

Appendix B



Report and Recommendations of
the Arizona Task Force to
Supplement Keeping of the Record
by Electronic Means

August 30, 2019

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Arizona Task Force to Supplement Keeping of the Record by Electronic Means

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Report and Recommendations of the Arizona Task Force to Supplement Keeping of the Record by Electronic Means

August 30, 2019

EXECUTIVE SUMMARY

A *Creation and Charge of the Task Force* Arizona Supreme Court Chief Justice Scott Bales issued Administrative Order No. 2019-49, establishing the Arizona Task Force to Supplement Keeping of the Record by Electronic Means, on May 21, 2019. Noting that Arizona, consistent with nationwide trends, is experiencing a shortage and unavailability of court reporters, the administrative order states “[t]his situation may require courts to reschedule or delay scheduling judicial proceedings, negatively impacting the ability to secure a speedy trial, hearing, or other resolution and ultimately delaying the administration of justice to the parties, victims, and all involved in the legal system broadly. The shortage also impacts court reporters’ ability to transcribe the proceedings in a timely manner.”

“Given these issues,” the administrative order continues, “electronic recording technology has been deployed in many Arizona courts to supplement the use of a court reporter in making a record of court proceedings. Use of electronic recording

“The Task Force shall develop recommended changes to statutes, rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal.”

Administrative Order No. 2019-49 (“Establishment of the Task Force to Supplement Keeping of the Record by Electronic Means”)

technology is limited, however, by statutes and rules enacted at a time when such technology did not exist or was not available or dependable.”

In describing its purpose, the administrative order directs that “[t]he Task Force shall develop recommended changes to statutes, rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal.” The task force is directed to consider the issues involved and to submit this report and “recommendations, together with recommended changes to statutes, rules, and the Arizona Code of Judicial Administration, by September 1, 2019 for circulation for comment and for presentation to the Arizona Judicial Council on October 24, 2019.”

Overview of this Report

This report begins with a summary of the membership of the task force, the process used to develop this report and these recommendations, and a summary of the recommendations themselves. The report then provides background information considered by the task force on the topic, with additional details available on the task force’s website: <https://www.azcourts.gov/cscommittees/Task-Force-to-Supplement-Keeping-of-the-Record-by-Electronic-Means>. The report includes, at Appendix 2, possible changes to statutes, rules, and the Arizona Code of Judicial Administration (sometimes referred to as the ACJA).

The Task Force and the Task Force Process

Members of the task force were selected, quite intentionally, to represent a wide variety of different perspectives. Members include an urban superior court judge; an appellate court judge; a rural county attorney; public and private court reporters, who also serve in leadership in the Arizona Court Reporters Association; rural and urban superior court administrators; an urban director of public defense services; an attorney in private practice; a representative of county management designated by the County Supervisors’ Association as well as staff support from the Arizona Administrative Office of the Courts (AOC). The intent was to make sure the task force included diverse perspectives in its work while keeping the number of members manageable.

The task force held three face-to-face meetings - June 25, 2019; August 1, 2019 and August 26, 2019 - and met by telephone on August 29, 2019. During these meetings, the task force learned about and discussed various issues, gathered and shared relevant information, considered approaches to use and recommendations to make, and then discussed and refined this report. These discussions included gathering and discussing

information about a wide variety of topics related to keeping the court record, with a particular focus on electronic recording. That effort prompts the structure of this report, which consists of three substantive sections: (1) possible changes to statutes, rules, and the Arizona Code of Judicial Administration to afford local superior courts in individual counties, through their presiding judges adopting policies and procedures, flexibility to create and maintain a complete and accurate court record electronically to supplement court reporters and prevent delay in resolving disputes in the trial court and on appeal; (2) efforts in Arizona to attract, retain and further enhance the reach and capacity of court reporters and (3) suggested best practices to apply when electronic recording is used to help ensure that courts continue to create and maintain a complete and accurate court record regardless of how the record is prepared.

Summary of Task Force Report and Recommendations

1. As directed by the administrative order, the task force developed possible changes to statutes, rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal. These changes, which are addressed in more detail below, are attached as Appendix 2.

2. Given the current shortage and unavailability of court reporters in Arizona, numerous efforts are underway to help attract, retain and further enhance the reach and capacity of court reporters. Regardless of whether changes to statutes, rules, and the ACJA are implemented, these efforts - which are discussed in more detail below - should be continued.

3. Best practices for electronic recording need to be enhanced and communicated to help ensure that courts continue to create and maintain a complete and accurate court record regardless of how the record is prepared. The ACJA contains helpful policy guidance for such practices. But particularly if electronic recording is used to create the court record in new areas and new ways, those standards should be enhanced to account for such new use. Moreover, those standards regularly should be

evaluated, at set intervals, to ensure that they account for changes in technology and any expansion of use of electronic recording to create the court record to help ensure that a complete and accurate court record is created and maintained.

A more detailed description of the background and reasoning supporting these recommendations follows.

DISCUSSION

Background

“Production and preservation of a record of proceedings in a court of record are fundamental functions of the Judicial Branch.” This introductory sentence from Administrative Order 2019-49 repeats what has been the case in Arizona since territorial days, and for far longer elsewhere. Court reporters have been a key component of producing and preserving records of legal proceedings.

In recent years, and increasingly, there has been a decrease in the number of court reporters resulting in significant vacancies. As one example, the 2018 Annual Report of the South Carolina Judicial Branch noted: “South Carolina is one of many states experiencing a shortage of court reporters. This established trend has been noted by industry experts for quite some time, and the South Carolina Judicial Branch works diligently to minimize the impact of the shortage on court proceedings.”¹ Along with efforts to recruit and attract more court reporters, South Carolina has “incorporated digital recording as a

supplemental measure in select courtrooms.” South Carolina is not alone in these efforts; a National Center for State Courts (NCSC) survey revealed that, nationwide, many courts are using electronic recording to create the court record.

It is in this context that Arizona established the task force. The shortage and unavailability of court reporters in Arizona “may require courts to reschedule or delay scheduling judicial proceedings, negatively impacting the ability to secure a speedy trial, hearing, or other resolution and ultimately delaying the administration of justice to the parties, victims, and all involved in the legal system broadly. The shortage also impacts court reporters’ ability to transcribe the proceedings in a timely manner.”

The administrative order also notes that transcript production is “one of the major factors contributing to delay in resolving appeals. Transcript production, which is required before any briefing can occur on appeal, can take months, delaying all types of appeals, including those where critical liberty interests are involved, such as criminal appeals and termination of parental rights appeals.” These delays in transcript production

¹ South Carolina Judicial Branch 2018 Annual Report at 8. See <https://www.sccourts.org/whatsnew/SOJ2019/2019SCJBAnnualReport.pdf>.

may be attributed to both court reporters and authorized transcribers.

Such delays are particularly significant where an individual is in custody awaiting resolution of criminal charges or, in juvenile court, a delinquency petition. But delays have a significant negative impact in other types of proceedings, including abuse and neglect (dependency) proceedings, where a child is in foster care pending resolution of the proceedings; family court matters (where child custody and the best interests of the child are cornerstone issues to be resolved) and in civil litigation, where resolution of a claim for damages may have enormous consequences to the parties.

To date, as noted in the administrative order, “[g]iven these issues, electronic recording technology has been deployed in many Arizona courts to supplement the use of a court reporter in making a record of court proceedings. Use of electronic recording technology is limited, however, by statutes and rules enacted at a time when such technology did not exist or was not available or dependable.” For these same reasons, courts are not afforded the flexibility, discretion, and authority to determine how the court record is made.

Along with the administrative order, the Arizona Supreme Court’s strategic

plan – “Justice for the Future Planning for Excellence 2019-2024” – echoes this same call. Goal 3 “Promoting Judicial Branch Excellence and Innovation” states the following in addressing “Keeping the Record:” “With a growing shortage of qualified court reporters at both the state and national level, courts are faced with the ever-increasing challenge of keeping an accurate record of court proceedings. Through emerging innovations, including digital recording and remote court reporting, we will take necessary steps to ensure courts continue to create a complete and accurate record for each and every case.” To achieve this goal, the strategic plan added a target to “[m]odernize statutes, rules, and the administrative code permitting courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to reduce the time needed to produce a record and transcript for cases on appeal.”

This background and context provided the call to action for the task force.

Task Force Meetings

The task force met three times in person and once by telephone.

The first meeting on June 25, 2019 started with introductions, adoption of rules for conducting task force business, a discussion of the charge of the task force

and the timelines set forth in the administrative order. During this meeting, the task force learned more about the court reporter shortage nationwide but, in particular, in Arizona. A court reporter staffing survey illustrated the situation in the superior courts in Arizona's 15 counties. That survey revealed that five counties employ no court reporters. Of the remaining 10 counties, just two had no court reporter vacancies. All told, of the 132 authorized court reporter positions in these superior courts, 26.5 (or 20 percent) were vacant. The reported duration of those vacancies ranged from "1 Month," to "Continuous," to "5 years" and, in one county, "10 years."

This first meeting included a comparatively unstructured, open discussion of the issues involved from various perspectives. In the end, the task force identified several "to-do" items to investigate and report back at the next meeting, including: (1) circulating text of relevant statutes, rules, and portions of the ACJA; (2) obtaining additional information on the Request a Reporter program; (3) asking Mark Wilson, Certification and Licensing Division Director, to attend the next meeting to discuss court reporter licensing; (4) gathering information about what other states and jurisdictions may be doing in

addressing the issues; (5) surveying court reporter salaries in Arizona and (6) ensuring that court record retention schedules account for the work of the task force. During its work, the task force also learned that Arizona Revised Statutes section 12-224 governing, among other things, fees for transcripts, has not been updated since 1987, and the page rate has not been changed since the late 1970s.

After this first meeting, these "to-do" list items were researched and relevant information was provided to the task force in advance of, or at, the second meeting.

The second meeting on August 1, 2019 started with a recap of the prior meeting, including the charge of the administrative order. Director Mark Wilson presented, addressing court reporter licensure, as well as how new legislation regarding reciprocity may impact the court reporter licensing process, and answered questions from task force members.

The meeting then involved presentations from three different, but frequently overlapping, perspectives: (1) a national perspective; (2) a court reporter perspective and (3) a court management perspective. These thoughtful presentations included questions and suggestions from task force members and provided the foundation for a broader conversation about next steps for the task

force. At the close of this second meeting, a general consensus was discussed for the structure of this report and the next task force meetings were scheduled.

Between this second meeting and the third meeting on August 26, 2019, a first draft of this report was prepared (based on the discussions at the first two meetings) and circulated to the task force for review via email on August 8, 2019. The task force was asked to review that draft and provide suggestions and comments by close of business on August 19, 2019. Those comments were then incorporated into a second draft that was circulated to the task force on August 21, 2019, in anticipation of the third task force meeting on August 26, 2019.

This third in-person task force meeting focused largely on the concepts and text in the second draft report and recommendations. In response to a question raised at the August 1, 2019 meeting, the task force received information from Director Mark Wilson. In Arizona, certified reporters renew their certification every even year. In February 2018 there were 440 Arizona certified reporters at the time of renewal; 376 renewed, 53 did not renew and 11 went inactive. Currently, Arizona has 402 certified reporters. These numbers suggest that, during February 2018, 64 court reporters did not renew or went

inactive while since February 2018, 26 additional court reporters were certified.

At the end of this third in-person meeting, the task force approved, by a vote of 7-2, Section 2 (“Arizona Efforts to Attract, Retain and Further Enhance the Capacity of Court Reporters”) and Section 3 (“Suggested Best Practices When Electronic Recording is Used”) and related text, subject to the editorial prerogative to account for suggestions offered. Section 1 (“Possible Changes to Statutes, Rules, and the Arizona Code of Judicial Administration”) and Appendix 2 were then revised and recirculated on August 27, 2019 in advance of the last task force meeting.

The last task force meeting was held telephonically on August 29, 2019. The purpose of this meeting was to account for changes, suggestions and additions to the report discussed at the August 26, 2019 meeting. At this last meeting, the task force considered revised Section 1 and Appendix 2 recirculated on August 27, 2019. Additional changes to Appendix 2 were suggested and, after discussion, a motion was made and seconded to approve Appendix 2, with those additional changes.

That version of revised Appendix 2 would have required a written request to be made for grand jury proceedings to be transcribed. After discussion, a motion to

amend was made and seconded, and passed by a vote of 7-2, so that the motion to approve as amended did not include language in Appendix 2 changing the current requirement that a grand jury transcript be prepared where an indictment issues. After further discussion, the motion as amended passed by a vote of 6-3. After a discussion, a motion was made and seconded to approve Section 1 ("Possible Changes to Statutes, Rules, and the

Arizona Code of Judicial Administration") and related text, subject to the editorial prerogative to account for suggestions offered. That motion passed by a vote of 6-3. Revised versions of the documents were then circulated to task force members for any final proofreading issues later in the day.

This report and recommendations reflect the product of this deliberative process.

Possible Changes to Statutes, Rules, and the Arizona Code of Judicial Administration

Attached as Appendix 2 are changes, identified by the task force, to Arizona statutes, Arizona procedural rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal. Appendix 2, which is intended to be comprehensive based on what the task force identified, is provided as directed by the administrative order.

In preparing Appendix 2, the task force considered numerous additional Arizona statutes, Arizona procedural rules and the ACJA. As a result of this consideration, the task force elected not to identify changes where at least one of the following applied: (1) the current provision already contemplated electronic recording in the discretion of the court; or (2) the current provision did not address the issue of how the verbatim record of a court proceeding is captured and preserved.

Several limitations and caveats are essential to provide clarity about what Appendix 2 does and does not address.

First, the changes in Appendix 2 deal with creating and maintaining a verbatim record of court proceedings. Unless arising in provisions that include both the judiciary and other governmental entities (such as agencies), these changes do not address law directing how a verbatim record is created and maintained in non-judicial proceedings, such as agencies or political subdivision proceedings.

Second, relatedly, the changes reflected in Appendix 2 do not address law directing how a verbatim record is created and maintained in court-adjacent proceedings such as a deposition.

Third, the changes reflected in Appendix 2 do not alter when a verbatim record of court proceedings must be created and maintained. Instead, the changes deal with what discretion a court has in deciding how (not whether) to create and maintain a verbatim record of court proceedings.

Fourth, if pursued and enacted, the changes reflected in Appendix 2 would provide a court additional discretion in deciding how to create and maintain a verbatim record of court proceedings. The changes do not direct or suggest how

a court should exercise discretion granted to it in deciding how to do so.

Fifth, consistent with the directives in the administrative order, Appendix 2 suggests changes that would afford courts discretion to determine how the verbatim record of court proceedings should be created and maintained in all instances, including instances where current law does not afford such discretion. *See* Ariz. R. Sup. Ct. 30(b)(3). Adopting such changes, particularly as they apply to “[g]rand jury proceedings” where no judicial officer is present, would implicate significant policy issues, which are beyond the scope of the charge of the task force, and quality control and training issues, some of which are addressed in the next part of this report.

Finally, and to amplify on the prior paragraph, given the directive in the administrative order and the time and

deadline set for the task force, the issues discussed in this Report, and any resulting changes that may be pursued, implicate significant policy issues, which are beyond the scope of the charge of the task force. The chair made this point throughout the work of the task force. Moreover, those policy issues were not the focus of the work of the task force. Instead, given the primary directive in the administrative order and the press of time, the task force focused on the important, but largely mechanical, task of identifying and capturing possible changes to statutes, rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal.

Arizona Efforts to Attract, Retain, and Further Enhance the Capacity of Court Reporters

Nationwide efforts are underway to attract and recruit individuals to the court reporting profession to overcome the nationwide shortage. Two organizations in particular are making significant efforts in this area, namely the National Court Reporters Association (NCRA) and Project Steno.

In October 2016, NCRA launched an A to Z steno program,² launched online in 2018. This free program is open to anyone interested in learning the steno keyboard

² <https://www.ncra.org/discoversteno>; <https://www.ncra.org/home/forms/learnsteno-a-to-z-intro-to-machine-shorthand-sign-up-form>, August 6, 2019.

once per week (three hours per session) for six to eight weeks. After those learning sessions, the program assists the individual with locating an educational institution the person can attend to become a court reporter.

More than 2,000 students have participated in the program in a comparatively short period of time. It is unclear, however, how many of these participants have gone on to seek to pursue a career in court reporting.

Project Steno is an organization formed in 2017. Its mission is to “promote the stenographic court reporting/captioning profession through social media and community outreach with the goal of building a robust pipeline of students into school and graduating them in two years.”³

Project Steno also offers a Basic Training program, similar to NCRA’s A to Z program. Participants who complete either the Basic Training Program or NCRA’s A to Z program are eligible for Project Steno’s tuition assistance. Project Steno partners with schools, provides coaching, and mentoring, and is working with the United States government to focus on recruiting military spouses into the court reporting profession.

³ <https://projectsteno.org/why-project-steno/>, August 6, 2019.

Project Steno also is present in vocational high schools and career educational programs. Over the past two years, the program has worked with high schools in four states and launched programs in high schools within these states.

The Arizona Court Reporters Association (ACRA) is taking action to expand court reporter services in Arizona. It has reinstated the Request a Reporter program, has notified its members and has notified outlying counties. This program allows counties to let ACRA know when there is a trial or other need for court reporting services that otherwise would be unmet. An email is sent by ACRA to its members and the need posted on ACRA’s Facebook page to try to secure a court reporter to provide services to meet that need.

Remote reporting also is a solution that ACRA referenced. This concept allows court reporters in different locations to provide contemporaneous reporting services. Remote video reporting is also currently in use in some Arizona courts.

In addition, ACRA is facilitating advertising to attract and retain court reporters in Arizona and providing transcription solutions.

Recent Arizona legislation, passed effective August 27, 2019, will allow

licensing reciprocity in Arizona, which includes court reporter licensing. This means that court reporters licensed in other states no longer have to pass the Registered Professional Reporter (RPR) licensing requirements for Arizona, which may be attractive to out-of-state court reporters seeking to relocate to Arizona. This legislation just became effective, meaning that it is too early to tell whether this reciprocity will result in more court reporters moving to Arizona. That said, given that there are approximately 400 certified court reporters in Arizona, even a small percentage increase in court reporters relocating to Arizona could have a significant benefit.

It is hoped that these significant efforts will yield results to lessen the shortage of court reporters in Arizona. Outside of Arizona, the shortage also is significant, with a stated unmet need for court reporters ranging from 5,000 - 6,000 nationwide. Court reporting schools have reported declining enrollments and 200 schools have closed in the last 20 years.

Recommendations:

1. Efforts should be made to encourage local community colleges to provide and expand court reporter programs.
2. Courts and court reporters are encouraged to work together to cover

courtroom calendars via workforce exchange, remote reporting from a dedicated location, utilizing the Request a Reporter program, etc.

3. Superior court administrators should ensure that licensing reciprocity information is included in job announcements and advertising.

4. Court reporters are encouraged to continue their community outreach and recruiting efforts.

* * * * *

Along with these recommendations, the task force encourages efforts to ensure that the certification process for court reporters in Arizona be expedited as much as possible to avoid losing qualified candidates to other states during the process. Arizona has a stringent quality-control based certification process that is not shared by many other states. Although not suggesting any change to the showing required to obtain certification in Arizona, the expressed hope is that the time period required to consider applications for certification in Arizona is competitive with other states so that candidates do not receive certification more promptly in another state and decide to move there instead of moving to (or remaining in) Arizona.

Another suggestion discussed by the task force, and noted here, is to determine whether the time permitted for providing

trial transcripts for a court reporter might vary depending upon the number of trial days reported by that court reporter. To use a hypothetical, for transcript production, it may be that the rules should require a smaller number of days for a five-day trial than that for a 25-day trial.

In addition, the lack of prompt and timely notice to the court reporter(s) of the need for transcript(s), particularly for an appeal, is an issue that at times has caused transcript delay. Further addressing the processes involved to provide that notice, and ensuring that such notice is effective, could avoid such delay.

Finally, a task force member provided information about a California program that allows courts to appoint certified shorthand reporters to serve as official court reporter pro tempores when an official reporter is unavailable.⁴ The task force encourages further research into this and other similar programs that provide these types of alternatives for consideration in Arizona.

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http://www.lacourt.org/generalinfo/courtreporter/GI_R_E001.aspx, August 27, 2019.

Suggested Best Practices When Electronic Recording is Used

Operation of a credible, reliable and accurate electronic recording (ER) program requires adoption of governing policies, procedures and a clear delineation of job responsibilities, both for court staff and transcription services. The Conference of State Court Administrators (COSCA) has advocated that courts “develop standards for topics including equipment, operation, security, storage, backup, retrieval, transcription and certification, redaction, retention, custody and public access.”⁵

To this end, the NCSC has published a comprehensive set of recommendations and minimum standards for digital recording programs, addressing the following areas:

- Governance, organization and structure;
- Ownership of the official record;
- Access to digital recordings;
- Oversight of digital recording monitors;
- Procedures and best practices;
- Signage;

⁵ Lee Suskin & Daniel J. Hall, “Making the Record Utilizing Digital Electronic Recording,” National Center for State Courts and State Justice Institute, September 2013, pg 6. See <https://www.ncsc.org/Services-and-Experts/Court-reengineering/~//media/Files/PDF/Services%20and%20Experts/Court%20reengineering/09012013-making-the-digital-record.ashx>.

- Opening colloquy;
- Procedures for courtroom monitors;
- Procedures for attorneys and courtroom participants;
- Transcription and delivery of the record;
- Access to recordings;
- Preparation and distribution of the transcript;
- State court practices and rules on management of transcript production;
- Equipment and technology standards;
- Digital recording format standards;
- Digital recording system specifications;
- Courtroom equipment, electrical connections, and wiring;
- Chambers equipment, electrical connections, and wiring;
- The record and transcription; and
- Facilities design recommendations.⁶

The Arizona Supreme Court has adopted administrative policies and procedures (ACJA § 1-602: Digital Recording of Court Proceedings)

⁶ *Id.* at 9-51.

governing many, but not all, of the foregoing areas of electronic recording, including:

- Technical requirements: equipment standards, annotation, playback, storage and back-up;
- Operational requirements: staffing, equipment checks, security, transcription and records management; and
- Best practices: procurement, staff training, alternative means of making the record in the event of equipment failure and public access fees.

These ACJA provisions, which govern ER currently authorized in Arizona, need to be communicated and complied with (and likely enhanced) if the use of ER expands in Arizona's courts.

Recommendations:

Given the critical importance of creating and maintaining the court record, recommendations to identify and implement best practices when ER is used include:

1. Expanding the Arizona Supreme Court's policy on Digital Recording of Court Proceedings set forth in ACJA § 1-602 to encompass all applicable areas of the foregoing minimum standards promulgated by the NCSC and update the Arizona Manual of Transcript

Procedures to reflect changes in transcript production and how the record is captured.

2. Implementing measures to ensure full implementation of the Arizona Supreme Court's policies and procedures governing electronic recording through:

- Designation of court staff to serve as courtroom monitors;
- Checklists for systems maintenance and operation, transcription services and record management;
- Specialized job descriptions for electronic recording program staff;
- Develop and implement training programs to account for and enhance skills sets identified in specialized job descriptions for individuals involved in all aspects of electronic recording systems;
- Periodic certification of electronic recording systems by local courts, periodic quality control and assessments and annual re-certification of electronic recording systems: and
 - Revocation of the local court's discretion to allow electronic recording if standards are not met.

The Arizona Supreme Court's administrative policy governing criminal court hearings conducted via video communications (ACJA § 5-208) is instructive in terms of system equipment maintenance, serving as a possible model for the oversight of electronic recording systems in the trial courts. Specifically, the policy (ACJA § 5-208(C)) expressly requires that courts conducting such video hearings certify - on an annual basis - that the video system meets operational standards. A checklist is also provided for the annual system certification process. CHECKLIST and CERTIFICATION ACJA § 5-208.

3. Court employees and contractors involved in the operation of the electronic recording program and/or transcription services must comply with governing statutes, court rules and policies. The NCSC recommends that courts adopt a code of "conduct and confidentiality" for staff and contractors, similar to that of the Code of Professional Ethics adopted by the American Association of Electronic Reporters and Transcribers (AAERT).⁷

It is recommended that separate governing codes of conduct be developed as applicable to the work of court staff and contract employees. For court staff

working in the electronic recording program, the provisions of the Arizona Supreme Court's Code of Conduct for Judicial Employees (ACJA § 1-303) may well suffice. That said, the Arizona Supreme Court has established specialized codes of conduct governing court reporters (ACJA § 7-206(J)) and court interpreters (Administrative Order No. 2015-98), which may be instructive in this analysis.

It is recommended that a separate code of conduct be developed to govern the work of contract employees who provide transcription or electronic monitoring services. The recommended expansion of the Arizona Supreme Court's policy on Digital Recording of Court Proceedings should include a provision requiring adoption of the recommended code of conduct for contract employees in all vendor contracts for electronic recording services.

It is also recommended that education efforts regarding ER include all involved in the judicial system, including court staff, counsel, parties and judicial officers. To that end, best practices information should be included in judicial training and in Bench books promulgated by the Administrative Office of the Courts for use by judicial officers.

⁷ Lee Suskin & Daniel J. Hall, "Making the Record Utilizing Digital Electronic Recording," National Center for State Courts and State Justice Institute, September 2013, Appendix E, pgs 45-46.

APPENDIX 1—Administrative Order

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ESTABLISHMENT OF THE TASK)	Administrative Order
FORCE TO SUPPLEMENT KEEPING)	No. 2019 - 49
OF THE RECORD BY ELECTRONIC)	
MEANS)	
)	

Production and preservation of a record of proceedings in a court of record are fundamental functions of the Judicial Branch. Arizona Revised Statutes and Arizona Rules of Procedure require that courts produce a verbatim record of certain judicial proceedings.

Consistent with trends nationwide, several Arizona counties are experiencing a shortage and unavailability of court reporters. This situation may require courts to reschedule or delay scheduling judicial proceedings, negatively impacting the ability to secure a speedy trial, hearing, or other resolution and ultimately delaying the administration of justice to the parties, victims, and all involved in the legal system broadly. The shortage also impacts court reporters' ability to transcribe the proceedings in a timely manner.

Delays in transcript production also are one of the major factors contributing to delay in resolving appeals. Transcript production, which is required before any briefing can occur on appeal, can take months, delaying all types of appeals, including those where critical liberty interests are involved, such as criminal appeals and termination of parental rights appeals.

Given these issues, electronic recording technology has been deployed in many Arizona courts to supplement the use of a court reporter in making a record of court proceedings. Use of electronic recording technology is limited, however, by statutes and rules enacted at a time when such technology did not exist or was not available or dependable.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the Task Force to Supplement Keeping of the Record by Electronic Means is established as follows:

1. **Purpose.** The Task Force shall develop recommended changes to statutes, rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a

complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal.

2. **Membership.** The individuals listed in Appendix A are appointed as members of the Task Force effective immediately and ending November 30, 2019. The Chief Justice may appoint additional members as may be necessary.
3. **Meetings.** The Task Force shall meet at the discretion of the Chair. All meetings shall comply with the public meeting policy of the Arizona Judicial Branch, Arizona Code of Judicial Administration § 1-202: Public Meetings.
4. **Recommendations.** The Task Force shall submit its recommendations, together with recommended changes to statutes, rules, and the Arizona Code of Judicial Administration, by September 1, 2019 for circulation for comment and for presentation to the Arizona Judicial Council on October 24, 2019.

Dated this 21st day of May, 2019.

SCOTT BALES
Chief Justice

Attachment: Appendix A

APPENDIX A

MEMBERSHIP LIST

**TASK FORCE TO SUPPLEMENT KEEPING OF THE RECORD BY ELECTRONIC
MEANS**

Chair

Honorable Samuel A. Thumma, Chief Judge
Arizona Court of Appeals, Division One

Members

Honorable Pamela Gates

Superior Court of Arizona in Maricopa
County

Mr. Rolf Eckel

Court Administrator
Superior Court of Arizona in Yavapai
County

Mr. Bob James

Deputy Court Administrator
Superior Court of Arizona in Maricopa
County

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Intergovernmental Relations

Possible Changes to Statutes, Rules, and the Arizona Code of Judicial Administration

Arizona Revised Statutes

Arizona Revised Statutes Annotated

Title 8. Child Safety (Refs & Annos)

Chapter 2. Juvenile Court

Article 3. Juvenile Proceedings (Refs & Annos)
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A.R.S. § 8-233. Record of proceeding

The provisions of title 12, chapter 2, article 3, ~~providing for~~regarding the appointment and oath of a ~~court~~certified reporter shall apply at any juvenile court hearing conducted by a judge.

Arizona Revised Statutes Annotated

Title 12. Courts and Civil Proceedings (Refs & Annos)

Chapter 2. Judicial Officers and Employees
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Article 3. Court <u>Certified</u> Reporter (Refs & Annos)
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A.R.S. § 12-221. Appointment and oath

~~Each~~A judge of the superior court ~~shall~~may appoint a ~~court~~certified reporter. Before entering upon ~~his~~the certified reporter's duties, the ~~court~~certified reporter

shall take and subscribe the official oath to be administered by ~~the~~a judge of the court.

A.R.S. § 12-223. Attendance at and report of proceedings; sale of transcripts

A. ~~The court~~When directed by the judge, the certified reporter shall attend court during the hearing of ~~all~~ matters before it ~~unless excused by the judge. He. The certified reporter~~ shall make stenographic notes of all oral proceedings before the court, but unless requested by court or counsel, ~~he~~the certified reporter need not make stenographic notes of arguments of counsel to a jury, nor of argument of counsel to the court in the absence of a jury.

B. Upon payment or tender of the fees therefor, ~~he~~the certified reporter, unless otherwise prohibited by law or order of the court, shall furnish to any person a typewritten transcript of all or any part of the proceedings reported by ~~him~~the certified reporter, and upon request, certify that such transcript is a correct and complete statement of such proceedings.

~~A.R.S. § 12-225. Appointment of deputies; compensation~~

~~A. The court reporter may employ deputies who shall be compensated by him.~~

~~B. When the reporter is prevented from performing his duties because of absence on public business, or when more than one judge is holding court at the same time in the county or any division thereof, the reporter may appoint a deputy to perform the services of reporter during the period and at the compensation the judge provides by order. Such compensation shall be a county charge.~~

Arizona Revised Statutes Annotated
Title 12. Courts and Civil Proceedings (Refs & Annos)
Chapter 3. Fees and Costs
Article 1. Fees in General (Refs & Annos)

A.R.S. § 12-302. Extension of time for payment of fees and costs; relief from default for nonpayment; deferral or waiver of court fees and costs; definitions

H. The following court fees and costs may be deferred or waived, except that the county shall pay the fees and costs in paragraphs [6, 7](#) and [78](#) of this subsection on the granting of an application for deferral or waiver and an applicant who has been granted a deferral shall reimburse the county for the fees and costs in paragraphs [6, 7](#) and [78](#) of this subsection:

1. Filing fees.
2. Fees for issuance of either a summons or subpoena.
3. Fees for obtaining one certified copy of a temporary order in a domestic relations case.
4. Fees for obtaining one certified copy of a final order, judgment or decree in all civil proceedings.
5. Sheriff, marshal, constable and law enforcement fees for service of process if any of the following applies:
 - (a) The applicant established by affidavit that the applicant has attempted without success to obtain voluntary acceptance of service of process.
 - (b) The applicant's attempt to obtain voluntary acceptance of service of process would be futile or dangerous.
 - (c) An order of protection or an injunction against harassment in favor of the applicant and against the party sought to be served exists and is enforceable.
6. The fee for service by publication if service is required by law and if the applicant establishes by affidavit specific facts to show that the applicant has exercised due diligence in attempting to locate the person to be served and has been unable to do so.
7. ~~Court~~[Certified](#) reporter's fees for the preparation of court transcripts if the ~~court~~[certified](#) reporter is employed by the court.

8. [Authorized transcriber's fees for the preparation of court transcripts if the authorized transcriber is employed by the court.](#)

9. Appeal preparation and filing fees at all levels of appeal and photocopy fees for the preparation of the record on appeal pursuant to sections 12-119.01, 12-120.31 and 12-2107 and section 12-284, subsection A.

Arizona Revised Statutes Annotated

Title 21. Juries (Refs & Annos)

Chapter 2. Jurors

Article 4. Misconduct by or Involving Jurors (Refs & Annos)

A.R.S. § 21-235. Recording, listening to, observing proceedings unlawful;
classification

A. A person who knowingly, by any means whatsoever, records all or part of the proceedings of any grand jury while it is in session or listens to or observes the proceedings of any grand jury of which he is not a member while such jury is in session is guilty of a class 2 misdemeanor.

B. This section does not prohibit:

1. The prescribed activities of the court, [which includes the court's use of an electronic recording system](#), the prosecuting officer, a ~~court~~certified reporter designated by the court, or an interpreter designated by the court.
2. The taking of notes by a grand juror in connection with and solely for the purpose of assisting him in the performance of his duties as such juror.
3. The appearance, for the purposes of giving the testimony, of a witness.
4. The appearance, for the purpose of presenting evidence when permitted pursuant to section 21-412, of a person being investigated and his counsel.

Arizona Revised Statutes Annotated

Title 21. Juries (Refs & Annos)

Chapter 4. Grand Juries

Article 1. General Provisions (Refs & Annos)
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A.R.S. § 21-411. Appointment of reporter; transcript

A. The presiding judge of the superior court or an individual designated by the presiding judge of the superior court may ~~shall~~ appoint a ~~regularly appointed court certified~~ reporter or direct the use of an electronic recording system to record the proceedings before the grand jury, except the deliberations of the grand jury. The reporter's notes or electronic recording containing the proceedings from which an indictment is returned shall be transcribed, any exhibits shall be secured, and the transcript shall be filed with the clerk of the superior court not later than twenty days following the return of the indictment, unless the court otherwise orders. Such transcript shall be made available to the prosecuting officer and the defendant. The transcript or electronic recording, or a portion of the transcript or electronic recording, may be denied to a defendant by the court upon a showing of extraordinary circumstances by a prosecuting officer. The reporter's notes or electronic recording which are not transcribed as provided in this section shall be ~~filed with~~ secured by the clerk of the superior court and impounded and shall be transcribed only when ordered by the presiding judge of the superior court; or an individual designated by the presiding judge of the superior court.

B. The ~~reporter and typists~~ persons who transcribe the reporter's notes or electronic recording of grand jury proceedings shall be sworn by the foreman ~~or,~~ acting foreman, clerk of superior court, the presiding judge of the superior court, or an individual designated by the presiding judge of the superior court not to disclose any testimony or the name of any witness except to the county attorney or other prosecuting officer or when testifying in court.

Arizona Revised Statutes Annotated

Title 36. Public Health and Safety (Refs & Annos)

Chapter 5. Mental Health Services

Article 5. Court-Ordered Treatment (Refs & Annos)

A.R.S. § 36-539. Conduct of hearing; record; transcript

A. The medical director of the evaluation agency shall issue instructions to the physicians or the psychiatric and mental health nurse practitioner of the evaluation agency who is treating the proposed patient to take all reasonable precautions to ensure that at the time of the hearing the proposed patient shall not be so under the influence of or so suffer the effects of drugs, medication or other treatment as to be hampered in preparing for or participating in the hearing. If the proposed patient is being treated as an inpatient by the evaluation agency, the court at the time of the hearing shall be presented a record of all drugs, medication or other treatment that the person has received during the seventy-two hours immediately before the hearing.

B. The patient and the patient's attorney shall be present at all hearings, and the patient's attorney may subpoena and cross-examine witnesses and present evidence. The patient may choose to not attend the hearing or the patient's attorney may waive the patient's presence. The evidence presented by the petitioner or the patient shall include the testimony of two or more witnesses acquainted with the patient at the time of the alleged mental disorder, which may be satisfied by a statement agreed on by the parties, and testimony of the two physicians who participated in the evaluation of the patient, which may be satisfied by stipulating to the admission of the evaluating physicians' affidavits as required pursuant to section 36-533, subsection B. The physicians shall testify as to their personal observations of the patient. They shall also testify as to their opinions concerning whether the patient is, as a result of mental disorder, a danger to self or to others or has a persistent or acute disability or a grave disability and as to whether the patient requires treatment. Such testimony shall state specifically the nature and extent of the danger to self or to others, the persistent or acute disability or the grave disability. If the patient has a grave disability, the physicians shall testify concerning the need for guardianship or conservatorship, or both, and whether or not the need is for immediate appointment. Other persons who have participated in the evaluation of the patient or, if further treatment was requested by a mental health treatment agency, persons of that agency who are directly involved in the care of the patient shall testify at the request of the court or of the patient's attorney. Witnesses shall testify as to placement alternatives appropriate and available for the care and treatment of the patient. The clinical record of the patient

for the current admission shall be available and may be presented in full or in part as evidence at the request of the court, the county attorney or the patient's attorney.

C. If the patient, for medical or psychiatric reasons, is unable to be present at the hearing and cannot appear by other reasonably feasible means, the court shall require clear and convincing evidence that the patient is unable to be present at the hearing and on such a finding may proceed with the hearing in the patient's absence.

D. The requirements of subsection B of this section are in addition to all rules of evidence and the Arizona rules of civil procedure, not inconsistent with subsection B of this section.

E. A verbatim record of all proceedings under this section shall be made ~~by stenographic means by a court reporter if a written request for a court reporter is made by any party to the proceedings at least twenty-four hours in advance of such proceedings. If stenographic means are not requested in the manner provided by this subsection, electronic means shall be directed by the presiding judge. The stenographic notes or electronic tape~~ and shall be retained as provided by statute.

F. A patient who has been ordered to undergo treatment may request a certified transcript of the hearing. To obtain a copy, the patient shall pay for a transcript or shall file an affidavit that the patient is without means to pay for a transcript. If the affidavit is found true by the court, the expense of the transcript is a charge on the county in which the proceedings were held, or, if an intergovernmental agreement by the counties has required evaluation in a county other than that of the patient's residence, such expense may be charged to the county of the patient's residence or in which the patient was found before evaluation.

Arizona Revised Statutes Annotated
Title 36. Public Health and Safety (Refs & Annos)
Chapter 6. Public Health Control
Article 6. Tuberculosis Control (Refs & Annos)

A.R.S. § 36-727. Hearings; procedure; confidentiality

A. The afflicted person or, if a minor or incapacitated person, the afflicted person's parent or guardian and that person's attorney have the right to be present at all hearings, subject to any conditions or procedures that are deemed appropriate or necessary by order of the court to protect the health and safety of all participants. The afflicted person may waive any appearance before the court.

B. If the afflicted person is unable or unwilling to be present at the hearing or the hearing cannot be reasonably conducted where the afflicted person is being treated or confined or cannot be reasonably conducted in the afflicted person's presence, the court shall enter a finding and may proceed with the hearing on the merits of the petition.

C. The court may impose conditions or procedures that it deems necessary to protect the health and safety of all participants in the hearing and to ensure humane treatment with due regard to the comfort and safety of the afflicted person and others. These measures may include video or telephonic conference appearances. If necessary the court shall provide language interpreters and persons skilled in communicating with vision impaired and hearing impaired persons pursuant to applicable law.

D. Parties to the proceedings may present evidence and subpoena and cross-examine witnesses. The evidence presented may include the testimony of experts on infectious diseases or public health matters or a physician who performed an examination or evaluation of the afflicted person. The petitioner may prove its case on the affidavit or affidavits filed in support of the initial petition. The clinical record of the afflicted person for the current admission shall be available and may be presented in full or in part as evidence at the request of the court, the afflicted person or the afflicted person's attorney or any party in interest.

E. At the hearing the court shall be advised of any drugs known to have been administered to the afflicted person before the hearing that would affect the afflicted person's judgment or behavior.

F. Persons appointed to conduct an examination and evaluation of the afflicted person shall make their reports in writing to the court. The reports shall include a recommendation as to the least restrictive alternative measures available to the court.

G. A verbatim record of all proceedings under this section shall be made ~~by stenographic or electronic means. The stenographic notes or electronic tape~~ and shall be retained as provided by statute.

H. The court hearing shall not be open to the public and all records, notices, exhibits and other evidence are confidential and shall not be released to the public. The court may order any portion released or a public hearing to be held on a request from the afflicted person or, if a minor or incapacitated person, the afflicted person's parent or guardian or the afflicted person's attorney. The court's records and exhibits are available to the petitioner, the afflicted person, the department, the tuberculosis control officer, the local health officer or a legal representative of any of these persons or agencies.

I. An afflicted person who is ordered by the court to undergo examination, monitoring, treatment, isolation or quarantine or, if a minor or incapacitated person, the afflicted person's parent or guardian may request a certified transcript of the hearing. To obtain a copy the person shall pay for the transcript or shall file an affidavit that the afflicted person cannot afford to pay for a transcript. If the affidavit is found true by the court, the court shall charge the expense of the transcript to the county in which the proceedings were held. If an intergovernmental agreement by the counties has required an evaluation in a county other than that of the afflicted person's residence, this expense may be charged to the county of the afflicted person's residence or in which the afflicted person was found before the evaluation.

Arizona Revised Statutes Annotated
Title 38. Public Officers and Employees (Refs & Annos)
Chapter 3. Conduct of Office
Article 3. Records (Refs & Annos)

A.R.S. § 38-424. Use of ~~tape recorders or other recording devices~~ certified reporters; electronic means; exception

This state or any agency of this state, including the judiciary, and each political subdivision of this state, including any courts of law, may for any purpose use ~~tape recorders or other recording devices~~ electronic means in lieu of reporters or

stenographers. ~~This section does not apply if the matter to be recorded arises out of~~ for court proceedings and either party ~~requests that~~ may provide a ~~court~~ certified reporter or stenographer ~~be in addition to the electronic means used~~ by courts to record the proceedings. The official record, however, is the record prepared by the court as established by the procedural rules established by the Supreme Court.

Consistent with these changes, change “court reporter” to “certified reporter” as applicable where used in any other statutes, rules, or Arizona Code of Judicial Administration provisions.

A.R.S. § 8-323. Juvenile hearing officer; appointment; term; compensation; hearings; required attendance; contempt
[no changes]

A.R.S. § 12-224. Salary; fees for transcripts; free transcripts; office supplies
[no changes]

A.R.S. § 13-4102. Order for examination; notice; proof of service
[no changes]

A.R.S. § 12-143. Payment of salaries and other expenses; providing facilities; judicial employees.
[no changes]

A.R.S. § 13-3952. Compensation of ~~court~~ certified reporter appearing at preliminary hearing; fees for transcribing notes
[no changes]

A.R.S. § 23-674. Procedure in rendering decisions and orders; rights of parties; representation
[no changes]

A.R.S. § 26-1028. Detail or employment of reporters and interpreters.

[no changes]

A.R.S. § 26-1054. Record of trial

[no changes]

A.R.S. § 32-3632. Hearing and judicial review; costs and fees; appeal

[no changes]

A.R.S. § 32-4001. Scope of chapter

[no changes]

A.R.S. § 32-4003. Reporter certification; violation

[no changes]

A.R.S. §32-4004. Board of certified reporters

[no changes]

A.R.S. § 32-4006. Enforcement and disciplinary procedures

[no changes]

A.R.S. § 32-4022. Examination; requirements; exemption

[no changes]

A.R.S. § 32-4041. Revocation or suspension of certificate

[no changes]

A.R.S. § 38-317. Compensation of impeachment personnel

[no changes]

A.R.S. § 36-539. Conduct of hearing; record; transcript

[no changes]

A.R.S. § 40-360.04. Hearings; procedures

[no changes]

A.R.S. § 41-324. ~~Court~~Certified reporters; notarial acts
[no changes]

A.R.S. §41-1092.07. Hearings
[no changes]

A.R.S. § 48-704. Hearing on objections
[no changes]

A.R.S. § 48-1034. Objections; hearing on formation
[no changes]

A.R.S. § 49-287.06. Allocation hearing
[no changes]

Arizona Procedural Rules

Rules of the Supreme Court of Arizona

Rule 30. Verbatim Recording of Judicial Proceedings

(a) [no changes]

(b) Use of Court Reporting Resources.

1. Request for certified reporter. Any party to any action in superior court may request that any proceeding in that action be recorded by a certified ~~court~~ reporter. The court ~~shall~~may grant the request if it is made at least three days prior to the proceeding to be recorded unless a different time frame has been established by local rule.

2. Making the record in the absence of a ~~timely request for a court certified~~ reporter. ~~Except as provided in (3) below, in~~In the absence of a ~~timely request for a certified court~~ reporter, the record will be made ~~in a manner within~~using an electronic recording system to record the ~~sound discretion of the court~~proceeding as established by local rule.

3. ~~Proceedings requiring~~ If the court is using an electronic recording system to record the proceedings, a party has the right to provide a certified court reporter to also record the proceedings. The following proceedings shall be recorded by a party providing the certified reporter must bear the cost. The official record, however, is the record designated by the court reporter and not solely by electronic means, unless as set forth in section (b)(4) of this rule requirement is waived by the parties and the court approves the waiver:

~~a. Grand jury proceedings;~~

~~b. All proceedings in a first degree murder case, pursuant to A.R.S. § 13-1105, once the intention to seek the death penalty notice has been filed;~~

~~c. Felony jury trials;~~

~~d. Initial determinations of sexually violent person status, pursuant to A.R.S. § 36-3706;~~

~~e. Proceedings on a request for authorization of abortion without parental consent, pursuant to A.R.S. § 36-2152.~~

4. Official record. When ~~an Arizona~~ a court's certified ~~court~~ reporter records a proceeding in a superior court that is simultaneously recorded by electronic recording equipment, the ~~court~~ court's certified reporter's record shall be the official record. For a proceeding not recorded by a court's certified reporter, the official record is the transcript prepared by an authorized transcriber as defined in Rule 30(a)(2)(b) or (c). The transcript in any case certified by the court's certified reporter or other authorized transcriber as defined in Rule 30(a)(2)(a)-(c) shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcripts of the proceedings of the court shall be considered as official except those made from the records certified by the court's certified reporter or other authorized transcriber as defined in Rule 30(a)(2)(b) or (c), unless otherwise ordered by the court.

[DATE] COMMENT (Redline compared to [2006] Comment)

Rule 30(b)(1). Nothing in this rule precludes the court from granting a party's untimely request for a certified reporter.

Rule 30(b)(2). ~~In the absence of a timely request for a certified court reporter,~~ The court may approve use of a certified court reporter, audio or video recording to capture the record of court proceedings. In exercising its discretion ~~under~~

~~subsection (B), giving due deference to the parties' preference~~ of how court proceedings should be captured, the court ~~may~~ should consider the following factors when requiring the presence of the court's certified reporter or otherwise designating the official record: unique demands of the preservation of the official court record by a certified reporter in grand jury proceedings, felony jury trials, particularly first degree murder cases in which the State filed a death penalty notice, initial determinations of sexually violent person status, and proceedings on a request for authorization of abortion without parental consent. Moreover, the court should consider the availability of a certified reporter; the probability that a transcript will be requested; the number of litigants; convenience of the parties and the court's schedule; sufficiency of another form of record to convey the substance of the matters discussed at the proceeding; whether testimonial evidence will be presented at the proceeding; presence of non-native English speakers as witnesses or parties; the likelihood that technical or otherwise difficult terminology will be used; the need for formal or informal proceedings; the need for a real-time transcript; the likelihood that daily transcripts will be required; and any other factor which in the interests of justice warrants a particular form of record, or as otherwise required to serve the interests of justice.

Rule 75. Jurisdiction; Definitions

Rule 75(b) Definitions

9. "Expenses" means all obligations in money, other than costs, necessarily incurred by the state bar in the performance of their duties under these rules. Expenses shall include, but are not limited to, administrative expenses, necessary expenses of bar counsel or staff, charges of expert witnesses, charges of ~~court~~ certified reporters and authorized transcribers and all other direct, provable expenses.

Rule 78. Initial Proceedings

[no changes]

Rule 125. Defining Minute Entry, Order, Ruling, and Notice; Party Responsibility

[no changes]

Rules of Civil Procedure

Rule 30. Deposition by Oral Examination

[no changes]

Rule 43. Taking Testimony

(a) [no changes]

(b) [no changes]

(c) [no changes]

(d) [no changes]

(e) [no changes]

(f) [no changes]

(g) Preserving Recording of Court Proceedings.

(1) *Transcripts and Other Recordings.* The official verbatim recording of any court proceeding is an official record of the court. The original recording must be kept by the person ~~who recorded it, a court-designated custodian, or the clerk in a place~~ designated by the court. The recording must be retained according to the records retention and disposition schedules adopted by the Supreme Court, unless the court specifies a different retention period.

(2) [no changes]

Rule 75. Hearing Procedures

[no changes]

Rules of Criminal Procedure

Rule 5.1. Right to a Preliminary Hearing; Waiver; Continuance

(a) [no changes]

(b) [no changes]

(c) [no changes]

(d) Hearing Demand. A defendant who is in custody may demand that the court hold a preliminary hearing as soon as practicable. In that event, the magistrate must set a hearing date and must not delay its commencement more than necessary to secure the attendance of counsel, ~~a court reporter, and~~ necessary witnesses, and ensure the ability to capture a verbatim recording of the proceeding.

Rule 5.2. Summoning Witnesses; Record of Proceedings

(a) [no changes]

(b) **Record of Proceedings.** The magistrate must make a verbatim record of the preliminary hearing. Proceedings may be recorded by a certified ~~court~~ reporter or by electronic or other means authorized by the superior court ~~presiding judge. But if a party requests that a certified court reporter record the proceedings, the court must record the proceedings in that manner, unless the court is located in an area where a certified court reporter is not reasonably available.~~

Rule 5.6. Transmittal and Transcript of the Record

[no changes]

Rule 5.7. Preservation of Recording

[no changes]

Rule 11. Initial Appearance and Trial Procedures

[no changes]

Rule 12.4. Who May Be Present During Grand Jury Sessions

(a) General. Only the following individuals may be present during grand jury sessions:

- (1) the witness under examination;
- (2) counsel for a witness if the witness is a person under investigation by the grand jury;
- (3) a law enforcement officer or detention officer accompanying an in-custody witness;
- (4) prosecutors authorized to present evidence to the grand jury;
- (5) a certified ~~court reporter~~ reporter or person authorized by the court to ensure the verbatim record is captured; and
- (6) an interpreter, if any.

(b) [no changes]

Rule 12.7. Record of Grand Jury Proceedings

(a) ~~Court Reporter~~ Recording Arrangements. The presiding or impaneling judge must ~~assign a certified court reporter~~ make arrangements to ~~record~~ capture all grand jury proceedings, except its deliberations. Any arrangements must ensure that no images of grand jurors are taken or captured.

(b) Foreperson. The foreperson must keep a record of how many grand jurors voted for and against an indictment, but must not record how each grand juror voted. If the grand jury returns an indictment, the foreperson's record of the vote must be transcribed ~~by the court reporter~~ and filed with the court no later than 20 days after the return of the indictment, and may be made available only to the court, the State, and the defendant.

(c) Filing the Transcript and Minutes. The court reporter's record of grand jury proceedings must be transcribed and filed with the superior court clerk no later than 20 days after return of the indictment, and may be made available only to the court, the State, and the defendant.

Rule 15.3. Depositions

[no changes]

Rule 28.1. Duties of the Clerk

[no changes]

Rule 31.2. Notice of Appeal or Notice of Cross-Appeal

[no changes]

Rule 31.8. The Record on Appeal

[no changes]

Rule 31.9. Transmission of the Record to the Appellate Court

[no changes]

Rule 32.4(e). Filing of Notice and Petition, and Other Initial Proceedings

[no changes]

Rule 32.8(e). Evidentiary Hearing

[no changes]

Rule 32.9(e). Review

[no changes]

Rules of Civil Appellate Procedure

Rule 1. Scope of Rules; Definitions

[no changes]

Rule 10. Appeals in Expedited Election Matters

(a) [no changes]

(b) [no changes]

(c) [no changes]

(d) [no changes]

(e) [no changes]

(f) Preparation of the Record on Appeal.

(1) *Index.* The superior court clerk must prepare an index of the record and transmit the index and the superior court's record to the appellate court within 5 business days after the notice of appeal is filed.

(2) *Transcripts; Stipulated Record.*

(A) The appellant must promptly order and ask the ~~court~~certified reporter or authorized transcriber to expedite the preparation of any transcripts necessary for determination of the appeal.

(B) [no changes]

(C) The party that orders a transcript must make payment arrangements with the ~~court~~certified reporter or authorized transcriber, and upon receipt of the transcript, must promptly file it with the appellate court and serve other parties with a copy.

(D) [no changes]

(E) [no changes]

(g) [no changes]

(h) [no changes]

(i) [no changes]

(j) [no changes]

Rule 11. The Record on Appeal

[no changes]

Rule 11.1. Transmitting the Record to the Appellate Court

[no changes]

Rules of Procedure for Special Actions

[no changes]

Rules of Procedure for Direct Appeals from Decisions of the Corporation Commission to the Arizona Court of Appeals

Rule 7. Record on Direct Appeal of Commission Decisions or Orders

Rule 7(f). Transcript Defined; Several Appeals; Inability to Provide Timely Transcript.

“Transcript” for purposes of this rule shall refer to a ~~reporter’s~~ transcript prepared by a certified reporter or authorized transcriber. When more than one direct appeal is taken from the same Commission decision, a single transcript shall be prepared. If a transcript cannot be obtained within the time limitation provided in this rule for transmission of the Commission record, application for relief may be made by the Commission to the Court of Appeals.

Rules of Procedure for Direct Appeals from Decisions of the Governing Bodies of Public Power Entities

Rule 7. Record on Direct Appeal of Decisions or Orders

Rule 7(f). Transcript Defined; Several Appeals; Inability to Provide Timely Transcript.

“Transcript” for purposes of this rule shall refer to a ~~reporter’s~~ transcript prepared by a certified reporter or authorized transcriber. When more than one direct appeal is taken from the same Governing Body decision, a single transcript shall be prepared. If a transcript cannot be obtained within the time limitation provided in this rule for transmission of the record, application for relief may be made by the Governing Body to the Court of Appeals.

Rules of Family Law Procedure

Rule 12. Court Interviews of Children

Rule 12(c)(1) Record of the Interview

(1) *Generally*. Unless the parties stipulate otherwise on the record or in writing, the court must record the interview, either by having a ~~court~~certified reporter transcribe it or by recording it ~~through another retrievable and perceivable~~by electronic ~~medium~~means. However, any interview conducted by a judicial officer must be recorded.

Rule 8. Telephonic Appearances and Testimony

[no changes]

Rule 18. Preserving a Record of a Court Proceeding

[no changes]

Rule 69. Binding Agreements

[no changes]

Rule 73. Family Law Conference Officer

Rule 73(c)(1) Procedures

Conducting a Conference. The conference officer should conduct the proceedings in an informal manner but must give the parties an opportunity to present their positions. The conference officer may record the proceedings by ~~audiotape~~[electronic means](#) or by a ~~court~~[certified](#) reporter. A party represented by an attorney has the right to have the attorney present at the conference.

Rules of Protective Order Procedure

Rule 18. Record of Hearings

[no changes]

Rules of Probate Procedure

Rule 11. Telephonic or Electronic Appearances and Testimony

[no changes]

Rules of Procedure for the Juvenile Court

Rule 1. Applicability; Definitions; Required Format of Stipulations, Motions and Orders

[no changes]

Rule 81. Consent to Adopt

[no changes]

Rule 106

[no changes]

Tax Court Rules of Practice

[no changes]

LOCAL RULES

Apache County Superior Court Local Rules

[no changes]

Cochise County Superior Court Local Rules

Rule 12.2. Rules of Procedure for Arbitration Services in the Courts of Limited Jurisdiction.

[no changes]

Rule 15. Audio, Video, and Other Sound Reproduction Exhibits.

(a) In the interest of a complete and accurate record in the event of an appeal, when audiotapes, videotapes, or other exhibits that reproduce sound are intended to be offered in evidence to demonstrate the substance of conversation, a transcription of that portion intended to be played for the trier of fact shall be made and concurrently offered in evidence as the court's exhibit. The proponent of the exhibit shall cause that portion to be transcribed and shall present it to opposing counsel for comparison against the audio exhibit sufficiently in advance of trial or hearing so that a good faith stipulation may be entered into by counsel as to its accuracy. The proponent may nevertheless establish the accuracy of the transcription sufficient for its admission into evidence by appropriate testimony. When the recording is played for the trier of fact, the transcription shall be incorporated in the record of the trial by the ~~court reporter's~~ reference to its exhibit number.

Coconino County Superior Court Local Rules

[no changes]

Gila County Superior Court Local Rules

Rule 16. Briefs, Memoranda, Argument, and ~~Court~~Certified Reporter Services.

...

F. Presence of ~~Court~~Certified Reporter. ~~Except in criminal, dependency, and delinquency actions, counsel are~~Counsel or a self-represented party is required to advise the court in advance of hearing whether a ~~court~~certified reporter is requested. If such a timely request is made, the court has the discretion whether to grant such a request. The failure to make a timely request may be deemed a waiver of a ~~court~~certified reporter or result in the postponement of a scheduled matter.

Rule 27. ~~Court~~Certified Reporters

Rule 27(A). Scope. This rule applies to all ~~court~~certified reporters' notes taken in trials or proceedings in any division of this court or before any commissioner or judge pro tempore. "Reporter's notes" mean paper notes, electronic records of proceedings on hard drive, floppy disc or other electronic medium. "Reporter's notes" does not include ~~tape~~recordings that are the result of the court's use of an electronic recording system, recordings of the proceedings utilized by a reporter for his or her own personal verification of the accuracy of the official notes; nor electronic files prepared as work product for use by court staff in preparation of such things as minute entries.

Rule 31. Appeals from Limited jurisdiction Courts.

[no changes]

Graham County Superior Court Local Rules

Rule 1.19. Appeals from Limited jurisdiction Courts.

[no changes]

Greenlee County Superior Court Local Rules

[no changes]

La Paz County Superior Court Local Rules

[no changes]

Maricopa County Superior Court Local Rules

Rule 1.4. Court Proceedings in Other Locations

...

h. ~~Court~~Certified Reporter. No ~~court~~certified reporter will be available for such proceedings unless counsel shall, before 5:00 p.m. on the second day preceding the day on which the attendance of said reporter will be required, notify the assigned judicial officer that the services of a ~~court~~certified reporter are ~~required.~~ The requested. If the request is approved by the assigned judicial officer, the assigned judicial officer shall thereupon arrange for a ~~court~~certified reporter at county expense.

Rule 1.10. ~~Court~~Certified Reporters' Notes, Electronic Recordings, Duties of Clerk and Reporters and Destruction of Notes

[no changes]

Rule 2.22. Record, ~~Court~~Certified Reporter Requests, ~~Court~~Certified Reporter Fees

...

b. Request and Fees. If a party desires a ~~court~~certified reporter for any proceeding ~~in which a court reporter is not mandated by Arizona Supreme Court Rule 30~~, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing. If the request is approved by the assigned judicial officer, the party must pay any fee authorized by law for the court reporting services at least two (2) judicial days prior to the proceeding.

3.2. Civil Motions; Stipulations, Notices of Settlement, and Proposed Forms of Order

[no changes]

Rule 10.5. ~~Court~~Certified Reporters, Interpreters and Equipment Requested

[no changes]

Mohave County Superior Court Local Rules

Rule AD-10. ~~Court~~Certified Reporters, ~~Court~~Certified Reporters' Notes

[no changes]

Rule AD-14. Audio, Video, and Other Sound Reproduction Exhibits.

A. In order to ensure a complete and accurate record in the event of an appeal, when audiotapes, videotapes, or other exhibits that reproduce sound are intended to be offered in evidence to demonstrate the substance of conversation, a transcription of that portion intended to be played for the trier of fact shall be made and concurrently offered in evidence as the court's exhibit. The proponent of the exhibit shall cause that portion to be transcribed and shall present it to opposing counsel for comparison against the audio exhibit sufficiently in advance of the trial or hearing so that a good faith stipulation may be entered into by counsel as to its accuracy. A stipulation as to the accuracy of such a transcript shall not affect the admissibility, or non-admissibility of the recording itself. Absent a stipulation as to the admissibility of such a recording, admissibility shall be determined in accordance with the rules of evidence. The proponent may nevertheless establish the accuracy of the transcription sufficient for its admission into evidence by

appropriate testimony. When the recording is played for the trier of fact, the transcription shall be incorporated in the record of the trial by the ~~court reporter's~~ reference to its exhibit number.

Rule AD-17. Telephonic Conference Calls.

[no changes]

Navajo County Superior Court Local Rules

[no changes]

Pima County Superior Court Local Rules

Rule 1.6. ~~Court~~Certified Reporters, Special Needs and Interpreters

(A) ~~Absent an advance request, court reporters will be available only for regularly scheduled trials or other matters as required by law.~~ If a certified court reporter is ~~needed for any other matter, including juvenile matters~~requested, counsel or a self-represented party must notify the division to which the case is assigned and the Manager of the Court Reporters by 12:00 noon of the preceding court day of the request to have a ~~court~~certified reporter present. If such a timely request is made, the court [Manager of the Court Reporters] has the discretion whether to grant such a request. No matter will be continued for a lack of a ~~court~~certified reporter unless such required notification has been given to the division to which the case is assigned and the Manager of the Court Reporters. ~~Absent a timely request, the availability of a court reporter may be limited by the priorities stated in Rule 30, Rules of the Supreme Court of Arizona.~~

Pinal County Superior Court Local Rules

Rule 2.2. Motions; Requirements

2.2(e). Telephonic Argument and Conference.

[no changes]

Santa Cruz County Superior Court Local Rules

Rule 1.4. ~~Court~~Certified Reporters' Notes, Duties of Clerk and Reporters, and Destruction of Notes and Electronic Recordings

[no changes]

Rule 8.6. Presence of ~~Court~~Certified Reporter

a. Notice to Court. All matters may be electronically recorded unless the parties or counsel advise the court at least five (5) court days in advance of hearing that a ~~court~~certified reporter is requested. and the court grants that request. Failure to make a timely request may be deemed a waiver of a ~~court~~certified reporter or result in the postponement of a scheduled matter.

b. Waiver of ~~Court~~Certified Reporter. Where a ~~court~~certified reporter has been requested, the party who originally requested the same shall notify the court within twenty-four (24) hours of the commencement of the hearing, if the ~~court~~certified reporter will no longer be necessary. Failure to notify the court may result in the assessment of the cost to provide the ~~court~~certified reporter.

Yavapai County Superior Court Local Rules

Rule 2. Administration

[no changes]

Rule 13. ~~Court~~Certified Reporters, ~~Court~~Certified Reporters' Notes

[no changes]

Yuma County Superior Court Local Rules

Rule 8. Criminal Appeals from Lower Courts on the Record

[no changes]

Superior Court Rules of Appellate Procedure – Civil

Rule 2. Record of Proceedings

[no changes]

Superior Court Rules of Appellate Procedure – Criminal

Rule 1. Scope; Definitions

[no changes]

Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders

[no changes]

Rules of Procedure for the Recognition of Tribal Court Civil Judgments

[no changes]

Rules of Procedure for Judicial Review of Administrative Decisions

Rule 5. Record on Appeal

[no changes]

Rules of Court Procedure for Civil Traffic and Civil Boating Violations

[no changes]

Justice Court Rules of Civil Procedure

[no changes]

Rules of Procedure for Eviction Actions

[no changes]

Local Rules of Practice and Procedure – City Court – City of Phoenix

Rule 2.18. Record

[no changes]

Local Rules of Practice and Procedure In City Court Civil Proceedings City of Tucson

[no changes]

Local Rules of Practice and Procedure For the Yuma Municipal Court

[no changes]

Local Rules Pima County Justice of the Peace Courts Providing for Pre-Trial Conferences in Criminal Cases

[no changes]

Pima County Rules for the Fast Trial and Alternative Resolution Program (“FASTAR”) Pilot Program

Rule 123. Hearing Procedures

[no changes]

Arizona Administrative Code

[no changes]

Arizona Code of Judicial Administration

Section 1-108: Committee on Judicial Education and Training

[no changes]

Section 2-101: Records Retention and Destruction Schedule

2-101(D) Retention and Disposition Schedule

15. *Direct Criminal Appeals (Death Penalty) and Petitions for Review of Post-Conviction Relief related to these cases:*

b.(1) Record on Appeal: The record on appeal, including ~~court reporter~~ transcripts (with the exception of the grand jury transcript) shall be retained in the Clerk's Office until execution of sentence or earlier death. At that time, certified copies of the instruments and minutes shall be destroyed. Original (paper) instruments and minutes shall be returned to the Superior Court consistent with Rule 31.23(a)(5), Rules of Criminal Procedure. Original (paper) Grand Jury transcripts and Juror Questionnaires shall be returned to the Superior Court at the time of the mandate. Copies shall be destroyed.

c.(1) Record on Appeal: When conviction and sentence is reversed: The record on appeal, including ~~court reporter~~ transcripts (with the exception of the grand jury transcript) shall be retained in the Clerk's Office until notification that defendant was re-sentenced to life or released. At that time certified copies of the instruments and minutes shall be destroyed. Original (paper) instruments and minutes shall be returned to the Superior Court. Grand Jury transcripts and Juror Questionnaires shall be returned to the Superior Court at the time of the mandate or destroyed if copies.

c. Record on Appeal: The record on appeal, including ~~court reporter~~ transcripts (with the exception of the grand jury transcript) shall be retained in the Clerk's Office unless transfer requested by the Superior Court. At that time, certified copies of the instruments and minutes shall be retained. Original instruments and minutes shall be returned to the Superior Court consistent with Rule 31.23(a)(5), Rules of Criminal Procedure. Original Grand Jury transcripts and Juror Questionnaires shall be returned to the Superior Court.

Section 5-206: Fee Deferrals and Waivers

5-206(A) Definitions

“Fees and costs”, as provided in A.R.S. § 12-302(H) means:

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7. ~~Court~~Certified reporter's fees for the preparation of court transcripts if the ~~court~~certified reporter is employed by the court.

8. Authorized transcriber's fees for the preparation of court transcripts if the authorized transcriber is employed by the court.

9. Appeal preparation and filing fees at all levels of appeal and photocopy fees for the preparation of the record on appeal pursuant to sections 12-119.01, 12-120.31 and 12-2107 and section 12-284, subsection A.

5-206(H) County-Paid Fees.

2. *Service by publication and ~~court~~certified reporter fees.* As provided in A.R.S. § 12-302(H)(6)~~&(7)~~, (7) & (8) the county shall pay the fees and costs for service by publication when required by law ~~and~~; for the preparation of the ~~court~~certified reporter's transcript, if the ~~court~~certified reporter is employed by the court; and for the preparation of the transcript prepared by the authorized transcriber, if the authorized transcriber is employed by the court, upon granting a deferral or waiver. An applicant granted a deferral shall reimburse the county for these fees and costs.

Section 5-208: Operational Standards for Interactive Audiovisual Proceedings in Criminal Cases

[no changes]

Section 7-206: Certified Reporter

[no changes]