

The Florida Bar's Rules of Judicial Administration Committee and Appellate Court Rules Committee have submitted to the Florida Supreme Court out-of-cycle reports concerning rule amendments proposed by the Commission on Trial Court Performance and Accountability to implement the Commission's Recommendations for the Provision of Court Reporting Services in Florida's Trial Courts.

The Court invites all interested persons to comment on the proposals, which are reproduced in full below, as well as online at <http://www.floridasupremecourt.org/decisions/proposed.shtml>. An original and nine paper copies of all comments must be filed with the Court on or before November 3, 2008, with a certificate of service verifying that a copy has been served on Scott M. Dimond, Chair, Rules of Judicial Administration Committee, 2665 S. Bayshore Dr., Penthouse 2, Miami, Florida 33133; John S. Mills, Chair, Appellate Court Rules Committee, 865 May St., Jacksonville, FL 32204-3310; and Robert B. Bennett, Jr., Chair, Commission on Trial Court Performance and Accountability, 2002 Ringling Boulevard, Floor 8, Sarasota, Florida 34237-7002, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The chairs have until November 24, 2008, to file a response to any comments filed with the Court. Electronic copies of all comments also must be filed in accordance with the Court's administrative order In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION AND THE FLORIDA RULES OF APPELLATE PROCEDURE – IMPLEMENTATION OF COMMISSION ON TRIAL COURT PERFORMANCE AND ACCOUNTABILITY RECOMMENDATIONS, CASE NO. SC08-1658

Proposed Amendments to Florida Rules of Judicial Administration

RULE 2.420. PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS

(a) [No change]

(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) - (3) [No change]

(c) - (f) [No change]

Committee Note

[No change]

RULE 2.535. 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 performs transcription services at public expense and 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.

(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, any proceedings reported for the court’s own use, and all proceedings required by statute to be reported by a certified or official an 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 subdivision (f).

(b) - (c) [No change]

(d) Ownership of Records. The chief judge of the circuit in which a proceeding is pending, in his or her official capacity, is the owner of all records and electronic records 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) - (10) [No change]

~~(f)~~**(g) Reporter as Officers of the Court.** 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 criminal and juvenile proceedings, and any other judicial proceedings required by law, or court rule, or administrative order to be reported shall be reported at public expense, shall be reported.

(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~~ approved court reporters or approved transcriptionists. 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 ~~persons other than~~ approved court reporters or approved transcriptionists, 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 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.

~~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.~~

(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 in its discretion may require that only the official record of a proceeding be made available to the public. 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.

(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 subdivision (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.

(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~~ 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.

Committee Note

The definitions of “electronic record” in subdivision (a)(5) and of “official record” in subdivision (a)(6) are intended to clarify that 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. While the term “record” is used within Rule 2.535 and within Fla. R. App. P. 9.200, it has a different meaning within the unique context of each rule. Accordingly, the meaning of the term “record” as defined for purposes of this rule does not in any way alter, amend, change, or conflict with the meaning of the term “record” as defined for appellate purposes in Fla. R. App. P. 9.200(a).

Proposed Amendments to the Florida Rules of Appellate Procedure

RULE 9.140. Appeal Proceedings in Criminal Cases

(a) [No change]

(b) Appeals by Defendant.

(1) [No change]

(2) Guilty or Nolo Contendere Pleas.

(A) [No change]

(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. – e. [No change]

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) [No change]

(3) – (4) [No change]

(c) [No change]

(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) – (C) [No change]

(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) [No change]

(2) [No change]

(e) [No change]

(f) Record.

(1) [No change]

(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) – (5) [No change]

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

(A) [No change]

(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) – (i) [No change]

RULE 9.200. The Record

(a) [No change]

(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) [No change]

(c) – (g) [No change]

9.900. Forms

(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,)	DESIGNATION TO <u>APPROVED</u>
)	<u>COURT REPORTER, CIVIL COURT</u>
v.)	<u>REPORTER, OR APPROVED</u>
)	<u>TRANSCRIPTIONIST, AND</u>
_____ ,)	<u>REPORTER’S OR APPROVED</u>
Defendant/Appellee))	<u>TRANSCRIPTIONIST’S</u>
_____)	<u>ACKNOWLEDGEMENT</u>

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).