

Office of the State Courts Administrator

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M E M O R A N D U M

TO: Trial Court Administrators
Court Reporting Managers
Court Technology Officers

FROM: Sharon Buckingham, Senior Court Operations Consultant, OSCA
Laura Rush, General Counsel, OSCA

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SUBJECT: Frequently Asked Questions Regarding Court Reporting Services
Memo #01-2010

With the advent of so many recent events impacting court reporting services such as court rule revisions and the adoption of standards of operations and best practices by the Supreme Court, the time is ideal for the Office of the State Courts Administrator to expand our trial court operational support efforts. Therefore, this memorandum is being issued as the first of what we anticipate will be a series of memorandums to support the trial courts in the management of court reporting services for years to come.

Provided below, you will find questions that have been recently submitted to us and answers that we hope you will find useful. As other questions arise, please feel free to contact us, and if appropriate, we will include them in future memorandums for the benefit of all circuits.

1. ***Question: What is the difference between a standard of operation and a best practice and why did the Commission on Trial Court Performance and Accountability (TCP&A) decide to distinguish between the two?***

Answer: A standard of operation is defined as a *mandatory* practice. A best practice is defined as a *suggested or recommended* practice. The TCP&A chose to emphasize the importance of having uniform operational policies across the state while still allowing for local flexibility due to conditions that may not be in

the direct control of a circuit court. While best practices are not considered mandatory, they are still highly recommended and circuits should make a diligent effort to implement them.

2. ***Question: I have the Supreme Court Administrative Order approving the standards of operation and best practices, but where can I find more information and guidance about each one?***

Answer: If you require more information about a standard of operation or best practice, it is best to consult the TCP&A's 2007 and 2009 reports on court reporting. Both may be located at: http://www.flcourts.org/gen_public/court-services/CourtServicesPandA.shtml. The standards of operation and best practices were not meant to be applied out of context and therefore, it is important to become familiar with the intent of these policies. It is also important to keep in mind that many of the standards and practices impact other standards and practices and should be considered holistically rather than on an individual basis. OSCA staff will attempt to provide as much support to the circuits as possible in identifying operational needs. For instance, we will be working to create reference documents to support circuit implementation efforts such as the creation of the Court Reporting Policy and Self-Assessment Guide which provides a crosswalk of standards, best practices, court rules, statutes, assessment strategies, and implementation strategies by topical area.

3. ***Question: When are the circuits expected to implement all of the standards of operation and best practices and how can they be implemented when many require additional funding to be able to do so?***

Answer: Similar to the recent rule changes, the standards of operation and best practices became effective immediately. However, there is an understanding that policy implementation does not happen overnight, and often times, not without additional resources. Circuits are not expected to have all of the standards and best practices implemented immediately, but rather, to begin implementation efforts immediately. It is recommended that circuits review the Court Reporting Policy and Self-Assessment Guide and determine those policies that may be implemented more readily and those that may require significant effort and/or funding to implement. Also, since additional funding is never a guarantee no matter how great the need, it is important to keep in mind that several of the standards and best practices will likely lead to greater efficiency and may free-up resources that can be directed towards other policies that require additional resources.

4. ***Question: Could the circuits be provided with a comprehensive list of those items that are confidential and are required to be redacted from a recording or written transcript?***

Answer: There is a list of specific items that should be considered confidential as proposed by the Committee on Access to Court Records referenced in amendments to rule 2.420(d)(1), Florida Rules of Judicial Administration, in In Re: Amendments to Florida Rules of Judicial Administration 2.420, Case No. 07-2050. In addition, the TCP&A recommends referencing the *Government-In-the-*

Sunshine Manual, prepared by the Florida Office of the Attorney General and published by the First Amendment Foundation. This manual, which may be located online at: <http://www.myflsunshine.com/sun.nsf/sunmanual>, provides a list of statutory exemptions that protect specific records or information from public disclosure, as well as general guidance on compliance with Florida's public records laws. The proposed list of exemptions automatically applicable to court records, as proposed by the Committee on Access to Court Records, is as follows:

- Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. §39.0132(3), Fla. Stat.
- Adoption records. §63.162, Fla. Stat.
- Social Security, bank account, charge, debit and credit card numbers in court records. §119.0714(i)-(j), (2)(a)-(e), Fla. Stat.
- HIV test results and patient identity within the HIV test results. §381.004(3)(e), Fla. Stat.
- Sexually transmitted diseases – test results and identity within the test results when provided by the Department of Health or the department's authorized representative. §384.29, Fla. Stat.
- Birth and death certificates, including court-issued delayed birth certificates and fetal death certificates, §§382.008(6) and 382.025(1)(a), Fla. Stat.
- Identifying information in petition by minor for waiver of parental notice when seeking to terminate pregnancy. §390.01116, Fla. Stat.
- Identifying information in clinical mental health records under the Baker Act. §394.4615(7), Fla. Stat.
- Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals who have received services from substance abuse service providers. §397.501(7), Fla. Stat.
- Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. §916.107(8), Fla. Stat.
- Estate inventories and accountings. §733.604(1), Fla. Stat.
- Victim's address in domestic violence action on petitioner's request. §741.30(3)(b), Fla. Stat.
- Information identifying victims of sexual offenses, including child sexual abuse. §§119.071(2)(b), 119.0714(1)(h), Fla. Stat.
- Gestational surrogacy records. §744.3701, Fla. Stat.
- Grand jury records. Ch. 905, Fla. Stat.
- Information acquired by courts and law enforcement regarding family services for children. §984.06(3)-(4), Fla. Stat.
- Juvenile delinquency records. §§985.04(1), 985.045(2), Fla. Stat.

- Information disclosing the identity of persons subject to tuberculosis proceedings and records of the Department of Health in suspected tuberculosis cases. §§392.545, 392.65, Fla. Stat.
- Reports and order appointing court monitors in guardianship cases. §§744.1076, 744.3701, Fla. Stat.

5. ***Question: What methods should circuits use to protect privileged or confidential information on digital court recordings?***

Answer: The review and removal of confidential information from audio/video recordings prior to release is now a required standard of operation approved by the Supreme Court. The Supreme Court also recommends several best practices to reduce instances in which privileged or confidential information is captured on recordings such as the use of signage, muting of microphones, and educating court participants about digital recording technology. Additionally, circuits may explore the possibility of using standardized tags that indicate privileged or confidential information on the digital recording so that they may be more easily identified and removed from copies of the recording before release.

6. ***Question: In light of the new Supreme Court Opinion and AO, I would like clarification of a procedure that we have been following since day one. It has always been our position that once a transcript has been prepared and filed, it then becomes the “official record” and the “electronic record” is no longer available for release. I believe this was based in part on the Committee Note immediately following Rule 2.535 that states, “... when a court proceeding is electronically recorded by means of audio, analog, digital, or video equipment, and is also recorded via a written transcript prepared by a court reporter, the written transcript shall be the ‘official record’ of the proceeding to the exclusion of all electronic records...” We have had the electronic record (audio and/or video) requested post-transcript several times recently and have denied those requests. I am requesting a legal opinion as to whether or not this is the proper procedure.***

Answer: In SC08-1658, the Supreme Court pointed to Florida’s well established public policy of government in the sunshine and the longstanding presumption in favor of openness for all court proceedings and allowing access to records of those proceedings. They also stated that, “digital recordings of court proceedings are now widely used throughout the state by those involved in the court system, as well as the media, and have proven useful, reliable, efficient, and cost effective. We agree that access to these recordings should not be denied or left to the unfettered discretion of the trial court or the chief judge.”

Based on these comments, the Supreme Court’s approval of standards of operation related to producing copies of recordings, and existing public records laws- the transcript is considered the official record, but the audio/video recording from which the transcript is produced is also a public record. Therefore, the recording must be provided upon request (after review to protect against disclosure of confidential information).

7. ***Question: If primary recordings are public records, are backup recordings also public records?***

Answer: Backup recordings are public records, except for portions of the recordings that do not meet the definition of public record under rule 2.420(b)(1), Rules of Judicial Administration. That definition defines public records as records that are made or received in connection with the transaction of official business. Information that is not part of a judicial proceeding would not qualify as public record and would need to be redacted prior to disclosure to the public. However, un-redacted backup recordings may be requested through discovery in a specific case, and would need to be provided.

If possible, circuits should attempt to release only the primary recording of a proceeding. The Supreme Court approved a best practice that circuits shall not disclose backup recordings of proceedings to persons not employed or contracted by the court. In accordance with the Florida Courts Technology Commission's (FCTC) functional and technical standards for court recording systems, this practice should be applied in order to help prevent judges and other participants in a proceeding from turning off or muting the backup recording system. The intent of the FCTC standards and the best practice is to protect the redundant backup recording should the primary recording of a proceeding fail.

8. ***Question: Why did the Commission on TCP&A recommend a best practice that permits only court employees to prepare transcripts under the cost sharing arrangement with the public defenders, state attorneys, and court-appointed counsel?***

Answer: The Commission considered several options for dealing with the cost sharing arrangement. Ultimately, they decided that since the funding transferred from the public defenders, state attorneys, and Justice Administrative Commission to the state court system each quarter to pay for transcription services is directly applied towards the cost of employees (Cost Center 729), that circuits should make a diligent effort to only use employees to provide those services. The court system is not reimbursed for transcription services that are performed by contract providers.

9. ***Question: Is the cost sharing arrangement expected to continue?***

Answer: As of today, there is no official indication from the legislature that the cost sharing arrangement will be discontinued. The TCBC has discussed the possibility of *permanently* transferring, to the state court system's budget, the funding now transferred on a quarterly basis by the public defenders, state attorneys, and Justice Administrative Commission under the cost sharing arrangement. This would essentially eliminate the cost sharing arrangement, however services that are currently provided under the arrangement would continue (consistent with other standards and best practices approved by the Court). If this occurs, the circuits will be informed.

It should also be noted that both the TCP&A and the TCBC have emphasized the importance of developing a "statement of services provided" in each circuit with

each entity involved to eliminate confusion and avoid miscommunications as to what services are provided under the cost sharing arrangement. This is a best practice that has been approved by the Supreme Court. Accordingly, circuits are strongly encouraged to implement this best practice as soon as possible and to include the following:

- Identify the services that will be provided by state-funded court employees versus those services that may be purchased independently from contractors.
- Identify the specific services provided by division of court, proceeding type, and any variation that exists by county and/or courthouse.
- Identify a corresponding time period in which the services are in effect that is no less than one fiscal year.

CC: Lisa Goodner
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