

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AMENDMENT TO THE)	Administrative Order
ARIZONA CODE OF JUDICIAL)	No. 2023 - <u>116</u>
ADMINISTRATION § 1-602: DIGITAL)	(Affecting A.O. No. 2013-38)
RECORDING OF COURT)	
PROCEEDINGS)	
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Proposed amendments to the above-captioned section of the Arizona Code of Judicial Administration (ACJA) came before the Arizona Judicial Council on June 27, 2023, were approved, and recommended for adoption.

Therefore, pursuant to Article 6, Section 3, Constitution of Arizona,

IT IS ORDERED that the amendments to ACJA § 1-602, as indicated on the attached document, are adopted. All other provisions of § 1-602 remain unchanged and in effect.

Dated this 3rd day of July, 2023.

ROBERT BRUTINEL
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Judicial Branch Administration
Chapter 6: Records
Section 1-602: Digital Recording of Court Proceedings

A. [No Changes]

B. Purpose. Digital recording in the courtroom, whether audio or video, ~~shall~~must meet the required standards listed below when created as the official record of a court proceeding. In addition to setting minimum standards for digital recordings, this section also contains storage requirements for electronically-maintained court reporters' notes and recommendations intended to guide electronic recording operations. This section is not intended to mandate digital recording in the court.

C. Technical Requirements.

1. Equipment.

- a. Courts ~~shall~~must comply with the equivalent accessibility, migration, storage, and retention requirements ~~contained~~provided in ACJA § 1-504(F)&(G) when procuring and using digital recording equipment.
- b. The recording system ~~shall~~must use equipment having industry standard connections.
- c. Peripheral devices used for transcription (e.g. foot pedals) ~~shall~~must connect with the system using standard interfaces.
- d. Toggling mute buttons ~~shall~~must not be used on microphones. Microphones that mute only when a button is depressed are allowed. Microphones that visually indicate when they are on and off are recommended to increase the likelihood that confidential communications are not recorded unintentionally.
- e. The recording system ~~shall~~must be capable of confidence monitoring.

2. Annotation.

- a. The recording system ~~shall~~must include an interface that allows the user to create an index of the proceeding being recorded, for use in identifying a desired portion of the hearing.
- b. The index may link the verbatim audio record of a proceeding with another internal court management system.
- c. The recording system ~~shall~~must provide a search function to allow searching of a recording's annotations.

3. Playback.

- a. The recording system ~~shall~~must allow for channel isolation to aid in the identification of different parties for transcription purposes.
- b. The recording system ~~shall~~must include tools to allow users to clip portions of a proceeding to accommodate partial record requests on ~~CD-portable media for distribution.~~
- c. The recording system ~~shall~~must allow for playback of recordings in the courtroom while simultaneously recording courtroom events.
- d. The recording system ~~shall~~must produce an audio or video record that can be placed on a ~~standard CD-R~~ portable storage medium with no licensing restrictions for playback, including no licensing restrictions on playback software.
- e. The system ~~shall~~must provide the ability to save files to an industry- or open-standard format such as AVI, MPEG/MP3, FLAC, or WAV playable by non-proprietary readers.

4. Storage and Backup of Recordings. Recordings ~~shall~~must have a file size/compression rate to allow approximately six hours of recording to fit on a ~~single CD or other the smallest size of non-rewriteable optical-media used.~~

D. Operational Requirements.

1. Procurement.

- a. The court ~~shall~~must obtain a minimum one-year warranty on all recording systems and related equipment as part of the installation services.
- b. The court ~~shall~~must obtain a minimum of both staff training and train-the-trainer training as part of the installation services.

2. Operation of Equipment.

- a. Staff operating the recording system ~~shall~~must be adequately trained to proficiently operate the system.
- b. A system check ~~shall~~must be made sufficiently in advance of court proceedings to assure proper operation of electronic recording equipment each day. The court ~~shall~~must establish a procedure for employees to follow in the event of an equipment malfunction. A system check ~~shall~~must also be performed prior to conducting the initial proceeding following any loss of power or recording system shutdown.

- c. Courts ~~shall~~must establish policies addressing when recording systems are to be turned on and off consistent with judicial necessity.
 - d. Courts ~~shall~~must assign one or more staff members to act as the point-of-contact for operational and repair issues. The point-of-contact staff person ~~shall~~must be trained in operating the equipment, as specified in subsection (E)(2), and in procedures to be followed in resolving operational issues, including contacting vendors.
3. Security. The court ~~shall~~must establish procedures to limit access to recordings of sealed and confidential matters, such as use of appropriate labeling or segregating recordings of non-public hearings.
4. Official vs. Unofficial Recordings.
- a. When no certified court reporter is present in a court proceeding, the electronic recording ~~shall be~~is the official record, except as provided by Supreme Court Rule 123(d)(4), and any transcript thereof ~~shall~~must be prepared in accordance with Section 5 below.
 - b. When a certified reporter records a proceeding in superior court that is simultaneously recorded by electronic recording equipment, the court reporter's record ~~shall be~~is the official record.
 - c. When a certified reporter records a proceeding in a limited jurisdiction court that is simultaneously recorded by electronic recording equipment, the judicial officer ~~shall~~must determine which recording is the official record, and the judicial officer's decision ~~shall~~must be noted on the record.
5. Transcription.
- a. Official transcripts of court proceedings prepared from electronic recordings ~~shall~~must comply with the ~~Arizona Manual of Transcript Procedures~~ ACJA § 1-603 and ~~shall~~must be produced by either a certified reporter, a court employee or a transcriber under contract with a court.
 - b. The court ~~shall~~must establish procedures to ensure that authorized transcribers notify the court when they encounter poor-quality recordings, and that these reports are investigated and any problems remedied.
 - c. Courts ~~shall~~must assign an individual to act as a transcript coordinator to ensure timely provision of electronic recordings of proceedings to authorized transcribers, as defined in Supreme Court Rule 30, when required for appellate proceedings. The coordinator and authorized transcribers should be familiar with the rules and practices involved in transmitting the verbatim record to the appellate court.

6. Records Management.

- a. Courts ~~shall~~must identify equipment and establish procedures necessary for archiving and managing electronic records of court proceedings, for ensuring the timely production of transcripts required for appellate proceedings, and for providing public access to the records in compliance with Rule 123, ~~Rules of the Supreme Court~~ and ACJA §§ 1-504 and -506.
- b. Courts ~~shall~~must preserve electronic notes of proceedings generated by court reporters in a generic format that will permit them to be interpreted by other reporters in the event the author is not available to prepare a transcript. For example, the translated version of the notes may be stored in a “.pdf” format accompanied by an electronic copy of the author’s personal dictionary.
- c. Courts ~~shall~~must conduct an annual review of the readability of digital recordings and migrate recordings to a non-proprietary format as necessary to ensure access throughout the applicable retention period.
- d. Courts ~~shall~~must ensure continued accessibility via a planned migration path so devices, media, and technologies used to store and retrieve official verbatim recordings are not allowed to become obsolete and are promptly replaced or upgraded.
- e. Courts ~~shall~~must ensure that any new equipment or software replacing that used in an existing digital recording system is backward compatible and ~~shall~~must obtain a vendor certification that the system will convert 100 percent of the audio or audio/video and index data to the new system so access to existing official records is never impeded.
- f. Courts ~~shall~~must periodically refresh audio files in order to ensure their accessibility for as long as the applicable records retention schedule requires. These procedures may require recopying of files to new media.

7. Storage and Backup of Recordings.

- a. Backup ~~shall~~must be performed at least daily, and periodically reviewed for continuing viability as required by subsection (D)(6).
- b. Retention of electronic recordings ~~shall~~must be in compliance with applicable records retention schedules.

E. Recommended Practices. This subsection identifies best practices in procuring and operating digital recording systems.

1. Procurement. The court should procure only from vendors who possess necessary state contractor licenses required to perform the work of installing the electronic recording systems in courtrooms.

2. Operation of Equipment.

- a. An alternative recording system should be available for use in the case of primary equipment failure.
- b. To the extent possible, courts should have properly trained personnel dedicated to the operation of electronic recording equipment. Training should be tailored to the specific needs of the recording system and court operations. Training should include but not be limited to the following:
 - Storing and copying of records including partial records.
 - Special handling of sealed or confidential hearings.
 - Creation and retrieval of annotation files.
 - Troubleshooting of equipment and recording quality as appropriate for the system, vendor, and the resources of the courts.
 - Creating backups of files.
 - Playing back a recording.
 - Confidence monitoring while a recording is being made.
 - Adjusting microphone volume.
 - Microphone operations, including muting techniques.

3. Public Access Fees. Courts may charge reasonable fees for copies of audio or video recordings of court proceedings, consistent with the requirements of Rule 123, ~~Rules of the Supreme Court~~. The court may waive or defer such fees as it deems appropriate or where law requires such waiver or deferral.

4. Storage and Backup of Recordings.

- a. Where possible, an additional backup should be made for offsite storage purposes. Backups made to any Internet-accessible storage location must be provided sufficient security controls to prevent unauthorized access and must be classified to indicate files sealed or otherwise closed to public access without having to listen to the recordings.
- b. Simultaneous storage to multiple devices is recommended, for example, recording to the local computer in the courtroom and simultaneously storing to a remote server. Simultaneous storage is not a substitute for the requirement for daily backup described in subsection (D)(7).
- c. Each recording should be annotated with the case number or numbers of the individual sessions included in the recording to allow the desired point in the recording to be referenced by a case management system or electronic docket.
- d. Caution should be exercised when labeling recordings being stored on a CD or DVD non-rewriteable media to ensure the labeling method employed will not expose ~~the~~

any disc-media to damaging ink or adhesive-borne solvents and will not impair the disc's balance during playback. The label should identify the hearing date, location, and hearing officer.

F. Periodic Review. Due to the changing nature of technology, these standards ~~shall~~must be reviewed periodically by the Commission on Technology to identify areas requiring updating or revision.