriptionist)..... to transcribe an original and \_\_\_\_\_ copies of the following portions of the trial proceedings to be used in this appeal:

1. The entire trial proceedings recorded by the reporter on .....(date)....., before the Honorable .....(judge)....., except .
2. [Indicate all other portions of reported proceedings.]
3. The approved court reporter, civil court reporter or approved transcriptionist is directed to file the original with the clerk of the lower tribunal and to serve one copy on each of the following:
  - 1.
  - 2.
  - 3.

I, counsel for Appellant, certify that satisfactory financial arrangements have been made with the approved court reporter, civil court reporter or approved transcriptionist for preparation of the transcript.

\_\_\_\_\_  
Attorney for .....(name of party).....  
.....(address and phone number).....  
Florida Bar No. ....

II. APPROVED COURT REPORTER'S, CIVIL COURT REPORTER'S OR APPROVED TRANSCRIPTIONIST'S ACKNOWLEDGMENT

1. The foregoing designation was served on .....(date)....., and received on .....(date).....
2. Satisfactory arrangements have ( ) have not ( ) been made for payment of the transcript cost. These financial arrangements were completed on .....(date).....
3. Number of trial or hearing days \_\_\_\_.
4. Estimated number of transcript pages \_\_\_\_.
- 5a. The transcript will be available within 30 days of service of the foregoing designation and will be filed on or before .....(date).....

OR

- 5b. For the following reason(s) the approved court reporter, civil court reporter or approved transcriptionist requests an extension of time of \_\_\_\_ days for preparation of the transcript that will be filed on or before .....(date).....
6. Completion and filing of this acknowledgment by the approved court reporter, civil court reporter or approved transcriptionist constitutes submission to the jurisdiction of the court for all purposes in connection with these appellate proceedings.
7. The undersigned approved court reporter, civil court reporter or approved transcriptionist certifies that the foregoing is true and correct and that a copy has been furnished by mail ( ) hand delivery ( ) on .....(date)....., to each of the parties or their counsel.

\_\_\_\_\_  
Approved Court Reporter, Civil Court Reporter or Approved Transcriptionist  
.....(address).....

Note: The foregoing approved court reporter's, civil court reporter's or approved transcriptionist's acknowledgment to be placed "at the foot of" or attached to a copy of the designation, shall be properly completed, signed by the court reporter, and filed with the clerk of the appellate court within 5 days of service of the designation on the approved court

reporter, civil court reporter or approved transcriptionist. A copy shall be served on all parties or their counsel, who shall have 5 days to object to any requested extension of time. See Fla. R. App. P. 9.200(b)(1), (2), & (3).

## Appendix B- Statutory Revisions

### SECTION 934.03, FLORIDA STATUTES

#### Interception and disclosure of wire, oral, or electronic communications prohibited.--

Section 1. Subsection (2)(k) of section 934.03, Florida Statutes, is created to read:

(2)(k) It is lawful under ss. 934.03 – 934.09 for the state courts system to utilize authorized electronic court reporting services in capturing the record of a judicial proceeding. In no event shall an inadvertent interception of an oral communication by authorized electronic court reporting services be considered unlawful under ss.934.03 – 934.09.

Section 2. This act shall take effect upon becoming law.

## Appendix C – Summary of Standards of Operation and Best Practices

TOPIC	STANDARDS OF OPERATION	BEST PRACTICES
<b>Court Reporter Qualifications</b>	<p>Court reporting employees and contract service providers shall meet all professional standards and training requirements established by Florida statute, court rule, the State Courts System, and the chief judge of the circuit.</p>	<p>Court employees or contractors providing stenographic services for the State Courts System will achieve and maintain the designation of Registered Professional Reporter (RPR) as defined by the National Court Reporters Association.</p> <p>Court employees or contractors providing digital court reporting or transcript services for the State Courts System will achieve and maintain certification with the American Association of Electronic Reporters and Transcribers (AAERT).</p> <p>Court employees or contractors providing voice-writing services for the State Courts System will achieve and maintain certification with the National Verbatim Reporters Association (NVRA).</p> <p>Judicial circuits shall ensure availability to real-time stenographic services, either through the use of court employees or contract service providers.</p>
<b>Oversight</b>	<p>Court reporting program employees and contract service providers are officers of the court and must comply with all applicable Florida statutes, court rules, and other requirements as established by the State Courts System and the chief judge of the circuit.</p> <p>Judicial circuits shall comply with court reporting contracting requirements as established by the State Courts System.</p>	
<b>Use of Clerk of Court Staff</b>	<p>Judicial circuits shall not engage clerk of court staff to provide court reporting services, other than those services or responsibilities established by Florida statute, court rule, and the State Courts System.</p>	
<b>Cross-training</b>		<p>Judicial circuits shall explore cross-training initiatives with their court reporting employees for the provision of court reporting services.</p>
<b>Assigning Coverage</b>		<p>Court staff responsible for scheduling hearings and preparing dockets will provide dockets to the court reporting manager or other designated court administration professional or contract service provider as far in advance as possible to ensure adequate time to assign appropriate court reporting coverage of proceedings.</p>

**Recommendations for the Provision of Court Reporting Services in Florida’s Trial Courts**

TOPIC	STANDARDS OF OPERATION	BEST PRACTICES
<b>Eliminating Analog Recording</b>		Judicial circuits shall refrain from utilizing analog audio recording and should attempt, where practical, to replace analog with digital recording capability.
<b>Service Delivery Models</b>		<p>Judicial circuits shall implement procedures for assigning court reporting coverage of proceedings recorded at public expense as follows:</p> <p>Digital court reporting <i>alone</i> should be used for county criminal, domestic violence injunction, Baker Act, Marchman Act, guardianship, Jimmy Ryce, and general magistrate/ hearing officer proceedings. Digital court reporting is also recommended for proceedings that take place outside of the regular business hours of the court.</p> <p>Either stenography <i>or</i> digital court reporting should be used for circuit criminal, delinquency, dependency, termination of parental rights, and crossover cases (Unified Family Court cases).</p> <p>Real-time or CAT stenography should be prioritized for circuit criminal trials and capital cases.</p>
<b>Monitoring Ratios</b>		<p>Judicial circuits shall implement procedures for assigning the monitoring of proceedings recorded at public expense using the following ratios of the number of proceedings vs. court reporters.</p> <p>Circuit criminal trials, capital cases, county criminal trials, and termination of parental rights proceedings should be monitored at a 1:1 ratio.</p> <p>Delinquency and dependency proceedings should be monitored at a 2:1 ratio.</p> <p>All other circuit and county criminal proceedings and domestic violence injunction proceedings should be monitored at a 3:1 ratio.</p> <p>Baker Act, Marchman Act, guardianship, and Jimmy Ryce proceedings should be monitored at a ratio of 4:1. However, this ratio may be lowered to 1:1 if these proceedings are held offsite and/or the presiding judicial officer is using a portable digital device.</p> <p>General magistrate/hearing officer proceedings should also be monitored at a ratio of 4:1, if monitored by a digital court reporter as opposed to the presiding magistrate or hearing officer.</p>

TOPIC	STANDARDS OF OPERATION	BEST PRACTICES
<p><b>Participant Responsibilities</b></p>	<p>Judicial circuits shall codify the responsibilities of all participants during a proceeding to ensure the quality of the official record.</p>	<p>Judges, general magistrates, and hearing officers shall: notify participants of the method of recording being utilized, remind participants to speak into the microphone at a sufficient volume and answer verbally; ask participants to identify themselves and spell their names for the record; notify court administration, the clerk, or contract service provider if equipment has been tampered with or is not functioning; remind participants to protect the equipment; signify when it is appropriate for attorneys to utilize mute buttons; and recess periodically during lengthy proceedings so that court reporters may remain alert and effective.</p> <p>Attorneys shall inform their clients of the method of recording being utilized and take necessary precautions to protect disclosure of confidential communications during the proceeding.</p> <p>Court reporters shall monitor equipment during a proceeding to ensure adequate operation and immediately notify the presiding judicial officer of problems with the equipment.</p> <p>Bailiffs 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.</p>
<p><b>Preventing the Recording of Confidential Communications</b></p>	<p>Judicial circuits shall post signs inside and outside of all rooms in which proceedings are recorded using audio technology. The signs shall provide notice to all who enter that any conversations occurring in the room may be recorded.</p>	<p>Judicial circuits shall post signs at attorney tables within rooms in which audio technology is used to record proceedings. The signs shall caution attorneys and their clients that their conversations may be recorded.</p> <p>Judicial circuits shall install microphones with “hold-to-mute” capability for those microphones used by attorneys or presiding judicial officers in proceedings recorded using non-portable digital technology.</p> <p>Judicial circuits shall conduct periodic training for stakeholders commonly coming into contact with the use of audio recording technology. The training shall include a description of how the technology is operated and tips for effective courtroom behavior specific to the stakeholder. Judicial Circuits shall distribute and/or make readily available audio recording resource materials (i.e., pamphlets, guide books, operator manuals, etc.) for stakeholders to assist with ensuring the quality of the official record.</p>

## Recommendations for the Provision of Court Reporting Services in Florida's Trial Courts

TOPIC	STANDARDS OF OPERATION	BEST PRACTICES
<b>Operating Digital Recording Equipment</b>	<p>Digital recording systems shall comply with all statewide standards for digital court recording as established by the Florida Courts Technology Commission.</p> <p>Judicial circuits shall implement procedures for regular testing of digital court recording systems to ensure proper operation.</p>	
<b>Tagging the Digital Recording</b>	<p>Judicial circuits shall ensure appropriate tagging of digital recordings is performed for proceedings in which there is a significant likelihood that transcripts will be requested.</p> <p>Judicial circuits shall establish standardized "tags" and produce a reference document of same to be distributed to all circuit court reporting staff, contract service providers, and approved transcriptionists.</p>	
<b>Ownership of the Official Record</b>	<p>The court shall retain ownership and control over the official record whether it is in paper or electronic format. The court shall also reserve the right to full and complete access to any unedited notes, paper tapes, electronic files, and audio or video recordings used to create the official record.</p>	
<b>Storage</b>	<p>Judicial circuits, contract service providers, and vendors of digital technology shall comply with all storage and retrieval standards for digital court recording as established by the Florida Courts Technology Commission and otherwise established by the State Courts System and the chief judge of the circuit.</p> <p>Judicial circuits shall codify record retention protocols to be applied to stenographic paper tape/notes, unedited CAT/real-time text, analog and digital recordings in accordance with rule 2.430, Florida Rules of Judicial Administration.</p> <p>Judicial circuits shall implement storage and retrieval procedures to ensure timely and secure access to transcripts, analog or digital recordings, and any supporting materials related to the production of the official record.</p>	<p>Judicial circuits shall examine the provision of secure and direct access to a network of electronic files and digital recordings related to the official record for certain internal stakeholders of the court such as court reporting employees, judges, general magistrates, and hearing officers. Circuits shall also examine the feasibility of providing limited and secure access to other stakeholders such as state attorneys, public defenders, and court-appointed counsel.</p>

TOPIC	STANDARDS OF OPERATION	BEST PRACTICES
<p><b>Transcript Production</b></p>	<p>Transcripts may only be produced by employee or contract court reporters and transcriptionists approved by the court in accordance with rule 2.535, Florida Rules of Judicial Administration.</p> <p>All persons approved by the court to perform court reporting transcription services shall comply with all applicable court rules and standards established by the State Court System and the chief judge of the circuit.</p> <p>All judicial circuits shall codify protocols for transcript production in accordance with court rule and standards established by the State Court System. These protocols shall include, but are not limited to: procedures preventing transcription of off-the-record discussions, sidebar conferences, and attorney-client conversations; the court’s process for approving transcription services; and certification of the transcript for correctness.</p> <p>Judicial circuits shall 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 in accordance with rule 2.535, Florida Rules of Judicial Administration.</p> <p>All persons approved by the court to perform court reporting transcription services shall give priority to capital cases in the production of transcripts.</p> <p>Judicial circuits shall prohibit the “loaning out” of stenographic notes in capital cases to ensure the court reporter has immediate access to the notes for production of the transcript.</p> <p>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 (if applicable).</p> <p>Judicial circuits shall incorporate requirements related to expedited transcript requests in court reporting service contracts.</p> <p>Judicial circuits shall specify consequences for contractors who fail to meet expedited transcript requirements in court reporting service contracts.</p>	<p>Judicial circuits shall encourage collegiality between all persons involved in expediting transcripts for capital cases.</p> <p>Judicial circuits shall collaborate with appellate courts regarding the oversight and management of the court reporting process, with particular emphasis on the production of transcripts for capital, dependency, and termination of parental rights cases.</p> <p>When requested, judicial circuits may provide a transcript for: appellate review, other purposes in which a transcript is considered a necessity by the court in the best interest of justice, or if an audio/video file is unavailable. A copy of the audio/video file, if available, shall be provided for all other purposes to the extent allowable under court rule.</p>

**Recommendations for the Provision of Court Reporting Services in Florida’s Trial Courts**

TOPIC	STANDARDS OF OPERATION	BEST PRACTICES
<b>Producing Copies of Recordings</b>	<p>All judicial circuits shall codify protocols for producing copies of audio/video recordings in accordance with court rule and standards established by the State Court System. These protocols shall include, but are not limited to: procedures preventing the release of off-the-record discussions, sidebar conferences, and attorney-client conversations to the public; the court’s process for ensuring the accuracy of the recording; and certification of the recording for correctness.</p>	
<b>Cost Sharing</b>		<p>Judicial circuits using state funded court employees to provide transcription services for public defenders, state attorneys, and court-appointed counsel shall operate under the cost sharing arrangement.</p> <p>When requested, judicial circuits operating under the cost sharing arrangement may provide transcripts to the state attorneys, public defenders, and court-appointed counsel for: appellate review, other purposes in which a transcript is considered a necessity by the court in the best interest of justice, or if an audio/video file is unavailable. A copy of the audio file, if available, shall be provided to these entities for all other purposes to the extent allowable under court rule.</p> <p>Judicial circuits operating under the cost sharing arrangement are required to provide a “statement of services provided” to local state attorneys, public defenders, the Justice Administrative Commission, and the Office of the State Courts Administrator. The “statement of services provided” shall include those services that will or will not be provided by state-funded court employees versus those services that may be purchased independently from contractors. This documentation shall also include services provided or not provided by division of court, proceeding type, and any variation that exists by county and/or courthouse. The “statement of services provided” shall include a corresponding time period in which these terms are in effect and shall be no less than one fiscal year (July 1 – June 30).</p>

## Appendix D – Standards for Integrated Digital Court Recording Systems *Florida Courts Technology Commission, June 2003*

### *Overview*

Over the past five years, circuit courts have used digital technology to contain increasing costs of court reporting. As directed in the recent amendment of Article V, revision VII of the Florida Constitution, the State Courts System (SCS) has embarked on a review of major expenses of the state trial courts, including court reporting. This document provides detailed specifications for an Integrated Digital Court Recording system which meets the SCS needs for operating and managing the capture of court proceedings and hearings for the purpose of providing transcripts of court proceedings as mandated by Florida Statutes.

The initial focus of these standards is to capture the audio and in some cases the video of court proceedings using a distributed digital court recording system. The system is setup in a series of repositories encompassing many courtrooms that are accessible from the SCS network. This configuration will provide for ease of administration and disaster recovery preparations which can be managed from a centralized or remote location.

It is the intention of the Office of the State Court Administrator (OSCA) to establish a working model to demonstrate the utilization of technology to remotely operate and monitor the capture of the audio and/or video record of court proceedings. The findings of this project will be used to develop and implement functional and technical standards to ensure the successful capture of court proceedings. If proven successful, this model may be applicable statewide.

### *Goals*

The Digital Court Recording (DCR) Project is designed to introduce recording technology to at least eleven felony courtrooms among three judicial circuits and integrate each of the DCR systems seamlessly into the SCS's wide area network, including:

1. Produce a quality recording.
2. Automate processes of digital court recording.
3. Preserve the integrity of the record.
4. Provide attachment support.
5. Provide search and access for recordings.

In order to fulfill the goals of the DCR Project, the necessary business objectives, description of participating courtrooms, and technical vision for the project have been considered. This will ensure the best allocation of current resources and maximize court participation. Based upon the outcome of the findings from the DCR Project, the SCS may elect to extend the use of this technology model in other judicial circuits.

### *Business Objectives*

#### 1). Produce a Quality Recording

The integrated DCR system must be able to produce high resolution digital masters for archival preservation of the recording of a courtroom proceeding. It is essential that the system playback feature accurately represent the audio and/or video recording of court proceedings. The quality of the digital recording must be clear and distinct for use by the legal and judicial community and for accurate transcription. The system must have the ability to record on multiple channels determined by the room size, number of microphones, type of proceeding and other engineering requirements.

#### *Base Configuration Recommendations*

- Standard Courtroom – 4 Channel recording.
- Hearing Room – 2 Channel recording.
- Backup, fault-tolerant recording – 1 Channel recording. (for redundant recording)
- Portable units – 2 Channel recording with two microphones and built-in redundancy.

All system configurations must have audio confidence and monitoring capabilities to check and ensure the status of a recording. The confidence monitoring should be a continuous and simultaneous recording. At a minimum, the DCR system must be able to capture and maintain playback of four isolated audio channels, regardless if four channels are used or not.

Microphones are assigned to specific channels for higher quality recording and isolation of audio on the channel for clarity purposes. Court interpreters should be on a separate channel for transcription purposes.

#### 2). Automate Processes of Digital Court Recording

##### Automatic Record Operation

The DCR system should include an automated record activation feature to allow for unattended operation using schedule and voice activation. When enabled, the DCR system should capture the spoken word automatically, unattended, without operator

involvement. Schedule activation should allow for multiple recording events to be programmed using scheduled date, including starting time and duration of recording. In addition, the DCR system should provide for voice activation, in which recording is controlled automatically, based upon a preset level of sound within each courtroom to determine whether a courtroom proceeding is active. For maximum effectiveness, recorded conversation should be comprehensive, without loss of a spoken word or phrase. The DCR system must also support a manual recording access operation using conventional client software interface and hardware peripherals such as foot pedals and/or remote control panels.

### Storage and Archiving

The DCR system should organize recordings using a Relational Database Management System (RDMS) utilizing a centralized and distributed index which is redundant for failsafe operation. Archive media should use current electronic medium technology such as CD-ROM and DVD as in accordance with state archival requirements. Archives should be indexed using an automatic numbering scheme for labeling and easy identification for retrieval.

All capture and archive servers used in support of the central recording model must have archival systems that operate mutually exclusive of each other. The software must maintain an RDBMS index of archived recordings detailing time and date stamps as well as media labels. Archive servers must have enough storage capacity to maintain on-line storage of digital recordings for a minimum period of six months.

### Centralized Monitoring Over Distributed Network

An integrated DCR system enables operators to hear, see, and capture audio and video recording in real time. By leveraging distributed systems to listen and observe courtroom activity, operators can efficiently monitor several courtrooms simultaneously from a remote location over the court's local or wide area network.

In order to effectively monitor a courtroom event, the DCR system must allow an operator to view sound level indicators of each audio channel with ease. The operator must be able to clearly and distinctly listen to the recorded audio or channels of sound to determine and monitor the quality of the recording. Separate audio channels allow the listener the ability to isolate the microphone/speaker on an individual channel allowing for greater clarity. Closed circuit or network based video cameras are also an important component of the system that allows for centralized monitoring and identification of speakers and events in the courtroom as well as the option of capturing video with the record.

Courtrooms will be independently managed and operated. However, the DCR system should provide an operator with the ability to centrally monitor at least four integrated courtrooms remotely, using a business class desktop computer or workstation.

The DCR system must provide for a single graphical user interface detail to enable an operator to:

1. View list of monitored courtrooms.
2. Read status indicator of courtroom recording activity.
3. View live images of at least four courtrooms on single display.
4. Display on screen messaging including status, time and date stamp, and case identifier.
5. Room switching must be an integrated part of the software.

#### User Interface

The DCR system must provide a visual user interface for court personnel to monitor, capture, and playback recordings of court proceedings. Preference will be given to Web based clients. User profiles should allow for customized levels of access and administrative control of the system to prevent unauthorized use and/or damage to the system. User profiles should be part of the RDBMS application security for levels of access and administrative control.

Operators must have the ability to perform basic recording control features such as start, stop, and pause recording during capture, select privacy using microphone mute controls, and playback of audio to a sound reinforcement system in a courtroom either locally or remotely.

The DCR software should provide hot keys to assist with identifying an active speaker during recording. Monitors and operators should have the ability to input relevant annotations that are attached to the recording using a standard computer keyboard.

#### 3). Preserve Integrity of the Record

It is important that the DCR system preserve the integrity of the electronic record after capture of a courtroom proceeding through appropriate system configuration or storage medium, whether on fixed disk or removable media. The recordings must be tamper resistant with provisions to ensure that the record cannot be tampered with after it is recorded into the system. The archive and redundancy systems must have "record over" protection.

Provisions must be made to provide for fail-safe operation and maximum uptime. Although fixed disks are reliable, all server equipment responsible for recording should have no single point of failure. System power considerations should be planned during the installation phase to allow for 15 minutes of continued operations at all levels of the system to allow for controlled shutdown during extended power outages, and to reduce loss of recording of proceedings and system damage. Power considerations should include at a minimum the server bank, switches, routers, and workstations associated with monitoring and recording.

In configurations where a standalone unit and/or single networked computer is used, the computer must be outfitted with a redundant array of inexpensive disks (RAID) at RAID

Level 1 (mirror) or RAID Level 5 (striped) redundant storage for all data retrieved and stored.

In complex configurations where equipment is responsible for recording multiple courtrooms using one or more servers, the DCR system must have a secondary/backup server. The backup server must operate independent of the primary recording server to provide for redundant, fault tolerant operations. It is expected that all participating courtrooms provide an independent composite audio channel to the secondary/backup server. All servers must be configured to provide and support RAID Level 5 for all fixed disks.

The DCR system must be able to copy recorded content immediately following the end of the proceeding to CD-ROM or DVD.

The DCR system must allow for network and user profile based security to control levels of access and prevent unauthorized access and potential damage, which should be incorporated into the application. The system should allow for stronger security if it is deemed necessary. The system must support the ability to seal all or portions of the captured recordings utilizing user authorization, encryption, and seal keys.

#### 4). Provide Attachment Support

The DCR system must be able to articulate all content associated with the captured event including audio, video, annotations and machine understandable data (metadata) as a single digital record.

#### 5). Provide Search and Access for Recordings

It is expected that all DCR technology must be accessible for operation over the SCS network. System must be capable of streaming live or pre-recorded audio to select users

over court network. The system should be capable of delivering this feature to a Web server over the Internet using appropriate security. Additionally, the DCR system must be capable of serving audio and/or video “on demand” to court personnel over network or made available to Internet users through secure Web servers.

The DCR system must use a relational database, compliant with industry ODBC/JDBC standards. All captured information must be indexed and searchable through a common interface. Recordings must be index search able using a case identifier, filenames, date and time stamps, and annotations as well as any associated metadata captured during and after recording.

All recordings must be accessible through a common index and made available for searching immediately after capture.

The DCR system must provide meaningful reports to assist in management of common and relevant analytical and operational information including recording utilization, recording storage capacity, audit logs and security access information. System must also support third party ad hoc report software using industry ODBC/JDBC standards.

### ***Business and Technical Constraints***

#### Quality of DCR System Software

The Appellate and Circuit Courts utilize Microsoft XP and Windows 2000 operating system environments. The DCR system should be compatible with these platforms and shall not use proprietary hardware and non-industry standard software. The system should support open standards including but not limited to HTML, ODBC/JDBC, TCP/IP, and XML that can be utilized to facilitate search requests, data retrievals, electronic submission and transport of all digital data.

#### Software installation

Installation routines that features both text-mode and graphical user interfaces including Microsoft Windows operating system and use of the W3C HTML 3.0 compliant web browsers, supporting a wide variety of video hardware at reasonable color depths and resolutions. In cases where the graphical interface is not desired or supported, a textmode interface must be made available to provide the user with the same functionality.

The text mode installation should spare the novice the intimidation of a command prompt. The text interface should provide a friendly script driven interface to the textmode installer.

The DCR software application should be independent of the MS Windows operating

system version.

#### Driver support

Uses Microsoft Windows operating system plug and play hardware auto detection system to automatically discover hardware and correct OS kernel version and server drivers to use with PCI, AGP, USB, and PCMCIA devices.

#### Version control

All packages, including drivers, audio applications, servers related to multimedia, operating system and kernel patches, will be provided in their latest version, to be fully tested by the systems integrators and court staff. As we approach the end of the project, we may consider “freezing” the software distribution, (i.e., no upgrades to applications to the latest version) thus concentrating our efforts in problem resolution.

#### Sound architecture support

The DCR software should fully support the Microsoft Windows operating system including XP and 2000 Server. It is expected that all audio software interfaces are certified by the manufacturer for operation with Microsoft Windows environment including consumer sound cards to professional multichannel audio interfaces. The DCR software should be fully modular including support for symmetrical multi processors and have thread safe design.

#### Usability considerations

To promote flexible operation and portability, preference will be given to Web browser based client software interfaces supporting standards based HTML. If the user interface is browser based, special software will not need to be installed and upgraded. The current standard browser is Microsoft Explorer Version 6 and all court staff are able to access Web based services via a screen size of 1024 x 768 pixels.

The user interface must be optimized for use with this browser and screen size. However, only features supported by the browser that are aligned with W3C standards should be used for core functionality. In addition to the W3C markup and style sheet standards, support for level 1 of the W3C Content Accessibility Guidelines and Section 508 of the U.S. Rehabilitation Act is recommended for all Web browser based user interfaces.