

COMMITTEE ON KEEPING THE RECORD FINAL REPORT

A. INTRODUCTION

During the past two years, the Arizona Supreme Court's Committee on Keeping the Record (hereinafter "the Committee") undertook an examination of the current court reporting environment in Arizona and elsewhere with the aim of identifying methods to ensure the verbatim record of court proceedings is made by the most reliable, efficient, and accurate means reasonably available to courts statewide.

Around the country and in some Arizona counties, traditional stenographic reporting has been replaced or supplemented with digital recording equipment to fill vacancies in court reporting personnel, to assist in meeting the public's rising demand for accelerated case processing in the face of rising case volume, and to reduce costs associated with court reporting. In most superior court locations in Arizona, clerks now use digital recording equipment in the courtroom to assist them in preparing minutes of proceedings and to replace shorthand skills which are no longer taught in schools. The legal community's growing familiarity with computer technology has raised interest in public access to these recordings, which can be easily copied onto compact discs.

In the last ten years, digital recording equipment has substantially improved in both quality and affordability and now offers many advantages over traditional tape recording equipment. Digital equipment is used in many courthouses nationwide with varying reports of satisfaction, but the trend is unmistakably moving toward wider use of this equipment. At the same time, the availability of court reporters has been reduced in some rural areas of the state, because, in part, of a new and rigorous court reporter certification program, and also because of a decline in the number of students attending court reporting school, a trend which reportedly has now reversed to some degree.

The Committee was asked to evaluate this phenomenon and to ensure that technology upgrades are pursued with appropriate foresight and an understanding of their administrative implications. The Committee learned much from the experiences of local courts that use digital equipment and discovered several areas in which statewide standards and policies are needed to assist those courts that may choose to integrate this new technology into their operations in the future.

Summary of recommendations

- ◆ New statewide rules and rule amendments are needed to:
 - Prioritize use of court reporters and electronic recording technology;
 - Preserve the parties' right to request a court reporter;
 - Regulate the preparation of official transcripts from electronic recordings;
 - Resolve issues raised by the recent rule changes for videotaping depositions;

- Prohibit public access to unofficial electronic verbatim recordings made by clerks for use in drafting minute entries;
 - Ensure orderly management of transcription services when the official verbatim record is an electronic recording; and
 - Modify language in existing rules and statutes to accommodate alternative methods of making a record other than stenographic reporting.
- ◆ Administrative standards are needed to guide courts in procuring and integrating electronic recording technology into their operations.
 - ◆ Courts using recording technology need to educate judicial officers, staff, litigants, and lawyers in courtroom procedures required to ensure an audible record is made.

B. FINDINGS AND RECOMMENDATIONS

Administrative Order No. 2003-104, attached as Appendix A, asked the Committee to address a number of specific issues. The balance of this report identifies the Committee’s recommendations and findings with respect to these issues.

1. Best practices in use in Arizona and elsewhere for making and storing the record of the various types of court proceedings.

(a) National Perspectives

The Committee was asked to identify the best record-making practices in Arizona courts and around the country. Identifying the “best” practices is problematic because record-making policies are shaped by funding, availability of qualified reporters, and legal requirements for verbatim recording. Consequently, there are as many variations in reporting practices as there are jurisdictions. Many states use a combination of court reporters and electronic recording technology. In 2002, the Superior Court in Maricopa County conducted a survey of seventy-five general jurisdiction courts in thirty-three states that revealed use of electronic recording devices to some degree in seventy percent of the responding courts. This survey also showed use of electronic recording in all case types, but with a preference for court reporters in major felony and complex civil trials.

The Committee focused on those jurisdictions with the most experience with recording technology, including Alaska, Illinois, Kentucky, Michigan, New Jersey, California, Connecticut, and the United States District Courts. A bibliography of materials considered is attached as Appendix B. Reporting technology is improving and becoming more affordable, and many states have employed some form of either analog or digital recording technology for many years. Parallel advancements in court reporters’

computer-aided systems are also offering improved transcript turn-around times, electronic searching, storage, and “real-time” reporting capabilities.

Hand in hand with increased use of reporting technology have come anecdotal reports of system failures. Committee members read a number of articles concerning courts that have received substantial media exposure about their difficulties with new electronic recording systems. Integration of this technology in courtroom operations often has been met with logistical, staffing, and training challenges that compromised recording quality, especially during the start-up phase. Arizona has had its share of difficulties, although no re-trials or reversals on appeal have been reported, with the exception of some lower jurisdiction court appeals. And although vendors of reporting equipment often claim their systems can run unattended, some jurisdictions have devoted considerable resources to developing staff, whose sole responsibility in the courtroom is to monitor equipment to ensure quality, and who are certified in troubleshooting equipment and familiarity with courtroom procedures and terminology. On the other hand, the Committee is also aware of instances in which court reporters’ stenographic notes have been lost or cannot be interpreted in order to prepare a transcript for appellate review.

The Committee did not attempt to assess whether reporting technology would represent a real cost savings compared with court reporting staff, because of the variation in equipment and support available to individual courts. To maximize the functionality of electronic recording systems, courts have begun to integrate their output with information technology networks. This arrangement obviously entails a technology infrastructure and staff whose costs potentially absorb any immediate savings expected from a reduction in court reporting personnel. On the other hand, many jurisdictions obviously have found automated systems to be sufficiently cost-effective to justify installing more equipment and hiring fewer reporters.

The 2002 Maricopa County survey results are borne out by those specific policies examined by the Committee showing a trend toward use of live reporters on the criminal side, and use of recording technology in domestic relations, juvenile, and civil matters. Pretrial proceedings are more likely to be recorded with equipment. Trials, and especially jury trials, are most likely to be reported by a live court reporter.

These policy developments demonstrate that reporters continue to be the preferred means of recording proceedings in those cases expected to result in a transcript order. This trend may be a consequence of a number of factors, including practitioners’ lack of familiarity with recording technology, concerns about the quality of the transcript prepared from an electronic recording or the quality of the recording itself, financial implications to official reporters, and the fact that very few appellate courts are willing to accept electronic recordings in lieu of a paper transcript as the verbatim record on appeal. As a matter of convenience, many judges and attorneys find it easier to index and review a written transcript than to listen to a recording.

In Arizona, the trial court with the most evolved recording systems is the Superior Court in Maricopa County. This court has some eighty reporters on staff, some of whom work out of a pool. Many courtrooms are equipped with either audio or audio/video recording technology. The court stores its recordings, including electronic notes made by court reporters, on network servers accessible by judges. A “real-time” reporter combined with video recording technology represents the best the industry has to offer at this point in time, but would be an unwarranted use of reporting resources and cost-prohibitive were it to be mandated for every hearing in every case. The Committee proceeded cautiously in developing a statewide policy that would avoid unnecessarily interfering with the various reporting practices that are working well for local courts, while accommodating courts’ need for flexibility in planning for expanding case volume.

(b) Arizona Perspectives

Until a few years ago when the court reporting industry in Arizona sought and obtained formal certification by the Supreme Court, the Court played virtually no role in determining how reporting resources are managed apart from its oversight of a few procedural rules focused on transcript preparation and filing. Most of the laws pertaining to court reporting are found in statutes governing counties’ appointment and use of official stenographic reporters in county-funded superior court operations.

(1) The court reporting industry in Arizona

In response to a 2004 survey, superior courts in all but one county - La Paz - indicated they have difficulty finding either full-time or per diem reporters. There are 158 official court reporter positions in Arizona’s superior court and more than 500 state-certified reporters. Approximately one in three certified reporters works as an official superior court reporter. Sixty-six percent of state-certified reporters reside in Maricopa County. Eight counties have fewer than ten certified reporters in residence.

Arizona has two schools of stenographic reporting and one voice-writing school. All three are located in Phoenix. Data published by the National Court Reporters Association indicates that stenographic court reporting programs have consistently graduated ten percent of their students. Nationwide enrollment in court reporting programs declined during the 1990’s, but has rebounded in the last few years.

Voice writing is a reporting technique that employs voice recognition software instead of a stenographic machine to make an instantaneous rough transcript on a computer. The voice-writing school, which opened in Phoenix in 2004, reportedly will graduate more people in less time than the two stenographic reporting schools, and thus offers the potential to fill some of the vacancies in reporting staff in rural areas. The Certified Court Reporter Board is preparing to begin certification of voice writers in 2007.

The July 2000 reporter testing and certification law accomplished its goal of eliminating unqualified reporters, but at the same time, the requirement has reduced the

number of reporters available to work as official reporters in Arizona courts. The average starting salary for an official reporter in Arizona is approximately \$40,000. Official court reporters are authorized by statute to charge \$2.50 per page for a transcript and \$.30 per page for a copy. Ariz. Rev. Stat. (“A.R.S.”).§ 12-224. These fees are paid on top of the reporter’s salary. There is no statutory limit on per page fees charged by private sector reporters.

During the past twenty years, stenographic reporters have aggressively integrated computer technology into their practices. Nearly all reporters now use a laptop computer connected to their steno machine to store electronic versions of their raw notes. More and more reporters are doing without paper notes altogether. Reporters’ computer software converts stenographic notes into a rough transcript instantaneously. Some reporters in Arizona have upgraded their skills to “real time” reporting, which allows parties and judges to view a somewhat more polished rough transcript on a computer monitor as it is being made and facilitates overnight transcript production. Reporters generally charge an extra fee to parties wishing to view the real time transcript during a court proceeding or deposition. Official reporters do not charge an extra fee for providing “real time” to judges.

(2) Current practices in Arizona Courts

Section 38-424 of the Arizona Revised Statutes gives the parties the right to have a judicial proceeding recorded by a stenographic reporter in a court of record. In the absence of a request for a court reporter, the statute authorizes the court to record proceedings electronically. Section 12-221 authorizes each new superior court judge to appoint a court reporter. Under this statute, in most counties a superior court judge typically works with a court reporter who is assigned to that judge on a permanent basis.

Like many other facets of court operations in Arizona, there are many variations among courts in their record-making practices. In the superior court, four counties rely exclusively on stenographic reporters: Coconino, Gila, Navajo and Pinal. All other counties are using a blend of reporters and recording technology. The two least populated counties, Greenlee and La Paz, have no court reporters on staff, and bring in a per diem reporter as needed. To assist those courts that have difficulty finding per diem reporters when needed, the Arizona Court Reporters Association recently implemented a program to match available freelance reporters with court administration. The program involves fax or email notification from the court to the Association that is then forwarded by email to reporter/members interested in working as official reporters on a per diem basis.

Under local policies, creation of new reporter positions in Maricopa and Pima Counties has not kept pace with the number of new judicial officers. The Superior Court in Maricopa County has ninety-one appointed judgeships, thirty-nine commissioners, and eighty court reporter positions. Half of the official court reporters work out of a court reporting pool, which offers administrators the flexibility to assign reporters to the courtrooms where they are most needed. A number of courtrooms in Maricopa are equipped with digital video or audio recording equipment. In the absence of a party’s

request for a reporter, each judge has the option to use either electronic recording equipment or a court reporter. Electronic recording is used in virtually every case type, and predominates in family and juvenile court proceedings, especially in pretrial and uncontested matters.

In Pima County, which has thirty-two superior court judges assisted by nineteen commissioners and hearing officers, ten reporters work out of a pool, and another twenty-five reporters are permanently assigned to individual judges. Pima County's five electronically-equipped courtrooms are used primarily by commissioners and hearing officers.

In superior court, electronic technology is used primarily to record routine matters that rarely result in a transcript order, such as non-evidentiary hearings in civil cases, domestic relations, juvenile and probate matters. When case volume strains judicial resources, these types of hearings are typically assigned to a full-time or part-time judge pro tempore, for whom no corresponding court reporter position has been created. In recent years, it has become a common practice in Arizona and elsewhere to install electronic recording systems whenever a courtroom is remodeled or newly constructed.

Municipal and justice courts are not courts "of record," and therefore, they are not required to make a verbatim record of their proceedings. Nevertheless, those courts routinely record all their proceedings either with analog or digital systems, but on occasion a stenographic reporter will be used on a per diem basis. In some counties, the superior court accepts tape or digital records in lieu of a transcript in considering an appeal from a municipal or justice court, generally with the proviso that the record to be reviewed be less than sixty or ninety minutes in duration.

(3) Electronic Alternatives

(i) Equipment

There are three primary vendors of digital recording equipment in Arizona, FTR Limited (FTR), Jefferson Audio Video Systems (JAVS), and CourtSmart. These companies each offer an automated means of making an audio or audio/video recording that is vastly superior to the analogue tape recorders of the past. Pricing of these systems has become more competitive each year and currently ranges from about \$5,000 for a basic portable system to \$30,000 for a more elaborate system. Recurring costs for these systems may include microphone replacement, maintenance, and repairs.

These systems are built to be operated by a single technician. They can be turned on and run throughout the day with little oversight. Anyone familiar with a computer can generally learn how to operate them in a few hours. In Arizona, recording equipment typically is operated by a courtroom clerk, bailiff, or judicial officer. The electronic record can be stored on a CD, a DVD, a computer hard drive or a server. Some systems offer the potential to link the recording to the case management system, so a recording of

a hearing can be accessed and reviewed from a docket list of case events. Arizona's courts have not yet developed this function, but are expected to do so in the future.

One provider of digital recording equipment recommended that the digital record be monitored by a full-time dedicated equipment monitor who not only ensures that the equipment is functioning properly, but also creates an integrated log of descriptive annotations, known as "log notes," to guide reviewers and transcribers to the pertinent portion of an audio or video record. The equipment monitor can also note correct spellings of proper names and technical terms, and record the occurrence of unspoken events, such as a recess. Maricopa County's new juvenile courthouse is the first in the state to incorporate central monitoring stations, which permit equipment monitors to monitor multiple courtrooms simultaneously.

(ii) Transcripts and Transcription Services

Once a digital recording is made, it can be emailed or provided on a CD to the person who will prepare the transcript. At least one national firm offers its customers the option of uploading the recording to its website. The transcriber uses special playback software to create the transcript from the recording; the transcriber need not be skilled in stenography. The American Association of Electronic Recorders and Transcribers (AAERT) offers a certification program that tests transcribers' skills in recording technology operation and troubleshooting, courtroom procedures, legal vocabulary, and the federal court standards for transcript formatting.

Responses to a Committee survey indicated that transcripts are prepared by in-house staff, a professional transcription service or a freelance or official reporter. All the larger courts in Arizona contract with the same national firm, AVTronics. Private sector transcribers typically work from home, and representatives of the transcription industry in Arizona estimate there are fewer than fifty full-time transcribers working in the state. Similar to court reporters, transcribers generally are paid based on a per page rate.

The Committee also became aware of two overseas transcription firms that claim they have prepared transcripts of judicial proceedings in Indiana and California. One firm is based in Hong Kong and employs native English-speaking transcribers located in Australia and New Zealand for its English language assignments. Another firm is based in the Philippines. Both firms work through local reporting agencies as subcontractors. It is unknown whether any Arizona transcripts are being prepared by off shore companies. Use of overseas transcription firms may raise privacy and security concerns.

2. Rules and statutes that are obstacles to using the best and most appropriate methods of keeping the record.

The Committee was asked to identify whether any rules or statutes pose an obstacle to using the best and most appropriate method of keeping the record. Many rules and a few statutes impact the courts' ability to take advantage of newer recording

technology; most are simply in need of updating their terminology, and a few require more substantive revision. The Committee’s recommended amendments appear in Appendix C (statutory amendments) and Appendix D (rules amendments).

(a) Amendments Intended to Modernize Terminology

- Updating language to reflect the certification of court reporters.
- Eliminating archaic terminology such as, “books of record,” “tapes,” “typewritten,” “typist,” and “stenographic notes.”
- Amending language regarding specific technology or terminology from the “paper world” to include electronic records and electronic recordings, for example:
 - References to “papers, documents, and transcripts” was amended by adding “or any other record;”
 - Provisions that unnecessarily describe alternative means available for making a record were amended to read simply that a record should be made; and
 - Statutes and rules that describe ordering a transcript from “a court reporter” were amended to accommodate those situations in which the transcript may be prepared by someone other than a certified court reporter.
- The term “certified transcript” was added to designate a transcript prepared by a certified reporter or other authorized transcriber.
- References were added to an “authorized transcriber” to reflect the reality that people who are not certified court reporters prepare transcripts from electronic recordings and to implement the recommendation that only certified reporters or transcribers under contract with a court be permitted to prepare official transcripts.

(b) Other Amendments

(1) Statutory Amendments

- A.R.S. §§ 22-261 and 22-265

These statutes govern the process of appealing a judgment from a justice court to the superior court. The proposed changes would conform these statutes to recent amendments to the Arizona Rules of Superior Court Appeals – Civil and Criminal. One additional change, to section 22-261, would permit a re-trial of the matter in the justice court, rather than at the superior court, in those cases in which an insufficient record of the proceedings was made by the justice court. This process has been in use in Maricopa County for a few years and has dramatically reduced the number of trials de novo in

superior court. A trial de novo at the justice court would also presumably be more convenient for the parties, rather than having to travel to the superior court location in their county.

- A.R.S. §12-221

This statute currently provides that a superior court judge “shall” appoint a court reporter. It has been interpreted differently in different counties such that we now have court reporter pools in Pima and Maricopa, dedicated court reporters in other counties, and no staff reporters in small counties such as La Paz and Greenlee, who rely on per diem contractors. The Committee recommends this statute be amended to reflect current realities and to direct the public to the new rule governing use of court reporting resources. The reference to Supreme Court rules specifically authorizes the Court to develop policy in this area through the rule-making process. Changes to this statute were considered part of the package of new policies that includes a rule governing use of court reporting resources, and therefore the proposal is set forth on page 6 of Appendix E.

- A.R.S. §38-424

This statute provides that a court of record must honor a party’s request for a court reporter, but in the absence of a request, the court is authorized to use alternative technology to record the proceeding. The Committee recommends that this statute be modified:

- to require “timely” notice from a party requesting a reporter; and
- to add a proviso that a party’s timely request will be honored.

The timeliness requirement codifies existing practices in some counties that need advance notice from the parties to arrange for the presence of a reporter. Changes to this statute were considered part of the package of new policies that includes a rule governing use of court reporting resources, and therefore the proposal is set forth on page 6 of Appendix E.

(2) Rules Amendments

- Rule 30(b), Arizona Rules of Civil Procedure - videotaped depositions. The proposal is discussed in Issue 5 below and is set forth in Appendix F.
- Supreme Court Rule 123 - public access to court records. The proposal is discussed in Issue 7 below and is set forth in Appendix D, at page 19.
- New Rule Governing Transcription. The proposal is discussed in Issue 3(b) below and is set forth in Appendix G.
- New Rule Governing Use of Court Reporting Resources. The proposal is discussed in Issue 8 below and is set forth in Appendix E.

- Various rules governing production of the transcript for appeals
 - Rules 31.8 and 31.9, Arizona Rules of Criminal Procedure
 - Rule 11, Arizona Rules of Civil Appellate Procedure
 - Rule 1, Rules of Superior Court Appellate Procedure -- Civil
 - Rules 3 and 4, Rules of Superior Court Appellate Procedure -- Criminal
 - Rules 89, 90 and 91, Rules of Procedure for the Juvenile Court

Official reporters are familiar with the regulatory framework and processes involved in appellate transcript ordering, production, and filing. However when the official record is made electronically, there is a need for someone to step into the shoes of the reporter to ensure timely notice, ordering, and filing of the transcript. The proposed amendments to these rules provide for an in-house “transcript coordinator” and add the term “authorized transcriber” to delineate the processes to be followed. These amendments codify practices currently in use by courts that have already integrated electronic recording technology into their operations. The various amendments are contained in Appendix D.

- Rule 55(f), Arizona Rules of Civil Procedure – default.

The current rule requires a plaintiff in a civil case to pay for a transcript of a default hearing that may never be needed. The amendment under the proposal, a transcript would not be ordered unless and until the defaulting party comes forward to challenge the judgment. The amendment mirrors Rule 44(F) of the recently-adopted Arizona Rules of Family Law Procedure. This proposal is contained in Appendix D at page 5.

3. Standards needed to protect the on-going availability and integrity of the record of judicial proceedings.

The Committee was asked to identify what standards are needed to safeguard the on-going availability and integrity of the record of judicial proceedings. The Committee was mindful of the need to identify revenue-neutral solutions wherever possible, since court reporting is expected to remain a locally-funded court function into the foreseeable future. After reviewing other courts’ policies regulating courts’ use of electronic recording technology and the transcription industry, the Committee developed the following infrastructure and operational standards:

- Digital Recording Standards (Appendix H)
- New Rule Governing Transcription (Appendix G)
- Recommended Specifications for Transcription Services Contracts and a model Request for Proposal (Appendix I)
- Arizona Manual of Transcription Procedures (Appendix J)
- Guidelines for Practitioners and Parties (Appendix K)

a. Digital Recording Standards (Appendix H)

This set of standards establishes minimum equipment and operating standards to guide courts in procuring, installing, and operating digital recording systems. Although these recommendations stop short of requiring courts to upgrade from analog tape recorders to digital equipment, the conversion is strongly recommended because of the substantial improvement digital equipment offers over traditional tape equipment.

It is recommended that these standards be reviewed annually by the Commission on Technology's Technical Advisory Council for revisions. Like many other aspects of technology, digital recording has undergone frequent improvements and enhancements in the last decade, and is expected to continue its evolution. Frequent revisions to the standards may be needed to keep pace with this trend.

b. New Rule Governing Transcription (Appendix G)

The Committee recommends adoption of this rule intended to regulate production of transcripts from electronic recordings and from court reporters' notes. It is designed to work in tandem with the proposed Arizona Manual of Transcription Procedures and the proposed set of recommended specifications for transcription services contracts, which requires courts to establish relationships with qualified vendors for transcript production. Arizona certified reporters by virtue of their state certification are not subject to inclusion on a vendor list and may transcribe electronic recordings at any time. The new rule identifies "authorized transcribers" of electronic recordings as either certified reporters or contractors doing business with one or more courts in Arizona. Any transcript that is filed for official use by a court on appeal or otherwise must be produced by an individual meeting these qualifications. As mentioned elsewhere in this report, the Committee hopes to see this work performed by certified reporters and court reporting school graduates, to the extent possible.

c. Recommended Specifications for Transcription Services Contracts and Model Request for Proposal (Appendix I)

The Committee recommends that the Supreme Court issue an Administrative Order or new provision in the Code of Judicial Administration requiring courts to enter into contracts with one or more transcription services, individual transcribers or certified court reporters to handle preparation of transcripts from electronic recordings. This requirement is intended to encourage uniformity of transcript formats and accountability by vendors. The Committee also drafted a model Request for Proposal, included in Appendix I, for courts to use in hiring transcribers who are not certified court reporters. Because local courts are subject to local procurement regulations and may not need to initiate an RFP process to establish these contracts, the specifications are intended as a guide to courts in identifying qualified transcribers. The model RFP is intended to be optional.

The Committee debated whether to recommend certification of transcribers, but decided certification is not appropriate at this point because of a number of unknowns, including the fact that it is unknown how many people who are not certified court reporters are available to prepare transcripts from electronic recordings, and how much they would be willing to pay to be certified by the Supreme Court. The court reporter certification program is funded entirely by annual membership fees, currently \$200, and testing fees. The anticipated low number of transcribers who are not already certified court reporters would not support the cost of the administrative infrastructure needed to conduct a certification program. Another unknown is how many certified reporters are interested in preparing transcripts from electronic recordings. With their formal training and experience, certified court reporters are the most prepared for this task. Representatives of the Arizona Court Reporters Association told the Committee that the organization is willing to email their membership and tell them to contact their local courts if they are interested in transcribing electronic recordings.

d. Arizona Manual of Transcription Procedures (Appendix J)

The use of digital recording technology permits parties to acquire a low-cost copy of the original recording for their own use. As a consequence, in some instances parties prepare and file their own “home-made” unofficial transcripts from such recordings for consideration by the court. These amateur transcripts are generally poorly formatted and unreliable. Apart from a short list of transcript formatting standards binding on certified reporters, there are no standards currently in existence to guide transcribers and ensure uniformity. Even among full-time professional transcribers, the transcription business is largely an unregulated cottage industry that includes off-shore companies. The proposed Manual of Transcription Procedures is intended for use by transcribers of electronic recordings and is based on similar publications used in Alaska, which relies exclusively on electronic recording technology for its official record. This manual establishes formatting standards that transcribers will be expected to know and meet when preparing transcripts for use in courts.

The Committee is grateful for the many hours that were donated by a number of official and freelance certified court reporters and electronic transcribers who thoroughly reviewed and edited the manual. The Arizona Board of Certified Court Reporters recently recommended that the manual be adopted as binding on certified reporters who prepare transcripts from electronic recordings. In addition, the Board has recommended that many of the manual’s provisions be incorporated into the regulations reporters follow in preparing transcripts from their own notes.

e. Guidelines for Practitioners and Parties (Appendix K)

Certain protocols in the courtroom must be observed to ensure a good quality electronic recording is made. The experience of courts around the country has been that some training of those people who appear in an electronic courtroom is necessary to ensure an accurate recording is produced. The Committee created a set of instructions entitled, “What Every Lawyer and Other Participants Should Know about the Electronic

Recording System in This Courtroom,” which can be distributed to trial participants for this purpose and recommends that this document, or something similar, be prominently posted inside the courtroom. Local practices and policies will influence the specific instructions to be provided.

4. Record retention standards for paperless court reporter notes and electronic recordings.

The Committee was asked whether record retention standards should be established for “paperless” electronic notes made by court reporters and for electronic audio or video recordings of judicial proceedings. The Committee has not developed a recommendation on this question because this issue was largely pre-empted by the Arizona Judicial Council’s approval in December 2004 of a revised superior court records retention schedule proposed by a workgroup of clerks of court.

Digital records resolve some of the concerns about long-term storage of paper notes and analog tape recordings. Stenographic reporters have been using computer-aided transcription techniques for twenty years to create their verbatim record. Newer stenograph machines commonly used in Arizona do not create paper notes; all notes are created digitally and stored to either a computer hard drive, a CD, or a network server under the court’s control. This innovation offers redundancy options not previously available and extends the records’ shelf-life beyond what is possible with paper or analog tape recordings: a digital record lasts as long as the medium on which it is stored, and the quality of a digital record is not compromised by copying or re-playing. The copy is just as good as the original.

On the other hand, long-term storage of a digital file entails periodic “refreshing” of the storage media and anticipation of the need to migrate older records to a newer format when software programs are updated. Courts undertaking electronic storage of court reporter notes and digital recordings must have adequate technology resources to manage these records over time.

The Committee heard from representatives of the clerks of court’s records retention committee and agreed with their retention schedule recommendations that, for the most part, should avoid the need to migrate or refresh electronic recordings, because the retention period is shortened to ten years or less for court reporter notes and electronic recordings. If this schedule is not adopted as proposed, courts will need to be made aware of the need to plan for migration and refreshing of storage media.

The Committee’s proposed Digital Recording Standards contained in Appendix H, addresses electronic record storage in general terms for digital recording systems. More specific guidance should be provided by the Technical Advisory Council of the Commission on Technology, to ensure standards keep pace with technological innovations and to supplement and revise these Standards as needed.

5. Recording a deposition with either video or audio equipment in lieu of a stenographic court reporter.

The Committee was asked whether the Court should reconsider its 2003 rule change decision regarding videotaping depositions. The Committee reviewed one alternative amendment which the court rejected that would allow a party to unilaterally decide to use electronic technology in lieu of a reporter for recording a deposition, without the consent of opposing counsel. The Committee invited representatives of the competing viewpoints to explain their concerns about the proposal as well as the changes adopted by the court in 2003.

As a result of its investigation of this issue, the Committee proposes amendments to pertinent rules that will maintain the rule as it was adopted by the Court in 2003 along with providing solutions to some of the unanswered questions raised by the 2003 amendments. The proposed amendments are contained in Appendix F.

Under the current rule, both parties must agree to use electronic recording before forgoing the use of a court reporter. The Committee decided it was best to preserve the current policy. In the absence of a court reporter, certain responsibilities must fall to the attorneys themselves, and many stakeholders are uncomfortable with the prospect of removing the neutral third party record-keeper from the deposition process. On the other hand, when parties mutually agree to record a deposition without a reporter, they take responsibility for the consequences.

The Committee heard from a professional videographer who detailed some of the common problems that even professionals in the industry encounter in making an audible record of a deposition, ranging from faulty recording media to opposing counsel's inadvertent or intentional interference with microphones. Unless the quality control issues have been resolved to their satisfaction, practitioners should exercise caution in choosing to forgo a court reporter altogether.

At the request of the court reporting association, the Committee is recommending some amendments to the rules governing videotaped depositions to clarify ambiguities relating to these issues:

- Identification of the “officer” in a videotaped deposition:
- Custody of the original videotape:
- Responsibility for notifying the deponent of his or her right to review and correct testimony when neither attorney covers this issue: and
- Mechanics of videotape review, signing, and correction by a deponent.

6. The role of the court reporter in managing the various reporting technologies.

The Committee was asked to determine what the court reporter's role should be in managing the record regardless of how the record is made. The Committee is not proposing any major change to the role of the court reporter in this regard. The Committee is not aware of any state that has attempted to reassign court reporters to monitoring electronic recording equipment. Typically, this task is assigned to clerks or dedicated equipment monitors with considerably less background and training than is true of the graduates of court reporting schools, and their wages are considerably lower than what court reporters earn.

The Committee is recommending certain rule amendments that identify responsibilities of a transcript coordinator. *See, e.g.*, proposed changes to Ariz. R. Crim. P. 31.2, Appendix D at pp. 8-9). Section 8.7 of the proposed Digital Equipment Standards (Appendix H at p. 4) requires courts to "assign a staff member to act as a transcript coordinator to ensure timely production of transcripts required for appellate proceedings," and recommends that "[t]his staff member should be familiar with the rules and practices involved in transmitting the verbatim record to the appellate court."

Many jurisdictions, including some Arizona courts, have assigned this role to a managing court reporter. The Committee did not think it was necessary or desirable to specify who should fill this role. Most courts do not have a managing reporter, and staffing decisions are subject to local budgetary considerations. Nevertheless, court reporters are most likely to have the requisite familiarity with transcript production and appellate rules and should be considered for this assignment, when possible.

Similarly, given their transcription skills, familiarity with courtroom procedures, legal terminology and the process of preparing transcripts for appeal, court reporters are ideal candidates for preparing transcripts from electronic recordings. The Committee's proposed new rule governing transcript production (Appendix G) is designed to encourage courts to develop working relationships with certified reporters for transcription of electronic recordings. There currently are few local individuals with the necessary skills and experience to prepare the transcripts from electronic recordings apart from certified reporters.

7. Public access to electronic recordings of court proceedings made by courtroom clerks to assist in drafting minute entries.

The Committee was asked to determine whether to prohibit public access to the electronic verbatim recordings some courtroom clerks create in lieu of shorthand notes to assist in minute entry production. The Committee recommends Supreme Court Rule 123 be amended to prohibit public access to those recordings. The potential for confusion in the face of multiple records of the same proceeding are obvious. Furthermore, clerks

should not be burdened with maintaining or copying recordings that serve merely as a backup for drafting their minutes of proceedings. These recordings are essentially taking the place of shorthand notes and should not be deemed official records of a proceeding anymore than the shorthand notes have been. The specific proposal is contained in Appendix D at page 19.

8. Electronic recording technology should be officially sanctioned as a permissible means of making the record in certain types of hearings and under certain circumstances.

The Committee was asked to determine which proceedings and under what circumstances electronic recording technology should be authorized as the official means of recording a judicial proceeding. The Committee recommends authorizing the use of electronic recording technology within the guidelines set forth in the Committee's proposed new rule governing use of court reporting resources. The rule appears in Appendix E. Under this rule, court reporters must be used to make the official record in grand jury proceedings, capital case hearings, and felony jury trials, as well as initial hearings to determine sexually violent person status (A.R.S. §36-3706), and hearings on a minor's request for an abortion in the absence of parental consent (A.R.S. §36-2152). These types of proceedings typically are reported by court reporters even in those courts that currently use electronic recording systems. Additionally, they typically involve high transcript volume, and exacting due process standards that argue in favor of maintaining the traditional record-maker.

The rule also preserves the statutory requirement that judges honor a party's request for a reporter for any type of hearing. In keeping with the proposed change to A.R.S. §12-221, the rule adds a timeliness requirement to ensure courts have sufficient notice that a reporter will be needed. Additionally, the rule specifies that when both a reporter and a recording system are in use, the reporter's notes are deemed the "official" record.

The rule is intended to work with several proposed amendments of existing civil, criminal, juvenile, and domestic relations rules of procedure governing pre-trial conference hearings. These amendments will safeguard the parties' right to request a reporter for a trial by ensuring that the issue will be included in the pre-trial conference.

Development of the reporting resources rule consumed considerable time and attention. The Committee struggled with striking a balance between local practices that appear to work well and the need to preserve the statutory right of practitioners to choose the manner in which the verbatim record of a proceeding would be made. In addition, the Committee identified certain proceedings in which the use of a certified court reporter has been the customary practice, namely, grand jury proceedings, cases involving major criminal offenses, and complex, multi-party civil matters. Given the current practice in this state, and also in many other states, the presumption is that such proceedings will be recorded by a certified court reporter.

Unlike all other recommendations contained in this Report, the Committee was not able to reach complete consensus on this rule. The members approved the rule by a vote of 15 to 7. Some dissenters felt the proposal over-inclusive; others believe it under-inclusive. The minority positions are included in Appendix L.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ESTABLISHMENT OF THE) Administrative Order
COMMITTEE ON KEEPING) No. 2003- 104
THE RECORD)
)
_____)

Making and preserving an accurate record of court proceedings is a fundamental, core function of the Arizona court system. The availability of an accurate record helps promote public trust in the system by ensuring the public knows what happens in court proceedings and, on appeal, can make the difference in winning or losing your property, your family or even your life.

Over the past decade, courts in Arizona have embraced innovations to expedite cases and to improve efficiency and cost effectiveness of the Judicial Branch, without compromising the provision of swift, fair justice. Some of these innovations have involved the utilization of technology in and out of court rooms across the state to make and preserve the record in court proceedings. There are new technologies available to enhance the record taking by a court reporter, to aid deputy clerks in preparing minute entries, as well as electronic systems in some instances able to accurately record proceedings.

This infusion of evolving technology into the courtroom as a means of capturing and preserving a verbatim record of court proceedings has generated a number of new policy issues to consider and resolve. Additionally, long standing statutory or rule requirements may no longer be adequate to accommodate the current state of technology or practices or the lack of certified court reporters in some jurisdictions. Finally, certified court reporters are highly trained, valuable professional members of the justice system. Their skills are important to the provision of justice and, like all resources, are limited in their availability. The court system needs to ensure these resources are utilized efficiently and not wasted by using a court reporter to make a record in proceedings where a record is unlikely to be needed. Rules and statutes may need to be modernized to ensure that certified court reporter resources are utilized effectively, efficiently and appropriately.

It is in the best interest of justice and an effective and efficient justice system that the many questions now surfacing regarding how best to capture and preserve the record of court proceedings in this state for the different business and legal reasons be addressed and answered.

In accordance with Arizona Code of Judicial Administration § 1-104, the Chief Justice may establish advisory committees to the Arizona Judicial Council to assist the Council in carrying out its responsibilities.

Now, therefore, pursuant to Article VI, Section 3 of the Arizona Constitution,

IT IS ORDERED that the Committee on Keeping the Record is established as follows:

1. **PURPOSE:** The Committee shall review current methods used for keeping the record of judicial proceedings and shall conduct a comprehensive review of relevant state statutes, court rules and administrative code sections. The Committee will develop recommendations for changes to statutes, rules or code sections necessary to permit courts to utilize the most appropriate methods for capturing and preserving a verbatim record of a judicial proceeding. In its deliberations and in developing its recommendations, the Committee shall give highest regard to ensuring the integrity, completeness and accuracy of the record made.

The Committee shall issue a report and make recommendations addressing, at a minimum, the following questions:

- What are the best practices in use in Arizona and elsewhere for creating, storing, and retaining the record of the various types of court proceedings?
 - Are any rules, code provisions or statutes an obstacle to using the best and most appropriate method of keeping the record?
 - What standards are needed to safeguard the on-going availability and integrity of the record of judicial proceedings?
 - Clerks are asked to record and document orders and judgments of the court announced during court proceedings. Many clerks of the superior court use electronic recording technology for this purpose. Is an electronic record created for this purpose a public record subject to Rule 123, Rules of the Supreme Court? Should it be made available to parties and counsel to the case? May this electronic recording be transcribed and used in another judicial proceeding? If a court reporter was also present during the proceeding, which record of the proceeding is the official record?
 - Should record storage and retention standards for paperless court reporter notes and electronic recording be established?
 - For which proceedings and under what circumstances should electronic recording technology be authorized as the official means of recording a judicial proceeding?
 - There is growing use of a variety of technologies in the court room for making a record. What should be the role of the court reporter in managing these technologies and the production of the ultimate record regardless of the technology employed?
 - Should the Court reconsider its decision not to adopt Alternatives A or C of the changes proposed in Case No. R-02-0007 pertaining to videotaped depositions?
2. **MEMBERSHIP:** The membership of the Committee is attached to this Order as an Appendix. The Chief Justice may appoint additional members as may be necessary.
 3. **MEETINGS:** Meetings shall be scheduled at the discretion of the Committee Chair. All meetings shall comply with the public meeting policy of the Arizona Judicial Branch.
 4. **REPORTS:** The Committee shall submit a report of its findings and recommendations to the Arizona Judicial Council in December 2004.
 5. **STAFF:** The Administrative Office of the Courts shall provide staff for the Committee and, as feasible, may conduct or coordinate research as requested by the Committee.

IT IS FURTHER ORDERED that the individuals designated in the Appendix to this Order are appointed to serve as members of the Committee until completion of the Committee's work.

IT IS FURTHER ORDERED that Justice Michael D. Ryan is appointed to serve as the Committee Chairperson.

Dated this 26th day of November, 2003.

/s/

CHARLES E. JONES
Chief Justice

Keeping the Record Committee Bibliography

Reports and Books

Administrative Office of the Courts, Arkansas, Videotaped Trial Records in Arkansas: Panel Evaluation of the use of Videotaped Trial Records on Appeal (1991).

Administrative Office of the Courts, Arkansas, Videotaped Trial Records in Arkansas: A report on a pilot project in Jefferson County, February-December 1990 (April, 1991).

Administrative Office of the Courts, Kentucky, Kentucky's Video Courts, (Spring 1992).

Albertine, John, Court Reporting: An analysis of efficacy and economy, (April 2, 1999).

Artegian, April, The Technology-augmented Court Record, Fifth National Court Technology Conference (September 1997).

Commission on Trial Court Performance and Accountability, Supreme Court of Florida, Court Reporting in Florida's Trial Court Post-Revision 7, (February 2005).

Commission on Trial Court Performance and Accountability, Supreme Court of Florida, Court Reporting, Report and Recommendations (December 2002).

Committee on Court Reporting (Stenographic & Electronic), Supreme Court of New Jersey, Final Report, (May 22, 1991).

Connecticut Secretary of State, Connecticut Practice Book 2003, Rules of Appellate Procedure, sections 63-8 and 63-8A

Court Reporter Committee, Arizona Supreme Court, Final Report (September 6, 1996).

Flango, C. & Rottman, D., Appellate Court Procedures in State and Federal Courts, National Center for State Courts (1998).

Greenwood, J. Michael; Horney, Julie; Jacoubovitch, M. Daniel; Lowenstein, Frances; and Wheeler, Russell, , A Comparative Evaluation of Stenographic and Audiotape Methods for U.S. District Court Reporting, Federal Judicial Center (July 1983).

Hewitt, William E., Videotaped Trial Records: Evaluation and guide, National Center for State Courts (1990).

Judicial Council of California, Reporting of the Record Task Force Draft Report, (September 27, 2004).

Maryland Judiciary, Report of the Ad Hoc Court Reporters Committee (September 9, 2003).

Massachusetts Supreme Judicial Court, Report of the Study Committee on Trial Transcripts, (June 30, 2003).

National Court Reporters Association, The Status of Reporter Education: Trends and analysis (September 2003).

Newman, Jeffrey, New Jersey Office of the State Court Administrator, Video Courtroom Survey Results (January 1999).

Patterson, Lizbeth, (May 2000), Transition from Audiotapes to Digital Technology in the Federal Immigration Courts, (Institute for Court Management, Court Executive Development Program, Phase III Project).

Superior Court in Maricopa County, Final Report on Maricopa County Local Experimental Rule 4.17, Rapid Transcripts in Criminal Appeals (August 14, 2003).

Teenstra, Richard, Superior Court in Maricopa County, Survey: Use of electronic recording to make the record in state trial courts, (July 2002).

U.S. Bankruptcy Court, District of Hawaii, Management Plan for Court Reporting and Recording Services (May 28, 2003).

Voice Recognition Task Force, Indiana Supreme Court, Summary of Activity and Report, (May 30, 2001).

Statutes, Rules, Administrative Orders, and Other Regulations

Alaska Rules of Administration, Rule 35

Alaska Rules of Civil Procedure, Rules 30.1 and 75.

Alaska Rules of Appellate Procedure, Rule 210 (Record on Appeal).

Superior Court in Cochise County, Arizona, Administrative Order No. 2003-005, In Re: Requests for Court Reporters (February 27, 2003).

California Rules of Court, Rule 980.5 & 980.6 (2004).

Colorado Supreme Court Directive 05-03, Management Plan for Court Reporting and Recording Services (May 19, 2005).

Administrative Directive of the President Judge of the Superior Court of the State of Delaware, No. 2001-1, Strategic Plan for Making the Court's Record (April 12, 2001).

Administrative Office of the Illinois Courts, Administrative Regulations – A Comprehensive Document Governing Court Reporting Services for the Illinois Courts (October 20, 2003).

Indiana Rules of Criminal Procedure, Rule 5.
Indiana Rules of Appellate Procedure, Rules 28, 29 & 30.

Information Systems Services, Florida Office of the State Court Administrator, Proposed Standards for Integrated Digital Court Recording Systems (Draft Version 1.7.0) (June 2003).

Administrative Order 2004-018 PA/PI CIR, Circuit Court, Sixth Judicial Circuit, In and For Pasco and Pinellas Counties, Florida.

Kentucky Rules of Civil Procedure, Rules CR72.04 & 98.

Massachusetts Rules of Appellate Procedure, Rule 8 .
Massachusetts Rules of Civil Procedure, Rule 80.

Michigan Court Rules, Rule 8.108.
Michigan Administrative Order No. 1990-7 (Videotape Record of Court Proceedings).
Michigan Office of the State Court Administrator, Approved Audio Recording Equipment for Michigan Courts, (July 7, 1997).

Missouri Court Automation Hardware and Software Standards (November 2003).

New Jersey Judiciary Office of Reporting Services, Standards for Transcriber Certification Process and Transcriber Certification Board (September 1, 1996).

North Dakota Supreme Court Administrative Rules, Rules 30.1, 32, 39 & 40.
North Dakota Supreme Court Policy Notice No. 206R.1, Fees and Expenses for Preparation of Transcripts.

Texas Rules of Appellate Procedure, Rules 13 & 34.

28 United States Code §§ 636 & 753.

Transcript Format Standards, Judicial Conference of the United States Courts (January, 1998).

General Order No. 03-06, Management Plan for Court Reporting Services for the District of Arizona, U.S. District Court (AZ) (March 17, 2003).

U.S. District Court for Colorado (Hon. Richard P. Matsch), Trial Procedures (April 2002).

Vermont Rules of Appellate Procedure, Rule 10.1.

Wisconsin Supreme Court Rules, Rule 71.05.

Manuals

Alaska Court System Office of Administration (May 1997) Manual of Transcript Procedures.

Maryland Judiciary, Court Reporting Manual (February 16, 2005 Revision).

Massachusetts Supreme Judicial Court [proposed] Standing Order on Transcript Format and Requirements (December 2004).

Michigan Video Courtroom Users Group Implementation Manual (September 1998).

Michigan Manual for Court Reporters and Recorders (August 2004).

Texas Supreme Court, Uniform Format Manual for Texas Court Reporters (July 15, 2003).

United States District Court for the District of Colorado (November 2003) Courtroom Technology Manual for Attorneys in the Alfred A. Arraj United States Courthouse.

Administrative Office of the U.S. Courts (August 1999) Courtroom Technology Manual.

Articles and Other Materials

Janet Roberts, *When Technology Flops: Failure Of Electronic Recording Devices Can Cost Lawyers A Trial*, eLOCmag.com, (September, 2005), online edition.

Kevin Corcoran, *Court Records Sent Abroad*, IndyStar.com, (August 24, 2005), online edition.

Candace Rondeaux, *In the Courtroom, High-Tech can be High Risk*, St. Petersburg Times (July 30, 2005), online edition.

Bern Wiklendt, *Digital Recording Technology in Florida's 18th Judicial Circuit*, The Court Manager (Spring, 2005).

Katie Hafner, *Even Digital Memories Can Fade*, N.Y. Times, (Nov. 10, 2004), online edition.

Gretchen Wenner, *Court Resolves Glitches In New Recording System*, The Bakersfield Californian, (October 16, 2004), online edition.

Robin Franzen, *Let Record Show, Court Recordings Are Changing*, The Oregonian, (Feb. 8, 2004), online edition.

Court Stenographers Sue to Block the Loss of Jobs, Manchester Union Leader (April 12, 2004), online edition.

Briana Chua, *Arizona's Digital Record And Its Use On Appeal*, 35 Ariz.St.L.J. 605 (2003).

Illinois State Bar Association, *Excerpt from the Draft Assembly Minutes* (December 14, 2002).

Knowledge & Information Services, National Center for State Courts, *Court Reporting Methods used by the State Courts* (November 2002).

John Southerst, *Trial Without Error: Digital Court Recording*, Court Technology Bulletin (March/April 1998).

William E. Hewitt, *Video Court Reporting: A primer for trial and appellate judges*, The Judges' Journal (Winter 1992).

National Center For State Courts Report (July 1991), *Video Court Reporting: New Information for Court Managers*

Hon. Robert F. Stephens, *Dispelling the Myths and Fables About Cats vs. Video*, available online at: www.javs.com/articles.

PROPOSED STATUTORY AMENDMENTS

TITLE 8: CHILDREN

Chapter 2 Juvenile Court

Article 3 Juvenile Hearings

8-233. Record of proceedings

The provisions of title 12, chapter 2, article 3, providing for a ~~court reporter~~ record of the proceeding shall apply at any juvenile court hearing conducted by a judge.

Chapter 3 Juvenile Offenders

Article 1 General Procedures for Delinquency and Incurrigibility Proceedings

8-302. Transfer between juvenile and criminal courts.

A. If during the pendency of a criminal charge in any court of this state the court determines that the defendant is a juvenile who is not subject to prosecution as an adult pursuant to section 13-501, the court shall transfer the case to the juvenile court, together with all of the original accusatory pleadings and other papers, documents and certified transcripts or any other record of any testimony relating to the case. On transfer, the court shall order that the defendant be taken to a place of detention designated by the juvenile court or to that court itself or shall release the juvenile to the custody of the juvenile's parent or guardian or any other person legally responsible for the juvenile. If the juvenile is released to the juvenile's parent or guardian or any other person legally responsible for the juvenile, the court shall require that the parent, guardian or other person bring the juvenile to appear before the juvenile court at a designated time. The juvenile court shall then proceed with all further proceedings as if a petition alleging delinquency had been filed with the juvenile court under section 8-301 on the effective date of the transfer. This subsection does not apply to a juvenile who is subject to prosecution pursuant to section 13-501 but who is convicted of an offense not listed in section 13-501.

B. If during the pendency of a criminal charge in any court of this state the court determines that the defendant is a juvenile who is subject to prosecution as an adult pursuant to section 13-501, subsection B, on motion of the prosecutor the court shall transfer the case to the juvenile court, together with all of the original accusatory pleadings and other papers, documents and certified transcripts or any other record of any testimony relating to the case. On transfer, the court shall order that the juvenile be taken to a place of detention designated by the juvenile court or to that court itself or shall release the juvenile to the custody of the juvenile's parent or guardian or any other person legally responsible for the juvenile. If the juvenile is released to the juvenile's parent or guardian or any other person legally responsible for the juvenile, the court shall require that the parent, guardian or other person bring the juvenile to appear before the juvenile court at a designated time. The juvenile court shall then proceed with all further proceedings as if a petition alleging delinquency had been filed with the juvenile court under section 8-301 on the effective date of the transfer.

C. During the pendency of a delinquency action in any court of this state, on the motion of the prosecution and before the adjudication hearing, the court shall dismiss without prejudice any count in the petition charging an offense for which the juvenile is subject to prosecution as an adult pursuant to section 13-501 to allow criminal charges to be filed.

D. If a juvenile reaches eighteen years of age during the pendency of a delinquency action or before completion of the sentence in any court in this state for an act that if committed by an adult would be a misdemeanor or petty offense or a civil traffic violation, the court shall transfer the case to the appropriate criminal court, together with all of the original accusatory pleadings and other papers, documents and certified transcripts or any other record of any testimony relating to the case and any sentencing order. The appropriate criminal court shall then proceed with all further proceedings as if a uniform Arizona traffic ticket and complaint form or a complaint alleging a misdemeanor or petty offense or a civil traffic violation had been filed with the appropriate criminal court pursuant to section 13-3903 or the Arizona rules of criminal procedure, the rules of procedure in traffic cases or the rules of procedure in civil traffic violation cases.

Article 2 Delinquency and Alcohol Offense Complaints and Hearings

8-323. Juvenile hearing officer; appointment; term; compensation; hearings; required attendance; contempt

* * *

G. A record of the proceedings before a juvenile hearing officer ~~shall~~ may be made ~~by a certified court reporter, videotape or audiotape or any other method approved by the supreme court that accurately reproduces what occurred at the proceeding.~~

* * *

Article 7 Victim's Rights for Juvenile Offenses

8-412. Victim's right to refuse an interview.

* * *

E. Unless otherwise directed by the victim, the prosecutor may attend all interviews. If a transcript or ~~tape~~ recording of the interview is made and on request of the prosecutor, the prosecutor shall receive a copy of the transcript or ~~tape~~ recording at the prosecutor's expense.

* * *

TITLE 12 JUDICIAL OFFICERS AND EMPLOYEES
Chapter 1 Courts of Record
Article 1.1 Court of Appeals

12-120.09. Duties of clerk; records; certified copies

A. The clerk of each division shall:

* * *

3. Keep such other ~~books of records~~ and perform such other duties as required by law or the court.

B. The clerk shall furnish a certified copy of any record or proceeding of the court upon receiving the fee for the copy, except that no fee shall be required from state or other public officers whose duties require such certified copy.

C. The clerk of each division of the court of appeals may destroy or provide for the destruction of all documents, records, instruments, books, papers, depositions, exhibits and transcripts in any action or proceeding in the court of appeals, or otherwise filed or deposited in the clerk's custody pursuant to rules established by the supreme court.

* * *

Chapter 2 Judicial Officers and Employees
Article 3 Court Reporter

12-221. Appointment and oath

Each superior court judge of the superior court shall appoint a court reporter ensure that an accurate verbatim record of proceedings is made. In discharging this responsibility, each superior court judge is entitled to use the services of a certified court reporter, and the cost of providing for the presence of the court reporter shall be a county charge. Subject to A.R.S. § 38-424, a superior court judge may alternatively discharge this responsibility through the use of electronic or other means, in accordance with rules established by the supreme court. Before entering upon his duties, the court reporter shall take and subscribe the official oath to be administered by the judge of the court.

12-223. Attendance at and report of proceedings; sale of transcripts

A. The certified court reporter shall attend court during the hearing of all matters before it unless excused by the judge. ~~He~~ The certified court reporter shall make ~~stenographic notes~~ a record of all oral proceedings before the court, but unless requested by court or counsel, ~~he~~ the certified court reporter need not make ~~stenographic notes~~ a record 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 court reporter shall furnish to any person a ~~typewritten~~ certified transcript of all or any part of the proceedings reported by ~~him~~ the certified court reporter, and upon request, certify that such transcript is a correct and complete statement of such proceedings.

12-224. Salary; fees for transcripts; free transcripts; office supplies

- A. The salary of the official court reporter shall be fixed by the presiding judge of the court, with the approval of the board of supervisors of the county, and shall be paid by the county.
- B. The official court reporter shall receive from a party ordering an appeal transcript, two dollars fifty cents per page for the original, and thirty cents per page for each copy if ordered at the same time and by the same party.
- C. The official court reporter, when requested in advance, shall furnish free of charge to the county attorney or the attorney general a copy of the certified transcript of testimony when a certified transcript is made on an appeal in a criminal case, and to the attorney general when the state is a party.
- D. The official court reporter, when requested, shall furnish at county expense to the county attorney or the attorney general a copy of the certified transcript of testimony of any proceeding held in the superior court when the state or an instrumentality thereof is ordered to provide such transcripts by a federal court in a habeas corpus proceeding in the federal courts or when ordered by the Arizona supreme court to provide such transcripts in a habeas corpus proceeding in state court.
- E. The necessary supplies for conduct of the office of the official court reporter shall be furnished by the county.

Chapter 2 Judicial Officers and Employees

Article 3 Court Reporter

12-225. Appointment of deputies; compensation

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

B. When the official court reporter is prevented from performing the official court reporter's ~~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 official court reporter may appoint a deputy to perform the services of official court reporter during the period and at the compensation the judge provides by order. Such

compensation shall be a county charge.

Article 8 Clerk of Superior Court

12-283. Powers and duties.

A. The clerk, in addition to the other duties prescribed by law or rule of court, shall:

1. Attend each session of the court held in the county.
2. Keep a list of fees charged in actions.
3. Keep ~~books~~ records required by law or rule of court.

* * *

Article 10 Family Law Referee

12-298. Appointment of family law referee or court commissioner; compensation; qualifications; duties; powers; procedures.

* * *

~~D. The family law referee shall prepare a report on the matters submitted to him consisting of written findings and recommendations. The family law referee shall not ordinarily be required to file with his report a transcript of the proceedings but shall make sufficient findings of fact in his report to justify the recommendations made to the court. The family law referee shall file the report with the clerk of the court along with the original exhibits. The clerk shall provide a copy of the report to all parties.~~

* * *

Chapter 3 Fees and Costs

Article 1 Fees in General

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 and 7 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 and 7 of this subsection:

* * *

7. ~~Court reporter's Fees for the preparation of court transcripts if the court reporter is employed by the court~~ a certified transcript.

* * *

Article 4 Costs Defined

12-331. Taxable costs in supreme court.

Costs in the supreme court shall include:

1. The amount paid to the clerk of that court.
2. The amount paid to the clerk of the superior court for certified copies of the record and for transmitting it.
3. The cost of printing or typing the abstract of record and briefs.
4. The amount paid for the certified transcript of the ~~notes of the reporter of proceedings~~ in the superior court.
5. Such other disbursements as may have been incurred pursuant to an order of the court or agreement of the parties.

Chapter 4 Venue and Change of Venue or Judge

Article 1 In General

12-407. Order for change of venue; transmittal of papers; payment of fees and costs; effect of failure to pay.

A. If a change of venue is ordered, the court shall transfer the action to the most convenient adjoining county, unless the parties agree to some other county in which case the court shall transfer the action to the agreed upon county.

B. The clerk shall promptly transmit the papers and certified transcripts of the proceedings, if any, in the action to the clerk of the court to which the venue is changed. Except as provided in subsection E of this section, the party applying for the change of venue shall pay a transmittal fee established pursuant to section 12-284 within twenty days after the order directing the change. If payment is not timely made, the application for change of venue and the order for change of venue shall be deemed abandoned. If the change is abandoned, the action shall proceed as if the order for change of venue had not been made.

* * *

Chapter 7 Special Actions and Proceedings in Which the State is a Party

Article 6 Judicial Review of Administrative Decisions

12-910. Scope of review.

A. An action to review a final administrative decision shall be heard and determined with convenient speed. If requested by a party to an action within thirty days after filing a complaint, the court shall hold an evidentiary hearing, including testimony and argument, to the extent necessary to make the determination required by subsection E of this section. The court may hear testimony from witnesses who testified at the administrative

hearing and witnesses who were not called to testify at the administrative hearing.

B. Relevant and admissible exhibits and testimony that were not offered during the administrative hearing shall be admitted, and objections that a party failed to make to evidence offered at the administrative hearing shall be considered, unless either of the following is true:

1. The exhibit, testimony or objection was withheld for purposes of delay, harassment or other improper purpose.
2. Allowing admission of the exhibit or testimony or consideration of the objection would cause substantial prejudice to another party.

C. For review of final administrative decisions of agencies that are exempt from sections 41-1092.03 through 41-1092.11, pursuant to section 41-1092.02, the trial shall be de novo if trial de novo is demanded in the complaint or answer of a defendant other than the agency and if a hearing was not held by the agency or the proceedings before the agency were not ~~stenographically reported or mechanically~~ recorded so that a transcript might be made. On demand of any party, if a trial de novo is available under this section, it may be with a jury, except that a trial of an administrative decision under section 25-522 shall be to the court.

D. The record in the superior court shall consist of the record of the administrative proceeding, and the record of any evidentiary hearing, or the record of the trial de novo.

E. The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

Chapter 11 Extraordinary Legal Remedies

Article 1 Certiorari

12-2002. Application for writ; grant of writ.

A. An application for a writ of certiorari shall be made on affidavit by the party beneficially interested, and the court may grant the writ with or without notice to the adverse party, or may enter an order to show cause why it should not be granted.

B. The writ may be directed to the inferior tribunal, board or officer, or to any other person having the custody of the record or proceedings to be certified.

C. When the writ is directed to a tribunal, the clerk, if there is one, shall return the writ with the ~~transcript~~ record required.

12-2003. Contents of writ.

The writ of certiorari shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and to annex to the writ a ~~transcript of the~~ record and proceedings named in the writ, and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

TITLE 13 CRIMINAL CODE

Chapter 18 Theft

13-1802. Theft; classification.

* * *

D. At the conclusion of any grand jury proceeding, hearing or trial, the court shall preserve any trade secret that is admitted in evidence or any portion of a ~~transcript~~ the court record that contains information relating to the trade secret pursuant to section 44-405.

* * *

Chapter 23 Organized Crime and Fraud

13-2316.02. Unauthorized release of proprietary or confidential computer security information; exceptions; classification.

A. A person commits unauthorized release of proprietary or confidential computer security information by communicating, releasing or publishing proprietary or confidential computer security information, security-related measures, algorithms or encryption devices relating to a particular computer, computer system or network without the authorization of its owner or operator.

* * *

C. At the conclusion of any grand jury, hearing or trial, the court shall preserve pursuant to section 44-405 any proprietary computer security information that was admitted in evidence or any portion of a ~~transcript~~ the court record that contains information relating to proprietary computer security information.

* * *

Chapter 38 Miscellaneous

Article 7 Arrest

13-3905. Detention for obtaining evidence of identifying physical characteristics; definition.

* * *

D. In lieu of, or in addition to, a written application as provided in subsection A, the magistrate may take an oral statement under oath which shall be recorded ~~on tape, wire or other comparable method~~. This statement may be given in person to a magistrate or by telephone, radio or other means of ~~electronic communication~~ voice transmission. This statement is deemed an application for the purpose of issuance of an order authorizing the temporary detention for the purpose of obtaining evidence of identifying physical characteristics. If a recording of the sworn statement is made, the statement shall be transcribed at the request of the court or either party and certified by the magistrate and filed with the court.

* * *

Article 8 Search Warrant

13-3914. Examination on oath; affidavits.

A. Before issuing a warrant, the magistrate may examine on oath the person or persons seeking the warrant, and any witnesses produced, and must take his affidavit, or their affidavits, in writing and cause the affidavit to be subscribed by the party or parties making the affidavit. Before issuing the warrant, the magistrate may also examine any other sworn affidavit submitted to him which sets forth facts tending to establish probable cause for the issuance of the warrant.

B. The affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing the grounds exist.

C. In lieu of, or in addition to, a written affidavit, or affidavits, as provided in subsection A, the magistrate may take an oral statement under oath which shall be recorded ~~on tape, wire or other comparable method~~. This statement may be given in person to the magistrate or by telephone, radio or other means of ~~electronic communication~~ voice transmission. This statement is deemed to be an affidavit for the purposes of issuance of a search warrant. If a recording of the sworn statement is made, the statement shall be transcribed at the request of the court or either party and certified by the magistrate and filed with the court.

Article 11 Preliminary Hearings

13-3952. Compensation of certified court reporter appearing at preliminary hearing; fees for transcribing notes

[Rules Workgroup believes this statute should be repealed, since its not know to be followed in any county]

When a ~~regularly appointed~~ an official court reporter appears and takes testimony at a preliminary hearing in a criminal proceeding, the official court reporter's compensation shall be fixed by the magistrate before whom the examination is had. Such compensation

shall not exceed the amount of fifteen dollars per day for each preliminary hearing actually attended upon such examination, and two dollars fifty cents per page for transcribing ~~his~~ the reporter's notes, to be allowed and paid as other county charges. The certified court reporter, when requested, shall furnish at county expense to the county attorney or the attorney general a copy of the certified transcript of testimony of any proceedings held in the justice court when the state or an instrumentality thereof is ordered to provide such transcripts by a federal court in a habeas corpus proceeding in the federal courts or when ordered by the Arizona supreme court to provide such transcripts in a habeas corpus proceeding in state court.

Article 18 Appeals

13-4034. Expense of record or transcript upon appeal by indigent as county charge.

The expense of a certified copy of the record on appeal or of the ~~reporter's~~ certified transcript, or both, when appellant files an affidavit that he is without means or wholly unable to pay for such copies, and such affidavit is found true, shall be a charge upon the county in which the appellant was convicted.

Article 24 Deposition of Witness Within the State

13-4103. Order for examination; notice; proof of service.

A. If the court is satisfied that the examination of the witness is necessary, an order shall be made that the witness be examined conditionally at a specified time and place, and that a copy of the order be served on the opposite party at least two days before the examination.

B. The order shall direct that the examination be taken before the clerk of the court, ~~the~~ a certified court reporter, a magistrate or a notary public named therein, and on proof of service upon the opposite party of a copy of the order, though no counsel appears for the state, the examination shall proceed.

Article 29 Post Conviction Relief

13-4239. Review.

* * *

F. Within thirty days after the expiration of the time for filing the last reply, the record, including the trial court file, the ~~reporter's~~ certified transcript, the original and all copies of the petition and cross-petition for review, responses and replies shall be transmitted to the appellate court.

* * *

TITLE 21 JURIES**Chapter 4. Grand Juries****Article 1. General Provisions****21-411. Appointment of reporter; certified transcript**

A. The presiding judge of the superior court shall appoint a ~~regularly appointed~~ certified court reporter to record the proceedings before the grand jury, except the deliberations of the grand jury. The certified court reporter's verbatim record ~~notes~~ containing the proceedings from which an indictment is returned shall be transcribed and 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 certified transcript shall be made available to the prosecuting officer and the defendant. The certified transcript or a portion of the transcript may be denied to a defendant by the court upon a showing of extraordinary circumstances by a prosecuting officer. The reporter's verbatim record ~~notes~~ which ~~are~~ is not transcribed as provided in this section shall be filed with the clerk of the superior court and impounded and shall be transcribed only when ordered by the presiding judge of the superior court.

B. The certified court reporter and any other person ~~typists~~ who transcribes the certified court reporter's verbatim record ~~notes~~ of grand jury proceedings shall be sworn by the foreman or acting foreman 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.

TITLE 22 JUSTICES OF THE PEACE AND OTHER COURTS NOT OF RECORD**Chapter 1 Justice Precinct and Precinct Officers****Article 2 Justices of the Peace****22-124. Custody of records filed; purging; destruction.**

A. The justice of the peace shall keep in custody and shall take charge of and safely keep and dispose of according to court rules all books, papers and records which may be filed or deposited in custody.

B. The justice court may destroy all documents, records, instruments, books, papers, depositions, exhibits and transcripts in any action or proceeding in the justice court or otherwise filed or deposited in custody pursuant to rules established by the supreme court.

C. The justice of the peace or the justice's designee shall notify the director of the Arizona state library, archives and public records of records designated for destruction pursuant to court rules. The state library shall have the opportunity in a time prescribed by court rule to review and inspect these records. During this time period, the state library

may remove any of these records for storage and retrieval.

D. Subsection C does not apply if the director of the Arizona state library, archives and public records has previously approved the destruction of records.

Chapter 2 Civil Proceedings in Justice Court

Article 4 Appeals

22-261. Judgments which may be appealed.

A. Any party to a final judgment of a justice of the peace may appeal therefrom to the superior court where the judgment or the amount in controversy exceeds twenty dollars, exclusive of costs.

B. The party aggrieved by a judgment in any action in which the validity of a tax, impost, assessment, toll or a statute of the state is involved may appeal to the superior court without regard to the amount in controversy.

C. An appeal shall be on the record of the proceedings if such record includes a ~~transcript or~~ verbatim record of the proceedings. De novo trials shall be granted only when the ~~transcript~~ record of the proceedings in the superior court's evaluation is insufficient or in such a condition that the court cannot properly consider the appeal. The superior court may remand to the original trial court for a trial de novo. A trial de novo shall not be granted when a party who had the opportunity to request that a transcript record of the lower court proceedings be made and failed to do so. At the beginning of each proceeding the judge shall advise the parties that their right to appeal is dependent upon their requesting that a record be made of the justice court proceedings. Any party to an action may request that the proceedings be recorded for appeal purposes. The cost of recording trial proceedings shall be the responsibility of the court. If a transcript is required by the superior court, the cost of preparing a transcript, ~~if appealed,~~ shall be the responsibility of the party appealing the case. The supreme court shall establish by rule the methods of recording trial proceedings for record appeals to the superior court, ~~including but not limited to electronic recording devices or manual transcription.~~

22-265. Notice to appellant for payment of fees.

Upon receipt of the ~~transcript or papers on~~ notice of appeal or notice of cross-appeal from the justice court, the clerk of the superior court shall notify appellant or cross-appellant that the ~~transcript or papers~~ appeal or cross-appeal will be ~~filed~~ perfected upon payment of the amount provided in section 22-283, and unless paid within ~~fifteen~~ 30 days after giving the notice, the appeal or cross-appeal shall be deemed abandoned, and the ~~transcript and papers~~ appeal or cross-appeal shall be ~~returned to~~ dismissed by the justice of the peace, and the judgment may be enforced as if no appeal or cross-appeal had been taken.

Chapter 3 Criminal Proceedings in Justice Court

Article 5 Appeals

22-371. Right of appeal; procedure for taking appeal; transcript.

- A. The defendant in a criminal action may appeal to the superior court from the final judgment of a justice or municipal court.
- B. The procedure for appeals from a justice or municipal court to the superior court shall be as provided by rules promulgated by the supreme court.
- C. In a trial in a justice or municipal court, a transcript of the proceedings ~~by a court reporter~~ may be ordered in the sole discretion of the court.
- D. A defendant may not appeal from a judgment or sentence that is entered pursuant to a plea agreement or from an admission to a probation violation.

22-374. Superior court trial or determination of appeal.

- A. An appeal shall be on the record of proceedings if such record includes a ~~transcript~~ verbatim record of the proceedings. Trial de novo shall be granted in all appeals wherein a ~~transcript~~ verbatim record of the proceedings has not been maintained. The record shall be as certified by the judge of the court of origin or as stipulated by the parties. The condition of the record shall be subject to review by the superior court which may grant trial de novo based upon the court's evaluation of the sufficiency and condition of the record.
- B. After a trial de novo or a final determination the superior court may:
 - 1. Adjudge guilty and impose sentence as it deems proper; or
 - 2. Acquit and discharge the defendant and exonerate his bail.
- C. After determination of an appeal where there is a ~~recorded transcript~~ verbatim record the superior court may:
 - 1. Reverse the court of origin and remand the case to the court of origin and direct a new trial;
 - 2. Reverse the court of origin and direct a verdict of acquittal, discharge the defendant and exonerate his bail.
 - 3. Affirm the court of origin and remand the case to the court of origin for appropriate action.

TITLE 32 PROFESSIONS AND OCCUPATIONS

Chapter 20 Real Estate

Article 3 Regulation

32-2159. Judicial review; costs; transcript.

- A. Except as provided in section 41-1092.08, subsection H, a final decision of the [state real estate] commissioner may be appealed to the superior court in Maricopa county pursuant to title 12, chapter 7, article 6.

B. If the superior court declares an appealing party indigent, on appeal the department shall pay the costs of the ~~reporter's~~ certified transcript of proceedings and shall produce a certified copy of all documents and evidence in the administrative record at no charge.

TITLE 36 PUBLIC HEALTH AND SAFETY

Chapter 5 Mental Health Services

Article 5. Court-Ordered Treatment

36-539. Conduct of hearing; record; certified transcript.

* * *

E. A ~~verbatim~~ record of all proceedings under this section shall be made by a certified court reporter ~~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~~ a certified court reporter is not requested in the manner provided by this subsection, electronic means shall be directed by the presiding judge. The ~~stenographic~~ notes or electronic tape record 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 he is without means to pay for a transcript. If the affidavit is found true by the court, the expense of the transcript is to be a charge upon 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 prior to evaluation.

Chapter 6 Public health control

Article 6 Tuberculosis control

36-727. Hearings; procedure; confidentiality.

* * *

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.

TITLE 39 PUBLIC OFFICERS AND EMPLOYEES

Chapter 2. Qualification and Tenure

Article 7. Impeachment of State and Judicial Officers

38-317. Compensation of impeachment personnel.

A. The senators composing the court of impeachment and the managers representing the house of representatives shall be paid during the impeachment trial the compensation, mileage, and subsistence provided by law for members of the legislature when convened in regular session.

B. The managers shall be allowed the same compensation for the time required in preparing the proceedings for presentation to the court of impeachment together with their actual and necessary expenses; such expenses shall include the personal or subsistence expenses of the managers. In addition, the managers may during the preparation of the proceedings and the trial thereof also employ legal, stenographic, clerical and other assistance as is required and fix their compensation.

C. The members, officers, employees of the court, the board of managers and all employees of the board of managers shall be paid on verified claims approved by the presiding justice of the court and attested by its clerk.

D. Certified court reporters employed by the court ~~may shall be paid the compensation compensated as~~ provided by law ~~for reporting proceedings before magistrates~~, and shall also receive from the party ordering a certified transcript of the proceedings the compensation provided by law for such services.

E. In lieu of the procedures prescribed by the terms of subsection D of this section, the court may provide by contract for the ~~reporting~~ recording of such proceedings and for the certified transcripts thereof.

Chapter 3. Conduct of Office

Article 3. Records

38-424. Use of ~~tape recorders or other~~ electronic recording devices; exception.

This state or any agency of this state, including the judiciary, and each political subdivision of this state, including any courts of ~~law record~~, may for any purpose use ~~tape recorders or other recording devices~~ electronic means in lieu of certified court reporters or stenographers. This section does not apply if the matter to be recorded arises out of court proceedings in a court of record and either party timely requests that a certified court reporter or stenographer be used.

TITLE 41: ADMINISTRATIVE PROCEDURE

Chapter 2. Administrative Officers

Article 2. Notaries

41-324. Certified Court reporters; notarial acts.

A. Certified court reporters who administer oaths and affirmations in judicial proceedings are exempt from the provisions of this chapter other than section 41-315. Certified court reporters who are commissioned as notaries and who perform notarial acts outside of judicial proceedings are subject to all provisions of this chapter and of other laws of this state that regulate notaries public.

B. A certified court reporter who prepares a transcript of a judicial proceeding shall attach a certificate page to the transcript. On the certificate page, the certified court reporter shall attest to the fact that the reporter administered an oath or affirmation to each witness whose testimony appears in the transcript.

C. An affidavit of nonappearance that is prepared by a certified court reporter does not need to be witnessed by a notary.

PROPOSED RULES AMENDMENTS
(new language is underlined, deletions are ~~stricken~~)

RULES OF CIVIL PROCEDURE

Rule 16(d) Joint Pretrial Statement: Preparation; Final Pretrial Conference.

(1) through (5) [no changes]

(6) A statement by each party indicating any depositions intended to be offered by that party at the trial, indicating with respect thereto the portions to be offered and the party or parties against whom they will be offered. If any deposition or portion thereof is so offered and such deposition was not transcribed ~~stenographically~~, a ~~stenographic~~ certified transcript of the pertinent portions of the deposition testimony shall be prepared and submitted by the person so offering the deposition.

* * *

Rule 30(b). Notice of Examination; General Requirements; Special Notice; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) Absent a stipulation of all parties to the action or an order of the court authorizing a briefer notice, a party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least ten days prior to the date of the deposition. The notice shall state the date, time and place for taking the deposition, ~~the technique for recording the deposition and the protocols to be used for such recording, the identity of the person recording the deposition, the placement of camera(s) if any, and~~ the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and the name and address of the person before whom the deposition shall be taken. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

If the deposition is to be recorded by audio or audio-video, the notice shall state the technique for recording the deposition and the protocols to be used for such recording, the identity of the person recording the deposition, and the placement of camera(s), if any.

(2) and (3) [no changes]

(4) Unless the parties stipulate or the court orders otherwise, the deposition shall be recorded by a certified court reporter ~~stenographic means~~ and may also be recorded by audio or audio-video ~~sound or sound and visual~~ means. ~~The party taking the deposition shall bear the cost of the recording.~~

When a deposition is recorded by a certified court reporter and the testimony is requested to be transcribed by one of the parties, the party noticing the deposition shall be responsible for the cost of the original transcript. The deposition shall contain the certified court reporter's name, certification number, and business address; the date, time and place of the deposition; the name of the deponent; the administration of the oath or affirmation to the deponent; and an identification of all persons present. If audio or audio-video is additionally requested by one of the parties, the requesting party shall be responsible for the cost of such recording.

If the deposition is recorded only by audio or audio-video, the party noticing the deposition shall bear the cost of the recording. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a ~~stenographic~~ certified transcription made at the party's own expense.

Any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition ~~recorded by nonstenographic means~~. Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement or notation on the record by the officer that includes (A) the officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. The officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state or note on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, ² or concerning other pertinent matters.

(5) and (6) [no changes]

Rule 30(e). Submission to Witness; Changes, Signing

Before completion of the deposition and if not otherwise informed by counsel, the officer shall advise a deponent of the right to review, modify, and sign the transcript or affirm the accuracy of the audio or video recording. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the witness does not submit such a statement or a written explanation why such statement cannot be submitted within the time period provided, the officer shall ~~state on the record~~

indicate in the certificate prescribed by subdivision (f)(1) or by affidavit the fact of the refusal to submit a statement with the reason therefore, if any, and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to submit a statement require rejection of the deposition in whole or in part.

Rule 30(f). Certification and Delivery by Officer; Exhibits; Copies.

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer must securely seal the deposition in an envelope or package endorsed ~~indorsed~~ with the title of the action and marked "Deposition of [here insert name of witness]" and must promptly send it to the attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness must, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain ~~stenographic notes and tapes of any deposition and a copy of the official recording~~ of any deposition taken by that officer ~~another method~~ in such place and manner as to ensure their availability to the court or any party upon request. The officer shall retain his or her own ~~stenographic~~ notes, tapes, and copies of recordings taken by another method according to records retention and disposition schedules and purge lists adopted by the Supreme Court. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) [no changes]

Rule 32(a). Use of Depositions

At the trial or at any hearing, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, and had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. The party who seeks admission of ~~said~~ the testimony by deposition may do so without proof of the deponent's unavailability

to testify at trial. Nothing contained in this Rule shall be construed to limit, in any way, the right of any party to call the deposed witness to testify in person at trial.

If only part of a deposition is offered in evidence by a party, the court may require the offeror to introduce contemporaneously any other part which ought in fairness to be considered together with the part introduced.

Except as provided in Rule 56(e), the use of the deposition transcript may be supplemented with contemporaneously recorded audio and video files, that may be synchronized to the deposition transcript, if any.

* * *

Rule 51 (b). Instructions to jury; notations; filing transcript

(1) [no changes]

(2) The written instructions shall be filed among the papers in the action and constitute a part of the record. At the request and cost of either party, the entire instructions given by the court shall be transcribed by the certified court reporter or authorized transcriber and filed with the clerk.

(3) The court's preliminary and final instructions on the law shall be in written form and a copy of the instructions shall be furnished to each juror before being read by the court. Upon retiring from deliberations the jurors shall take with them all jurors' copies of final written instructions given by the court. In limited jurisdiction courts, the court may record jury instructions ~~on audiotape~~ electronically and provide these ~~audio~~ instructions to the jury for their use during deliberations.

Rule 53(g). Report; contents and filing

The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and unless otherwise directed by the order of reference, shall file with it a certified transcript of the proceedings and of the evidence and original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

Rule 55 (f). Judgment when service by publication; statement of evidence

Where service of process had been made by publication and no answer has been filed within the time prescribed by law, judgment shall be rendered as in other cases, but a ~~reporter's transcript certified by the reporter as correct~~ record of the proceedings, in a form approved by the court, shall be filed as a part of the record maintained on a tangible medium or that is stored in any electronic or other medium and that is retrievable in perceivable form.

Rule 74. Rulings by arbitrator; hearing; evidence and procedure.

(a) through (i) [no changes]

(j) *Record of proceedings.* The arbitrator shall not be required to make a record of the proceedings. If any party desires ~~the presence of a reporter to make a verbatim record of the proceedings,~~ such party shall pay for and provide for the reporter recording. The charges of the reporter recording shall not be considered costs in the case.

(k) [no changes]

RULES OF CRIMINAL PROCEDURE

Rule 5.2. Summoning of witnesses and record of proceedings

The magistrate shall issue process to secure the attendance of witnesses and, shall provide for a verbatim record of proceedings, which may be by a certified court reporter, electronic, or other means in the discretion of the Presiding Judge of the Superior Court unless a certified court reporter is requested by a party. Such request for a certified court reporter shall be honored unless the court is in a geographic location where certified court reporters are not reasonably available.

Rule 5.5. Review of preliminary hearing.

(a) and (b) [no changes]

c. *Evidence.* Review of the evidence shall be limited to the certified transcript of the proceedings.

d. [no changes]

Rule 5.6. Transmittal and transcription of record.

Within 3 days after waiver or conclusion of the preliminary hearing, the magistrate shall transmit the ~~audiotape or videotape~~ verbatim record of the preliminary hearing, if any, all papers and records in the case, and a prescribed transmittal form, to the clerk of the Superior Court. No ~~audiotape, videotape or court reporter's notes of the preliminary hearing~~ verbatim record shall be transcribed absent a written request by a party avowing that there is a material need for the transcript, in which case a certified transcript shall be filed in Superior Court no later than 20 days after receipt of such request. Failure to timely file this certified transcript may be treated as a contempt of court.

Rule 5.7. Preservation of recording.

The clerk shall retain and preserve any ~~audiotape or videotape~~ electronic recording of a preliminary hearing in the same manner as required for the original notes of a certified court reporter pursuant to Rule 28.1(c), Rules of Criminal Procedure.

Rule 12.5. Persons authorized to be present during sessions of the grand jury.

No person other than the witness under examination, counsel for the witness if the witness is a person under investigation by the grand jury, prosecutors authorized to present evidence to the grand jury, the certified court reporter, and the interpreter, if any, shall be present during sessions of the grand jury. No person other than the grand jurors shall be present during their deliberation and voting.

Rule 12.8. Record of proceedings before grand jury.

a. *Reporter.* The presiding or impaneling judge shall assign a regularly appointed certified court reporter to record the proceedings before the grand jury, except ~~their~~ its deliberations.

b. *Foreman.* The foreman of the grand jury shall keep a record of the numerical count of the grand jury vote for and against such indictment. The foreman's record of the vote from which an indictment is returned shall be transcribed and filed with the clerk of the superior court no later than 20 days following the return of the indictment and made available to the prosecution and defendant only.

c. *Filing of the transcript and minutes.* The certified court reporter's ~~notes containing verbatim record of~~ the proceedings from which an indictment is returned ~~and the foreman's record of the vote~~ shall be transcribed and filed with the clerk of the superior court no later than 20 days following the return of the indictment and ~~such record and~~ the certified transcript shall be made available to the prosecution and defendant only.

Rule 12.9. Challenge to grand jury proceedings.

(a) [no changes]

b. *Timeliness.* A motion under Rule 12.9(a) may be filed only after an indictment is returned and no later than 25 days after the certified transcript and minutes of the grand jury proceedings have been filed or 25 days after the arraignment is held, whichever is later.

Rule 15.3. Depositions.

(a) through (c) [no changes]

d. *Manner of taking.* Except as otherwise provided herein or by order of the court, depositions shall be taken in the manner provided in civil actions. With the consent of the parties, the court may order that a deposition be taken on written interrogatories in the manner provided in civil actions. Any statement of the witness being deposed which is in the possession of any party shall be made available for examination and use at the taking of the deposition to any party who would be entitled thereto at trial. A deposition may be recorded by other than ~~stenographic means, such as, by an audio recording device~~ a certified court reporter. If a deposition is recorded by other than ~~stenographic means~~ a certified court reporter, the party taking the deposition shall provide the opposing party with a copy of the recording within 14 days after the taking of the deposition or not less than 10 days before trial, whichever is earlier. The parties may stipulate, or the court may order, that a deposition be taken by telephone, consistent with the provision of Rule 15.3(d).

(e) and (f) [no changes]

Rule 15.9. Appointment of Investigators and Expert Witnesses for Indigent Defendants.

(a) [no changes]

b. *Ex parte proceeding.* No ex parte proceeding, communication, or request may be considered pursuant to this rule unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be ~~transcribed~~ recorded verbatim and made a part of the record available for appellate review.

(c) and (d) [no changes]

Rule 16.3. Procedure on omnibus hearings.

(a) through (d) [no changes]

e. *Record of proceedings.* All proceedings at the omnibus hearing shall be ~~reported~~ recorded verbatim.

(f) [no changes]

Rule 26.2. Time of rendering judgment.

(a) through (c) [no changes]

d. *Factual determination.* In the event the trial court did not make an affirmative finding of a factual basis for the plea pursuant to Rule 17.3, before the entry of the judgment of guilt the trial court shall make such determination. One or more of the following sources

may be considered: statements made by the defendant; police reports; certified reporter's transcripts of the proceedings before the grand jury; and other satisfactory information.

Rule 26.11. Duty of the court after pronouncing sentence.

After trial, the court shall, in pronouncing judgment and sentence,

(a) [no changes]

(b) (1) [no changes]

(2) If the defendant is unable to pay for a certified copy of the record on appeal and the ~~reporter's~~ certified transcript, they will be provided by the county.

(c) [no changes]

Rule 27.7. Revocation of probation.

(a) through (e) [no changes]

f. *Record.* A ~~complete~~ record of the revocation arraignment, violation hearing and disposition hearing shall be made.

Rule 27.9. Revocation of probation in absentia.

(a) through (e) [no changes]

f. *Record of proceedings.* A ~~complete~~ record shall be made of all proceedings at the revocation hearing in absentia.

Rule 31.2. Notice of appeal; automatic appeal; joint appeals.

(a) [no changes]

b. *Automatic Appeal When Defendant is Sentenced to Death.* When a defendant has been sentenced to death, the clerk, pursuant to Rule 26.15, shall file a notice of appeal on his behalf at the time of entry of judgment and sentence. Such notice shall be sufficient as a notice of appeal by the defendant with respect to all judgments entered and sentences imposed in the case. Within 10 days after the filing of the notice of appeal in any capital case, the clerk of the superior court shall notify all authorized transcribers assigned to transcribe any portion of the proceedings that they are required to transmit their portions of the certified transcript to the clerk of the supreme court.

(c) through (e) [no changes]

f. *Service of the Notice of Appeal.*

(1) *When defendant appeals.* When a defendant appeals, within 8 days of the filing of the notice of appeal, the clerk of the trial court shall send a copy of the notice of appeal to the prosecutor of the county in which the defendant was tried, to the attorney general, to each co-defendant at trial who is not a joint-appellant and defendant's counsel of record, if any, to the appropriate certified court reporter or reporters, or to the court's designated transcript coordinator, if the record was made by electronic or other means, and to the clerk of the proper Appellate Court.

(2) *When the state appeals.* When the state appeals or cross-appeals, within 8 days of the filing of the notice of appeal, the clerk of the trial court shall send a copy of the notice of appeal to each defendant and defendant's counsel of record, if any, to the appropriate certified court reporter or reporters, or to the court's designated transcript coordinator, if the record was made by electronic or other means, and to the clerk of the proper Appellate Court.

(3) & (4) [no changes]

(g) [no changes]

Rule 31.4. Motion to stay appeal; notice of reinstatement of appeal; consolidation of appeals.

a. *Motion to stay appeal; notice of reinstatement of appeal.*

(1) The appellate court, on motion of a party or on its own initiative, may stay an appeal while a motion under Rule 24 or a petition under Rule 32 is pending. If a stay is ordered, the clerk of the appellate court shall notify all parties, the clerk of the trial court, and, if the certified transcript has not yet been filed, the appropriate ~~court reporters~~ authorized transcribers.

(2) [no changes]

(b) [no changes]

Rule 31.5. Appeals by indigents.

a. *Determination of indigency.*

(1) A defendant who had appointed counsel at the determination of guilt or at sentencing may proceed on appeal as an indigent without further authorization, unless, after a notice of appeal is filed, the trial court finds that the defendant is now able to employ counsel and pay for a certified copy of the record on appeal and the ~~reporter's~~ certified transcript.

(2) [no changes]

(b) and (c) [no changes]

d. *Notice to clerk of the appellate court and to the certified court reporter or to the court's designated transcript coordinator.* A copy of any order or decision made under this rule shall be sent to the parties, the clerk of the appellate court and to the appropriate certified court reporter or reporters, or to the court's designated transcript coordinator, if the record was made by electronic or other means.

Rule 31.7. Docketing in the Appellate Court; designating the parties

a. *Docketing the Appeal.* Within ~~5~~ 10 days after filing the notice of appeal, the clerk of the Appellate Court shall docket the appeal.

(b) [no changes]

Rule 31.8. The record on appeal; transcript; duty of the ~~court reporter~~ authorized transcriber.

a. *Composition of the record on appeal; additions; deletions.*

(1) *Composition.* The record on appeal to the appellate court shall be a certified copy of the transcript, all documents, papers, books and photographs introduced into evidence, and all pleadings and documents in the file— (other than subpoenas and praecipes not specifically designated) —shall constitute the record on appeal, and if authorized by the appellate court, an electronic recording of the proceeding.

(2) *Additions and deletions.*

(i) *By the appellant.* Within 5 days after the filing of the notice of appeal the appellant may file with the clerk of the trial court a designation to include in the record the subpoenas and praecipes ~~he or she~~ appellant deems necessary, and to delete from the record all the documents, papers, books and photographs he or she deems unnecessary.

(ii) *By the appellee.* Within 12 days after the filing of the notice of appeal the appellee may file with the clerk of the trial court a designation to include in the record those subpoenas and praecipes ~~he or she~~ appellee deems necessary, and any document, paper, book or photograph deleted by the appellant.

(iii) [no changes]

b. *Certified Transcript: Composition, additions and exclusions.*

(1) For the purpose of these rules, an “authorized transcriber” is a certified court reporter or a transcriber under contract with an Arizona court.

(1) ~~(2)~~ *Composition.* Except in cases where the death penalty has been imposed, ~~the transcript shall consist of the reporter's~~ a certified transcript of the following proceedings shall be provided:

(i) through (v) [no changes]

~~(2)~~ ~~(3)~~ *Composition where the death penalty has been imposed.* The certified transcript shall consist ~~of the reporter's transcript~~ of all recorded proceedings ~~at which a court reporter was present~~, including grand jury proceedings.

~~(3)~~ ~~(4)~~ *Additions and deletions.* Within 5 days after the filing of the notice of appeal, the appellant may request the certified court reporter or the court's designated transcript coordinator, if the record was made by electronic or other means, to add to the certified transcript any proceeding not automatically included, and to exclude from the certified transcript any portion of the proceedings the appellant deems unnecessary for the proper hearing of his or her appeal.

Within 12 days after the filing of the notice of appeal, the appellee may request the certified court reporter or the court's designated transcript coordinator, if the record was made by electronic or other means, to add to the certified transcript any portion deleted by the appellant or not automatically included under paragraph (1).

c. [no changes]

d. *Duty of the ~~court reporter~~ authorized transcriber; payment for certified transcript; number of copies.*

(1) The ~~court reporter~~ authorized transcriber shall prepare the certified transcript promptly upon receipt of a notice of appeal by the state or a notice of appeal indicating that the appellant proceeded as an indigent at the determination of guilt or at sentencing.

(2) Within 5 days after the filing of the notice of appeal or within 5 days after denial or a request to proceed as an indigent, an appellant who is not proceeding as an indigent shall make arrangements with the ~~court reporter~~ authorized transcriber to pay for the certified transcript. Thereupon the ~~court reporter~~ authorized transcriber shall promptly prepare the certified transcript.

The ~~court reporter~~ authorized transcriber shall notify the appellate court if the appellant fails to make satisfactory arrangements within the prescribed time.

(3) The ~~court reporter~~ authorized transcriber shall promptly make any additions and deletions requested by the parties.

(i) For non-electronically filed transcripts. The ~~court reporter~~ authorized transcriber shall prepare an original and two copies of the certified transcript unless further copies are ordered. The ~~court reporter~~ authorized transcriber shall file the original certified transcript with the clerk of the appellate court within the time for the clerk to file the record pursuant

to Rule 31.9(a). When the state is the appellee the ~~court reporter~~ authorized transcriber shall send one copy of the certified transcript to the Office of the Attorney General. When the state is the appellant, the ~~court reporter~~ authorized transcriber shall send one copy of the certified transcript to the agency that prosecuted the case in Superior Court. The ~~court reporter~~ authorized transcriber shall file the copy for the defendant with the clerk of the Superior Court, who will retain the copy for release to the defendant's appellate counsel or to the defendant if he or she is proceeding *pro se*, unless there is a local rule or administrative order providing otherwise, in which case the ~~court reporter~~ authorized transcriber shall distribute the defendant's copy as provided by such rule or order. Notice of service of the certified transcript shall be filed with the appellate court reflecting when and upon whom service was made.

(ii) For electronically filed transcripts. In courts that accept electronic filings, the authorized transcriber shall file the certified electronic transcript with the clerk of the appellate court within the time for the clerk to file the record pursuant to Rule 31.9(a). When the state is the appellee, the authorized transcriber shall send an electronic copy of the certified transcript to the Office of the Attorney General and the appropriate county attorney's office, if any. When the state is the appellant, the authorized transcriber shall send an electronic copy of the certified electronic transcript to the agency that prosecuted the case in Superior Court. The authorized transcriber shall file the electronic transcript for the defendant with the clerk of the Superior Court, who will provide the electronic transcript to the defendant's appellate counsel or to the defendant if he or she is proceeding *pro se*. If a paper transcript is required or requested in lieu of an electronic transcript, the authorized transcriber shall file the paper copy for the defendant with the clerk of the Superior Court, who will retain the copy for release to the defendant's appellate counsel or to the defendant if he or she is proceeding *pro se*, unless there is a local rule or administrative order providing otherwise, in which case the authorized transcriber shall distribute the defendant's copy as provided by such rule or order. Notice of service of the certified transcript shall be lodged with the appellate court reflecting when and upon whom service was made.

e. *Responsibility for payment.* Non-indigent parties shall pay for all portions of the record on appeal and certified transcript which they have designated or requested. In addition, non-indigent appellants shall pay for those portions of the record on appeal and certified transcript required under Sections (a)(1), (b)(1), and (b)(2) and not deleted.

(f) [no changes]

g. *Agreed statement as the record on appeal.* In lieu of the record on appeal as defined above, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court, setting forth only so many of the facts averred and proved or thought to be proved as are essential to a decision of the issues presented. Notice that a statement is being prepared shall be served promptly on the appropriate ~~court reporter or reporters~~ authorized transcriber and on the clerk of the trial court.

The agreed statement shall be submitted for the trial court's approval within 20 days of the filing of the notice of appeal. The court may make such additions as it considers necessary

fully to present the appeal.

(h) [no changes]

Rule 31.9. Transmission of the record.

a. *Time for transmission.* Within 45 days after the filing of the notice of appeal, the clerk of the superior court shall transmit to the appellate court a copy of the pleadings, documents, and minute entries, and the original paper and photographic exhibits of a manageable size filed with the clerk of the superior court. ~~Within 10 days after the filing of the notice of appeal in any capital case, the clerk of the superior court shall notify all certified court reporters who reported any portion of the record that the reporters are required to transmit their portions of the record to the clerk of the supreme court.~~

b. *Duty to certify and transmit the record.* After certifying that it is true, correct, and complete as ordered, the clerk of the trial court and the ~~court reporter or reporters~~ authorized transcriber shall transmit to the clerk of the appellate court the portions of the record on appeal for which ~~they are~~ each is responsible. Each shall number the items comprising ~~his~~ that portion of the record on appeal and shall transmit with that portion a list of the items so numbered.

c. *Extension and reduction of time for transmission of the record.* The appellate court, on a showing of good cause, may grant one extension of the time for transmitting the record on appeal which shall not exceed 20 days or it may require the record to be transmitted at any time within the prescribed period. A copy of any order issued under this section shall be sent to the parties, the clerk of the trial court, and to the ~~appropriate court reporter or reporters~~ requesting authorized transcriber.

(d) [no changes]

Rule 31.15. Motion to dismiss.

(a) and (b) [no changes]

c. *Notice of dismissal.* The clerk of the appellate court shall give prompt notice of dismissal of an appeal to the parties, the clerk of the trial court, and if the certified transcript has not yet been filed, to the appropriate ~~court reporter or reporters~~ authorized transcribers.

Rule 32.4. Commencement of proceedings.

(a) through (c) [no changes]

d. *Transcript preparation.* If the ~~transcripts of the trial court proceedings~~ have not been previously transcribed, the defendant may request on a form provided by the clerk of court

that ~~the~~ certified transcripts be prepared. The court shall expeditiously review the request and order only those transcripts prepared that it deems necessary to resolve the issues to be raised in the petition. The preparation of the transcripts shall be at county expense if the defendant is indigent. The time for filing ~~of~~ the petition shall be tolled from the time a request for the transcripts is made until the transcripts are prepared or the request is denied. Certified transcripts shall be prepared and filed within sixty days of the order granting the request.

(e) and (f) [no changes]

Rule 32.8. Evidentiary hearing.

a. *Evidentiary hearing.* The defendant shall be entitled to a hearing to determine issues of material fact, with the right to be present and to subpoena witnesses. If facilities are available, the court may, in its discretion, order the hearing to be held at the place where the defendant is confined, giving at least 15 days notice to the officer in charge of the confinement facility. In superior court, ~~a complete record of the hearing shall be made recorded.~~

(b) through (d) [no changes]

e. *Transcript.* The court may, and shall upon request of a party within the time for filing a petition for review, order that a certified transcript of the evidentiary hearing be prepared. The preparation of the evidentiary hearing transcript shall be at county expense if the defendant is indigent.

Rule 32.9. Review.

(a) and (b) [no changes]

c. *Petition for review.* Within thirty days after the final decision of the trial court on the petition for post-conviction relief or the motion for rehearing, any party aggrieved may petition the appropriate appellate court for review of the actions of the trial court. A cross-petition for review may be filed within 15 days after service of a petition for review. The petition for review, cross-petition and all responsive pleadings filed pursuant to this rule shall be filed in the appellate court. Within 3 days after filing a petition or cross-petition for review, the petitioner and cross-petitioner, if any, shall file a notice of such filing with the trial court. The notice of filing may include a designation of record adding to the record defined in Rule 32.9(e) any additional certified transcripts of trial court proceedings that were prepared pursuant to Rule 32.4(d) or that were otherwise available to the trial court and the parties and that are material to the issues raised in the petition for review. Motions for extensions of time to file petitions or cross-petitions shall be filed in and ruled upon by the trial court. All other motions shall be filed in the court in which the petition is to be filed.

(1) and (2) [no changes]

(d) [no changes]

e. *Filing of the record.* In Rule 32 of-right and non-capital cases, within 45 days after the receipt of the notice of filing of a petition for review, the record, including the trial court file and the ~~reporter's~~ certified transcript, shall be transmitted to the appellate court.

In capital cases, the record of the post-conviction proceedings shall not be transmitted to the appellate court unless requested by that court. If requested by the appellate court, the record shall consist of copies of the notice of post-conviction relief, the petition for post-conviction relief, response and reply, all motions and responsive pleadings filed and all minute entry orders issued in the post-conviction proceedings, plus the ~~reporter's~~ certified transcript and any exhibits admitted by the trial court in the post-conviction proceedings.

(f) through (h) [no changes]

SUPREME COURT RULES

Rule 32. Organization of State Bar of Arizona.

(a) through (i) [no changes]

(j) Formal requirements of ~~papers filed.~~ All ~~transcripts of testimony verbatim records~~ and all copies of recommendations, documents, papers, pleadings, reports and records required or permitted by any provision of these rules relating to admission, discipline, disability, and reinstatement may be either typewritten, ~~or~~ electronically prepared, or copied by a any-mechanical-duplicating process that is clear, ~~and~~ legible, or audible. ~~and if prepared by duplicating process. An original is not required. no original typewritten copy shall be required.~~

(k) and (l) [no changes]

Rule 46. Jurisdiction in discipline and disability matters; definitions.

(a) through (e) [no changes]

(f) (1) through (11) [no changes]

12. "Expenses" means all obligations in money, other than costs, necessarily incurred by the state bar and the disciplinary clerk's office in the performance of their duties under these rules. Expenses shall include, but are not limited to, administrative expenses, necessary expenses of hearing officers, commission members, bar counsel or staff, charges of expert witnesses, charges of certified court reporters and all other direct, provable expenses.

(13) through (17) [no changes]

18. "Record" means the complaint and accompanying panelists' order of probable cause, or other document that commences formal discipline, disability or reinstatement proceedings, or contempt proceedings and every later-filed document or exhibit. Certified transcripts ~~Tape recordings~~ shall not be submitted to the court as part of the record unless the court directs otherwise in a specific case.

(19) through (21) [no changes]

Rule 47. Rules of procedure. [relating to attorney discipline]

(a) through (f) [no changes]

(g) *Transcript of hearings.* The disciplinary clerk shall cause a record to be made, by ~~stenographic~~ certified court reporters or electronic means, of all evidentiary hearings and oral arguments or upon request of the hearing officer or the parties. Testimony recorded by electronic means is admissible for the same purposes as transcripts ~~provided by certified court reporters~~. After the conclusion of each evidentiary hearing or oral argument in a contested case, the disciplinary clerk shall obtain and file one (1) copy of the ~~written~~ certified transcript of the hearing and serve a copy on bar counsel and respondent. A ~~written~~ certified transcript of an evidentiary hearing before a hearing officer that involves a tender of admissions and agreement for discipline by consent may be secured and filed by the disciplinary clerk only upon the request of the hearing officer, the respondent or bar counsel, the commission or the court. The disciplinary clerk may also cause a record to be made of meetings and oral arguments before the commission. The costs to the disciplinary clerk of the services of a certified court reporter and certified transcripts may be included in the costs of adjudication that are assessed against the respondent pursuant to Rule 60(b).

(h) and (i) [no changes]

(j)(1) [no changes]

2. *Imposition of costs.* When a lawyer's failure to cooperate results in a deposition being conducted pursuant to the preceding subsection (h)(1), the lawyer shall be liable for the actual costs of conducting the deposition, including but not limited to service fees, certified court reporter fees, travel expenses and the cost of transcribing the deposition, regardless of the ultimate disposition of the discipline proceeding. Upon application of chief bar counsel to a panelist, itemizing the costs and setting forth the reasons necessitating the deposition, and after giving the lawyer ten (10) days to respond, the panel shall, by order, assess such costs as appear appropriate against the lawyer. Commission review of an order assessing costs under this rule may be had.

(k) and (l) [no changes]

Rule 56. Discipline by Consent.

(a) through (d) [no changes]

(e) *Hearing officer report.* Within thirty (30) days of the submission of an agreement and joint memorandum or the conclusion of an evidentiary hearing, if one is held, and receipt of the certified transcript, the hearing officer shall file a report with the disciplinary clerk and serve a copy on the parties. The report shall recommend acceptance, rejection or modification of the proposed agreement and shall address the proportionality of the sanction to be imposed.

(1) through (3) [no changes]

(f) [no changes]

Rule 57. Formal proceedings

(a) through (i) [no changes]

(j) *Report.* Within thirty (30) days after receiving the certified transcript, the hearing officer shall prepare and file with the disciplinary clerk a written report containing findings of fact, conclusions of law and recommendations regarding discipline, together with a record of the proceedings. The hearing officer shall serve a copy of the report on respondent and on bar counsel. For good cause shown, a hearing officer may request that the chair of the commission, or the chair's designee, grant an extension of time within which to file the report. If no appeal is timely filed, the decision of the hearing officer is final as to any dismissal, diversion, informal reprimand, assessment of costs and expenses, probation and restitution, if not part of a sanction which includes disbarment, suspension or censure.

(k) [no changes]

Rule 65. Reinstatement; application and proceedings.

(a) [no changes]

(b)(1) and (2) [no changes]

3. *Hearing officer report.* Within thirty (30) days after receiving the certified transcript, the hearing officer shall file a report containing findings of fact and a recommendation concerning reinstatement with the commission, which shall include a record of the proceedings. The hearing officer shall serve a copy of the report on the parties.

(4) and (5) [no changes]

Rule 78. Initial Proceedings.

(a) [no changes]

(b) (1) and (2) [no changes]

3. (A) [no changes]

B. *Imposition of Costs.* When a respondent's failure to cooperate results in a deposition being conducted pursuant to the preceding subsection (b)(3)(A), the respondent shall be liable for the actual costs of conducting the deposition, including but not limited to service fees, certified court reporter fees, travel expenses and the cost of transcribing the deposition, regardless of the ultimate disposition of the unauthorized practice of law proceeding. Upon application of chief bar counsel to a panelist, itemizing the costs and setting forth the reasons necessitating the deposition, and after giving the respondent ten days to respond, the panel shall, by order, assess such costs as appear appropriate against the respondent. An order assessing costs under this rule may be appealed to the superior court.

(c) [no changes]

Rule 91. Superior courts and clerks.

(a) through (g) [no changes]

(h) *Uniform size of pages of transcripts.*

(1) The certified transcript of testimony of any proceeding shall be furnished by the ~~court reporter~~ authorized transcriber on 8 1/2 by 11 inch paper having 25 lines per page with a left hand margin of 1 3/4 inches and a right hand margin of 3/8 inch total combined margins of text not to exceed 2 and 1/8 inches.

(2) [no changes]

(i) [no changes]

Rule 95. Visiting judges.

(a) through (d) [no changes]

(e) *Extension of time.* A judge who has heard and determined a civil action or proceeding in another county may enlarge or extend the time for hearing or determining a motion for new trial or to set aside the judgment, or to file a certified transcript of ~~the reporter's notes~~ or statement of the evidence or proceedings, by a written order signed by the judge, and transmitted by mail to the clerk of the court in which the action or proceeding is pending.

The order when filed with the clerk shall have the same force and effect as if made within the county where the action or proceeding is pending.

Rule 102. Appellate review of orders under A.R.S. Section 36-2153 (Parental consent waiver proceedings).

(a) [no changes]

(b) The clerk of the superior court shall transmit the record in the case to the appellate court forthwith upon the filing of the notice of appeal. The record in the case shall be as defined in Rule 11(a)(1) of the Arizona Rules of Civil Appellate Procedure, except that it shall be required to include a ~~reporter's~~ certified transcript of the proceedings in the superior court.

(c) through (h) [no changes]

Rule 123. Public access to the judicial records of the state of Arizona.

(a) through (c) [no changes]

(d) *Access to Case Records.*

(1) through (3) [no changes]

(4) Unofficial verbatim recordings of proceedings. Electronic verbatim recordings made by a courtroom clerk or at the direction of the clerk and used in preparing minute entries are closed.

(e) through (h) [no changes]

Rule 125. Defining minute entry, order, ruling, and notice; party responsible

(a) A minute entry is the memorialization, electronic or otherwise, either by form or narrative of events occurring during a court proceeding or of matters required to be performed by statute or rule. It is not intended to be a verbatim record of the court proceeding. A court proceeding includes those matters heard in chambers when one or more parties are present or represented by counsel. In addition to the date and starting and ending times of a proceeding and the identity of the certified court reporter, alternative recording method and operator, or the absence thereof, a minute entry shall include all official acts occurring during the proceeding, which may consist of any or all of the following as applicable:

(1) through (10) [no changes]

(b) through (e) [no changes]

RULES OF CIVIL APPELLATE PROCEDURE

Rule 11. Record on appeal.

(a) *Composition of record on appeal; transmission of record.*

(1) The ~~papers making up the~~ record on appeal to the appellate court shall be the ~~original papers~~ official documents, exhibits, minute entries, and other objects filed with the clerk of the superior court, and a ~~reporter's~~ certified transcript or narrative or agreed statement, or if authorized by the appellate court, the electronic recording of the proceeding.

(2) The clerk of the superior court shall number the items comprising the record, and shall transmit to the appellate court, within 40 days from the date of filing the notice of appeal, the index listing the contents of the record and the number thereof, together with copies of the final complaint, any minute entry or order waiving filing fees, the judgment from which the appeal lies, the notice of appeal and notice of any cross-appeal, and any civil appeals docketing statement. Upon request of the clerk of the appellate court, the clerk of the superior court shall transmit copies of any other item. The clerk of the superior court shall also serve a copy of the index upon all parties to the appeal. If an enlargement of time is desired, the appellant obtain an order from the superior court extending the time for transmitting the index to not more than 90 days from the date of filing the appeal if the order for extension is made before the expiration of the period for transmittal as originally prescribed or as extended by previous order. If a certified transcript or electronic recording if authorized by the court is not obtained by the date the appeal is docketed application by the appealing party shall be made to the appellate court for relief.

(3) The clerk of the appellate court shall notify the clerk of the superior court when the final brief on appeal has been filed. Within 15 days from the date of such notice, the clerk of the superior court shall transmit to the appellate court the ~~original~~ pleadings, documents, minute entries, and electronic, paper and photographic exhibits of a manageable size filed with the clerk of the superior court, and any narrative or agreed statement.

(4) through (6) [no changes]

(b) *The certified transcript of proceedings; duty of appellant to order; notice to appellee if partial transcript is ordered.*

(1) No later than 10 days after filing the notice of appeal, the appellant shall order ~~from the reporter~~ an original and one copy of a certified transcript, if any, of such parts of the proceedings as ~~he~~ the appellant deems necessary for inclusion in the record. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, ~~he~~ the appellant shall include in the record a certified transcript of all evidence relevant to such finding or conclusion.

(2) If the proceedings to be transcribed were recorded by a certified court reporter, the appellant shall order the transcript directly from the court reporter.

(3) If the proceedings to be transcribed were electronically recorded and no certified court reporter was present, the appellant shall order the transcript from an authorized transcriber. The appellant shall promptly file with the superior court clerk and serve on the other parties a copy of the designation of record ordered from the transcriber.

(4) All parties to the appeal shall cooperate with the transcriber by providing such information as is necessary to facilitate transcription, including providing the transcriber with a copy of any designation made under subsection (b)(2) of this rule. The court will furnish the transcriber with a copy of the electronic recording to be transcribed upon receipt of a notice from the transcriber that satisfactory financial arrangements have been completed.

~~(2)~~ (5) Unless the entire certified transcript as limited in subparagraph (5) below is to be included, the appellant shall, within the time above provided, file a description of the parts of the certified transcript which ~~he~~ the appellant intends to include in the record and a concise statement of the issues ~~he~~ the appellant intends to present on the appeal, a copy of which shall be served by appellant on appellee. If the appellee deems a certified transcript of other parts of the proceedings to be necessary, ~~he~~ the appellee shall, within 10 days after the service of the statement of the appellant, file a designation of additional parts to be included. If the appellant refuses to order such parts, ~~he~~ the appellant shall, within 5 days, notify the appellee in writing of such refusal. The appellee may either order the parts or apply to the superior court for an order requiring the appellant to do so. At any time prior to submission to the appellate court for decision, a party may apply to the appellate court to include any additional part of the certified transcript.

~~(3)~~ (6) At the time of ordering, the party ordering must make satisfactory arrangements with the certified court reporter or authorized transcriber for payment of the cost of the certified transcript and file a notice to that effect. Failure or delay in making satisfactory arrangements ~~with the court reporter~~ shall be cause for such sanctions as the superior court deems proper.

~~(4)~~ (7) Unless otherwise ordered by the Court of Appeals, promptly upon the docketing of the appeal, the appellant shall file the ~~original~~ certified transcript with the clerk of the appellate court and shall serve a copy of the certified transcript upon the appellee. Notice of service of the certified transcript shall be filed with the appellate court reflecting when and upon whom service was made. If there is more than one appellee, the appellees shall agree upon and shall promptly inform the appellant of the party upon whom the appellant shall serve the certified transcript copy, and that party shall make the copy available for use by the other appellees.

~~(5)~~ (8) The certified transcript shall not contain the testimony of jurors touching on their qualifications, any other matters preceding the impaneling of a jury, or the opening statements or arguments of counsel to the jury, or any part thereof, unless specifically designated by one of the parties to be contained in the certified transcript.

~~(6)~~ (9) The parties shall not include in the certified transcript any matter not essential to the decision of questions presented by the appeal. For any infraction of this rule, the appellate court may impose sanctions pursuant to Rule 25.

(10) These rules shall apply to the electronic recording if such has been previously authorized by the court in accordance with section (a)(1) of this rule.

(c) *Narrative statement of the evidence or proceedings when the certified transcript is unavailable.* If a certified transcript is unavailable, the appellant may prepare and file a narrative statement of the evidence or proceedings from the best available means, including ~~his~~ the appellant's recollection. The statement shall be filed within 30 days after filing the notice of appeal. The appellee may file objections or proposed amendments thereto within 10 days after service. If the appellant does not file such a statement within the specified time, the appellee may prepare and file such a statement, and the appellant may file objections or proposed amendments thereto within 10 days after service. Thereupon the statement of the appellant or the appellee and any objections or proposed amendments shall be submitted to the superior court for settlement and approval, and as settled and approved shall be transmitted to the appellate court.

(d) *Agreed statements in lieu of certified transcript.* In lieu of the certified transcript, the parties may stipulate as to and file an agreed statement, which sets forth such evidence or proceedings as are essential to a decision of the issues presented by the appeal. The agreed statement shall include a statement of the issues the appellant intends to present on the appeal. The agreed statement shall be filed within 30 days after filing the notice of appeal, and shall be submitted to the superior court for settlement and approval. The superior court may make such additions and corrections as it may consider necessary to the issues presented by the appeal. The agreed statement, as corrected and modified, shall thereupon be transmitted to the appellate court.

(e) [no changes]

(f) *Several appeals.* When more than one appeal is taken from the same judgment, a single certified transcript (or narrative statement of the evidence or agreed statement) shall be prepared containing all the matter designated or agreed upon by the parties, without duplication.

~~(g) *Transcript defined.* "Transcript" for purposes of these rules shall refer to a reporter's transcript, a narrative statement of evidence pursuant to Rule 11(c) or an agreed statement pursuant to Rule 11(d).~~

(h) [no changes]

Rule 12. Notice to appellant to pay fee and file opening brief; docketing the appeal; filing of the record; docketing statement.

(a) through (c) [no changes]

(d) *Dismissal for failure of appellant to cause timely filing of the certified transcript or to docket appeal.* If the appellant shall fail to cause timely filing of the certified transcript or to pay the docket fee if a docket fee is required, any appellee may file a motion in the appellate court to dismiss the appeal. The motion shall be supported pursuant to Rule 11(h) with copies of the relevant portions of the record. If the appeal has not been docketed, the clerk shall docket the appeal upon the payment of the appellee's fee. The appellant shall not be permitted to respond to the motion without payment of the docket fee unless he is otherwise exempt therefrom.

(e) [no changes]

Rule 13. Briefs.

(a) [no changes]

(1) through (3) [no changes]

4. A statement of facts relevant to the issues presented for review, with appropriate references to the record. The statement shall not contain evidentiary matter unless material to a proper consideration of the issues presented, in which instance a reference shall be made to the record or page of the certified transcript where such evidence appears. The statement of facts may be combined with the statement of the case.

(5) through (7) [no changes]

(b) through (f) [no changes]

Rule 23. Petition for Review.

(a) and (b) [no changes]

(c) (1) [no changes]

2. The facts material to a consideration of the issues presented to the Supreme Court for review with appropriate references to the record on appeal. No evidentiary matter shall be included unless material to a proper consideration of the issues presented, in which instance a reference shall be made to the record or page of the certified transcript where such evidence appears.

(3) [no changes]

(d) through (k) [no changes]

Rule 30. Arizona Appellate Settlement Conference Program.

(a) through (c) [no changes]

(d) [Applicable in Division One] [no changes]

(d) [Applicable in Division Two] Order of Assignment. Except as provided in paragraph (f) of this rule, Division Two shall select those cases for assignment to the Program which Division Two deems most likely to benefit from alternative dispute resolution. Within three days after the appellant has filed the Notice of Appeal, Division Two may enter an order notifying the parties to a selected case that the case has been assigned to the Program. The order shall stay the normal appellate briefing schedule pending completion of the settlement process. The order may also stay posting bonds for costs on appeal, filing notices of cross-appeals, ordering certified transcripts ~~from court reporters~~, or transmitting indexes of records on appeal. The assignment order shall also notify the appellant that the filing fee shall be paid within ten days.

(e) through (r) {no changes]

RULES OF PROCEDURE FOR SPECIAL ACTIONS

Rule 7. Special appellate court provisions.

(a) through (d) [no changes]

(e) The petition shall consist of a single document. It shall include a jurisdictional statement, a statement of the issues, a statement of the facts material to a consideration of the issues presented, and an argument containing the petitioners' contentions with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and appropriate references to the record. A copy of the decision from which the petition is being taken shall be attached to the petition. All references to the record shall be supported by an appendix of documents in the record ~~on appeal~~ before the trial court that are necessary for a determination of the issues raised by the petition. The response to the petition shall, if necessary, be supported by an appendix of documents in the record ~~on appeal~~ before the trial court that are necessary for a determination of the issues raised by the petition which are not contained in the petitioner's appendix. If either party's appendix exceeds 15 pages in length, it shall be fastened together separately from the petition or response. Except by permission of the court, petitions and responses shall not exceed (i) 10,500 words if in proportionate typeface, or (ii) 30 pages if in monospace typeface, exclusive of the appendix and the copy of the decision from which the petition is being taken. The reply, if any, shall not exceed (i) 5,250 words if in proportionate typeface, or (ii) 15 pages if in monospaced typeface. The petition, response and any reply must otherwise comply with Rules 6(c) or 14a(a)(1), ARCAP or Rules 31.12 or 31.13 of the Ariz. R. Crim. P. The petition, response and any reply must each be accompanied by a certificate of compliance that states the petition's line spacing and states either (i) the petition uses a proportionately spaced typeface, together with the typeface, point size, and word count, or (ii) the petition uses a monospaced typeface, together with the number of

characters per inch. A party preparing this certificate may rely on the word count of the processing system used to prepare the petition.

(f) through (i) [no changes]

(j) Filing may be accomplished by mail addressed to the clerk, but filing ~~of any papers~~ under this rule shall not be timely unless ~~the papers are~~ received by the clerk within the time fixed for filing.

TAX COURT RULES OF PRACTICE

Rule 6. Cases transferred to the Tax Court.

(a) [no changes]

(b) When a tax case is transferred, the Clerk of the Superior Court from which the case is transferred shall forthwith transmit the file together with all exhibits and certified transcripts to the Clerk of the Tax Court. If the case is transferred from a county other than Maricopa, the Clerk of the county from which the case is received shall remit to the Clerk of the Maricopa County Superior Court Tax Court Department filing and appearance fees paid to the transferring Clerk by the parties. If the case was first filed other than in Maricopa County, the parties shall pay to the Clerk of the Maricopa County Superior Court Tax Court Department such document storage and retrieval fees, and other surcharges as are applicable. Such payment shall be made within 30 days of the order transferring the case.

Rule 25. Small claims hearings and trials.

All testimony in a small claims hearing or trial shall be given under oath. The proceedings need not be ~~reported by a court reporter~~ recorded.

SUPERIOR COURT RULES OF APPELLATE PROCEDURE-CIVIL

Rule 1. Scope of rules; Definitions.

(a) [no changes]

(b) All appeals from the limited jurisdiction courts shall be on the record. ~~The record may consist of audio, video, digital, transcription or other method of recording as approved by the Supreme Court.~~ The record may be made by a certified court reporter or other electronic means approved by the Supreme Court. A trial de novo shall not be granted

when a party who had opportunity to request that a verbatim record of the limited jurisdiction court proceedings be made, failed to do so.

(c) through (g) [no changes]

(h) For the purposes of these rules, an “authorized transcriber” is a certified court reporter or a transcriber under contract with an Arizona court.

Rule 4. Time for taking appeal and cross-appeal

(a) through (c) [no changes]

(d) Within the 14 calendar day deadline to file the notice of appeal, or five day deadline in forcible and special detainer cases, the appellant shall also pay the applicable record or transcript fees to the trial court in cash or other manner allowed by the trial court, or make arrangements with ~~court reporters or transcribers~~ an authorized transcriber for the preparation and filing with the trial court of the certified transcript(s). Within the 28 calendar day deadline to file a cross-appeal, or ten day deadline in forcible and special detainer cases, the cross-appellant shall pay the applicable record or transcript fee pertaining to the cross-appeal to the trial court in cash or other manner allowed by the trial court, or make arrangements with ~~court reporters or transcribers~~ the authorized transcriber for the preparation and filing with the trial court of the certified transcript(s) pertaining to the cross-appeal. Appellant shall be responsible for the filing of all certified transcripts with the trial court prior to the filing of its memorandum. Cross-appellant shall be responsible for the filing of all certified transcripts pertaining to the cross-appeal with the trial court prior to the filing of its appellate memorandum. The trial court may assess a separate fee to prepare additional requested copies of the record, including documents, exhibits, ~~tapes, CD's, videos, or other~~ and electronic recordings of proceedings.

(e) [no changes]

Rule 7. Record on Appeal.

(a) Joint Statement of the Record. In lieu of any part of the record or transcripts in the trial court, the parties may prepare and submit a joint statement of the record on appeal, signed by all parties and setting forth the issues and pertinent facts presented by the appeal. Notice that a joint statement will be used shall be given to the trial court and any ~~court reporters or~~ authorized transcribers.

(b) (1) through (7) [no changes]

Unless otherwise designated by a party, the record on appeal shall also include:

(8) and (9) [no changes]

(10) the record or certified transcript of the trial (except that oral argument on motions, voir dire, opening and closing arguments, and jury instructions shall not be included unless designated by a party);

* * *

(c) Designation of the Record on Appeal. Within the time allowed to appeal, the appellant shall also file an original, and one copy for each party, of a designation of items to be included in the record on appeal. The documents shall be date stamped on their face when received by the trial court. The trial court shall send the copy(ies) to the opposing side(s). Within 14 calendar days of the date of filing, the opposing party(ies) may also file its designation of portions of the record to be included.

(d) Correction or Modification of the Record on Appeal. If anything material to any party is omitted from the record on appeal or is misstated, the parties by stipulation, the trial court (before the record is transmitted to the Superior Court), or the Superior Court (after the record has been transmitted), may direct that the omission or misstatement be corrected or that the record be augmented to reflect what took place, and if necessary, that a supplemental record be certified and transmitted to the Superior Court.

(e) [no changes]

SUPERIOR COURT RULES OF APPELLATE PROCEDURE-CRIMINAL

Rule 1. Scope and definitions

(a) through (e) [no changes]

(f) For the purposes of these rules, an “authorized transcriber” is a certified court reporter or a transcriber under contract with an Arizona court.

Rule 2. Record of Proceedings

a. A record in the trial court shall be made by ~~court reporter, video, audio, digital or other method of recording~~ a certified court reporter or other electronic means approved by the Supreme Court.

(b) through (d) [no changes].

Rule 3. Notice of appeal.

(a) and (b) [no changes]

c. When a party appeals, the trial court shall send a copy of the notice of appeal to the

opposing side and to ~~any court reporters or transcribers~~ authorized transcribers responsible for preparing the transcript, ~~if any,~~ and shall note such fact in the court records.

(d) [no changes]

Rule 7. Record on appeal.

a. Within 14 calendar days after the filing of the notice of appeal, when the defendant is the appellant, a defendant who is not proceeding as an indigent on appeal shall make arrangements with all ~~court reporters or~~ authorized transcribers to pay any record or transcript preparation fees. Thereupon, each ~~court reporter or~~ authorized transcriber shall promptly prepare the transcript.

b. In lieu of the record of proceedings or transcript in the trial court, the parties may submit a joint statement of the record on appeal, prepare and sign an agreed statement as to the record on appeal, setting forth the issues and pertinent facts presented by the appeal. Notice that a joint statement will be used shall be given to the trial court, any ~~court reporter or~~ authorized transcribers.

c. (1) through (8) [no changes]

(9) the recording or certified transcript of the trial (except that voir dire, opening and closing argument, and jury instructions shall not be included unless designated by a party). The Superior Court may require the filing of either of the above;

(10) and (11) [no changes]

d. [no changes]

e. *Correction or modification of the record on appeal.* If anything material to either party is omitted from the record on appeal or is misstated therein, the parties by stipulation, the trial court before the record is transmitted to the Superior Court, or the Superior Court on motion of either party or on its own initiative after the record has been transmitted to the Superior Court, may direct that the omission or misstatement be corrected or that the record be augmented to reflect what took place, and if necessary, that a supplemental record be certified and transmitted to the Superior Court.

f. [no changes]

Form 1. Defendant's Notice of Right to Appeal (Criminal).

* * *

STAGE ONE - THE TRIAL COURT

1. [no changes]

2. **THE RECORD.** Within 14 calendar days after you file your notice of appeal, you must also arrange to pay for a copy of the proceedings at the hearing. The copy may be a recording or a certified transcript. The clerk will explain which type of record is required. Payment must be in cash or other method explained by the clerk. If you cannot afford to pay for the record, ask the clerk for information about a possible waiver or extension ("deferral") to make payment later. If you fail to pay for the record or certified transcript, your appeal may be dismissed. Additional copies of the trial or proceeding record or certified transcript may be obtained for an additional charge.

(3) through (8) [no changes]

Form 2. Defendant's Notice of Appeal (Criminal).

* * *

Appellant understands: (1) the instructions set forth in the "Notice of Right to Appeal," including payment for a copy of the record or certified transcript; (2) the need to post bond to stay enforcement of the judgment unless released on "own recognizance"; (3) filing an original and copy of the Appellant's Memorandum with the trial court; and (4) that failure to complete all stages in the appeal may result in the dismissal of the appeal and reinstatement of the trial court judgment.

* * *

RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 1. Applicability; Definitions

(A) and (B) [no changes]

(C) For the purposes of these rules, an "authorized transcriber" is a certified court reporter or a transcriber under contract with an Arizona court.

Rule 34. Transfer for criminal prosecution.

(A) through (E) [no changes]

(F) (1) [no changes]

(2) (a) through (d) [no changes]

e. Certified Transcript of proceeding. The certified transcript of the probable cause phase of the hearing shall be filed with the clerk of the superior court within twenty (20) days of the completion of the hearing if the juvenile is to be transferred.

(3) through (5) [no changes]

Rule 81. Consent to adopt.

(A) [no changes]

(B) (1) [no changes]

2. Making arrangements for the presence of a certified court reporter at the hearing if one is required to effectuate an out-of-state adoption; and

(C) and (D) [no changes]

Rule 89. Time within which an appeal may be taken and notice thereof; preparation of certified transcript and record on appeal.

(A) and (B) [no changes]

C. 1. Immediately upon the filing of a notice of appeal, the clerk of the superior court shall serve copies of the notice of appeal on all parties or their counsel; on each certified court reporter who reported any juvenile court proceeding that is part of the certified transcript as defined by subsection D.2. of this rule; ~~upon each juvenile court word processing operator who has possession of a tape recording of any such proceeding~~ or the court's designated transcript coordinator, if the record was made by electronic or other means, and on the clerk of the court of appeals. The clerk of the superior court shall include with the copy of the notice of appeal served on the clerk of the court of appeals a copy of the order from which the appeal is taken and the names of the ~~court reporters and word processing operators~~ persons who were sent a copy of the notice of appeal.

(2) [no changes]

(D) (1) (a) through (d) [no changes]

2. The certified transcript shall consist of the following:

(a) through (e) [no changes]

Notwithstanding the preceding provisions of Rule 89D.2., the certified transcript shall not include any proceeding or portion thereof excluded pursuant to Rule 89E.

E. No later than five days after filing the notice of appeal the appellant may file with the clerk of the superior court and serve a pleading entitled "designation of record" (1) requesting that the clerk of the superior court add to the record on appeal specifically identified subpoenas or praecipes, or specifically identified studies, reports or medical or psychological evaluations, or compilations of such studies, reports or evaluations, prepared

as required by statute, court rule or order for the use of the juvenile court in the proceedings resulting directly or indirectly in the order from which the appeal is taken and not otherwise part of the record; (2) requesting that the clerk of the superior court delete from the record specifically identified items otherwise automatically included in the record on appeal; and (3) requesting that one or more certified court reporters or ~~juvenile court word processing personnel~~ the court's designated transcript coordinator, if the record was made by electronic or other means, add to the transcript any proceeding or part thereof not automatically included, and to exclude from the transcript any portion thereof otherwise automatically included. The appellant shall serve the designation of record on all parties, ~~and on each affected court reporter who reported a designated portion of the proceedings, or juvenile court word processing operator~~ and on the court's designated transcript coordinator, if the record was made by electronic or other means.

F. 1. No later than 12 days after the filing of the notice of appeal any appellee may file with the clerk of the superior court and serve a pleading entitled "supplemental designation of record" (1) requesting that the clerk of the superior court add to the record on appeal specifically identified subpoenas or praecipes, or specifically identified studies, reports or medical or psychological evaluations, or compilations of such studies, reports or evaluations, prepared as required by statute, court rule, or order for the use of the juvenile court in the proceedings resulting directly or indirectly in the order from which the appeal is taken and not otherwise part of the record, or any specifically identified items deleted by appellant's designation of record; and (2) requesting that one or more court reporters or ~~juvenile court word processing personnel~~ authorized transcribers add to the transcript any proceeding or part thereof deleted by appellant's designation of record or not automatically part of the transcript as defined in Rule 89D.2. The supplemental designation of record shall be served on all parties and on each affected court reporter and ~~juvenile court word processing operator~~ authorized transcriber.

(F) (2) [no changes]

G. No party shall request that ~~the clerk of the superior court or a court reporter or juvenile court word processing operator~~ add any item be added to the record, or any proceeding to the transcript, that is not essential to deciding the issues presented by the appeal. For any infraction of this rule, the appellate court may impose sanctions pursuant to ARCAP 25 made applicable in juvenile appeals by Rule 88G.

H. The court reporter or reporters or ~~word processing personnel of the juvenile court~~ authorized transcribers shall prepare the original certified transcript and one copy for each party to the appeal who has not filed a notice pursuant to subsection C.2. of this rule promptly upon receiving a notice of appeal filed by a governmental entity or a notice of appeal stating that the appellant was proceeding with appointed counsel in the juvenile court when the final order that is the subject of the appeal was filed.

I. No later than five days after the filing of the notice of appeal or five days after the denial of a request to proceed with appointed counsel, an appellant who is not proceeding with appointed counsel shall make arrangements with the certified court reporter or ~~reporters or juvenile court word processing personnel~~ authorized transcriber to pay for the transcript. The certified court reporter or ~~reporters or juvenile court word processing personnel~~

authorized transcriber shall immediately notify the appellate court in writing if an appellant fails to make satisfactory arrangements within the prescribed time. When satisfactory payment arrangements are made, the certified court reporter or ~~reporters or juvenile court word processing personnel~~ authorized transcriber shall promptly prepare the certified original transcript and one copy for each party to the appeal who has not filed a notice pursuant to subsection C.2. of this rule.

(J) [no changes]

Rule 90. Docketing of appeal; transmission and filing of record on appeal; filings in juvenile court after commencement of appeal.

(A) [no changes]

B. The court reporter or reporters or ~~word processing personnel of the juvenile court~~ authorized transcriber shall file the completed certified ~~original~~ transcript with the clerk of the court of appeals, marked with the number assigned to the appeal by the court of appeals, no later than

(1) and (2) [no changes]

3. 30 days after the appellant makes satisfactory arrangements to pay for the certified transcript, whichever event first occurs. At the time of filing the ~~original~~ certified transcript, the court reporter or reporters or ~~word processing personnel of the juvenile court~~ authorized transcriber shall serve one copy of the certified transcript on each appellant and each appellee who has not filed a notice pursuant to Rule 89C.2. The court reporter or reporters or ~~word processing personnel of the juvenile court~~ authorized transcriber shall contemporaneously file notice of service of the certified transcript with the appellate court, reflecting when, upon whom, and by what means service was made. Service of certified transcript copies shall be made in the manner prescribed by any applicable local rule or administrative order, or otherwise in accordance with the prevailing custom in the juvenile court from which the appeal originates.

C. If the certified transcript is not timely filed with the clerk of the court of appeals, the noncomplying court reporter or reporters or ~~juvenile court word processing personnel~~ authorized transcriber shall be subject to such orders or sanctions as the court of appeals deems appropriate in its discretion.

(D) (1) [no changes]

2. identify and assemble the original ~~paper, book, binder,~~ documentary and ~~photographic~~ electronic exhibits in the record that are of manageable size, including those added to the record pursuant to Rule 89E. or F. and excluding those deleted from the record pursuant to Rule 89(E);

(3) through (5) [no changes]

(E) through (G) [no changes]

Rule 91. Briefing, consideration and disposition in the court of appeals.

(A) through (D) [no changes]

E. The appellate court, upon motion of the appellee, or upon its own initiative after notice to all parties, may dismiss an appeal for any legal cause including want of prosecution, unless an affected party makes a showing of good cause why the appeal should not be dismissed. The clerk of the court of appeals shall give prompt notice of dismissal of an appeal to the parties, the clerk of the superior court, and if the certified transcript has not yet been filed, to the appropriate court reporter or reporters or ~~word processing personnel of the juvenile court~~ the court's designated transcript coordinator.

(F) [no changes]

Rule 92. Petition for review.

(A) [no changes]

(B) (1) [no changes]

2. The facts material to a consideration of the issues presented to the supreme court for review with appropriate references to the record on appeal. No evidentiary matter shall be included unless material to a proper consideration of the issues presented, in which instance a reference shall be made to the record or page of the certified transcript where such evidence appears.

(3) and (4) [no changes]

(C) through (J) [no changes]

RULES OF PROCEDURE IN CIVIL TRAFFIC VIOLATION CASES

Rule 20. Record; summary transfer.

(a) A record of the proceedings shall be made by ~~court reporter, video, audio, digital, or other recording~~ a method approved by the Supreme Court.

(b) [no changes]

Rule 28. Time for filing; payment of record or transcript fee to trial court.

(a) [no changes]

(b) Within the 14 calendar day deadline to file the notice of appeal, the appellant shall also pay the applicable record ~~or transcript~~ fee to the trial court in cash or other manner allowed by the trial court. The trial court may also assess a separate fee to prepare additional requested copies of recorded proceedings.

RULES OF THE COMMISSION ON JUDICIAL CONDUCT

Rule 27. Hearings.

(a) through (e) [no changes]

(f) (1) through (8) [no changes]

(9) The hearing shall be transcribed by a certified court reporter or ~~tape~~ recorded for use by the supreme court, and a certified transcript shall be filed with the commission's recommendations. Any party may obtain a copy of the certified transcript at his or her own expense.

(10) Where a member of a hearing panel has not heard the evidence, that member shall not participate in any deliberations or decisions unless he or she has personally considered the whole record, including any recording or certified transcript from portions of the hearing from which that member was absent.

(g) and (h) [no changes]

Rule 28. Recommendations.

(a) By a hearing panel. The hearing panel may file proposed recommendations at any time after the conclusion of the formal hearing and shall do so no later than fifteen days after the certified transcript of the hearing is filed with the commission. The recommendations shall be served on both parties, and either party may file a motion for reconsideration within ten business days. The motion shall be limited to whether the evidence in the record supports the findings of fact. If a motion is filed, the adverse party may file a response within ten business days, and no reply shall be filed unless ordered by the hearing panel. The hearing panel may accept or reject any objections to the factual findings without further proceedings.

(b) By a hearing officer. The hearing officer may file proposed recommendations at any time after the conclusion of the formal hearing and shall do so no later than fifteen days after the certified transcript of the hearing is filed with the commission. Commission members who have not previously participated in the investigation shall review the findings of fact based on a clearly erroneous standard and the conclusions of law on a de

novo basis. The commission so constituted may thereafter adopt, reject, or modify the proposed recommendations. The recommendations shall be served on both parties, and either party may file a motion for reconsideration within ten business days. The motion shall be limited to whether the evidence in the record supports the findings of fact. If a motion is filed, the adverse party may file a response within ten business days, and no reply shall be filed unless ordered by the commission. The commission may accept or reject any objections to the factual findings without further proceedings.

(c) [no changes]

REPORTING RESOURCES PROPOSAL

The proposal is in three parts:

1. New rule establishing reporting priorities in superior court (pp.1-2).
2. Civil, criminal, juvenile and family law rules amendments to ensure parties have an opportunity to request a certified reporter prior to trial (pp. 2-6).
3. Related statutory amendments (p. 6).

1. New rule establishing reporting priorities in superior court.

Rule ____ . Use of Court Reporting Resources

(A) 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 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.

(B) Making the record in the absence of a timely request for a court reporter. Except as provided in (C) below, in the absence of a timely request for a certified court reporter the record will be made in a manner within the sound discretion of the court.

(C) Proceedings requiring a certified court reporter. The following proceedings shall be recorded by a certified court reporter and not solely by electronic means, unless this requirement is waived by the parties and the court approves the waiver:

1. Grand jury proceedings;
2. 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;
3. Felony jury trials;
4. Initial determinations of sexually violent person status, pursuant to A.R.S. §36-3706;
5. Proceedings on a request for authorization of abortion without parental consent, pursuant to A.R.S. §36-2152.

(E) Official record. When an Arizona-certified court reporter records a proceeding in a superior court that is simultaneously recorded by electronic recording equipment, the court reporter's record shall be the official record. The transcript in any case certified by the reporter or other authorized transcriber 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 reporter or other authorized transcriber.

COMMENT

Rule __ (B). 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. In exercising its discretion under subsection (B), giving due deference to the parties' preference, the court may consider the following factors:

- 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,
- 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.

2. Proposed amendments to rules for civil, criminal, juvenile, and domestic relations proceedings to ensure parties are given an explicit opportunity to request a reporter prior to trial:

A. RULES OF CIVIL PROCEDURE

Rule 16(b). Scheduling and Subjects to Be Discussed at Comprehensive Pretrial Conference in Non-Medical Malpractice Cases

Except in medical malpractice cases, upon written request of any party the court shall, or upon its own motion the court may, schedule a comprehensive pretrial conference. At any comprehensive pretrial conference under this rule, except for conferences conducted in medical malpractice cases, the court may:

(1) through (18) [no change]

(19) Determine how verbatim record of future proceedings in the case will be made.

Rule 16(c). Scheduling and Subject Matter at Comprehensive Pretrial Conferences in Medical Malpractice Cases

In medical malpractice cases, within five days of receiving answers or motions from all defendants who have been served, plaintiff shall notify the court to whom the case has

been assigned so that a comprehensive pretrial conference can be set. Within 60 days of receiving that notice, the court shall conduct a comprehensive pretrial conference. At that conference, the court and the parties shall:

(1) through (12) [no change]

(13) Determine how verbatim record of future proceedings in the case will be made.

Rule 16(d). Joint Pretrial Statement; Preparation; Final Pretrial Conference

Upon the initiative of counsel for the plaintiff, counsel who will try the case and who are authorized to make binding stipulations shall confer and prepare a written pretrial statement, signed by each counsel, to be filed by the plaintiff within the time set by the court in the particular case, or by the applicable Local Rules of Practice, or if no time is set, then not less than five judicial days prior to the date of trial. Such pretrial statement shall contain the following:

(1) through (6) [no changes]

(7) A statement by each party on how a verbatim record of the trial will be made.

* * *

B. RULES OF CRIMINAL PROCEDURE

16.4. Mandatory prehearing conference.

a. Timing and Scope of Conference. No later than 25 days after the arraignment, counsel for the parties, or a defendant if he or she is not represented by counsel, shall settle as many issues in the case as possible, and shall notify the court in writing of all issues which remain in dispute. This notification shall be filed no later than 3 days after the conference. A jointly prepared omnibus hearing form may be filed with the notification.

(b) Request for Court Reporter. Among other issues to be addressed by the parties and reported to the court is a determination of how a verbatim record of future proceedings in the case will be made.

(b) and (c) [renumber -- no changes]

C. RULES OF THE JUVENILE COURT

Part II. Delinquency and Incurigibility

Rule 28. Advisory hearing.

(A) and (B) [no changes]

C. Procedure. At the advisory hearing the court shall:

(1) through (8) [no changes]

9. Determine how a verbatim record of the adjudication hearing will be made.

(D) and (E) [no changes]

Rule 32. Revocation of probation.

(A) through (C) [no changes]

D. Advisory hearing.

(1) [no changes]

2. Procedure. At the advisory hearing the court shall:

(a) through (g) [no changes]

h. Determine how a verbatim record of the probation violation hearing will be made.

(E) [no changes]

Part III. Dependency, Guardianship and Termination of Parental Rights

Section 3. Dependency

Rule 54. Pretrial conference.

(A) [no changes]

B. Procedure.

(1) [no changes]

2. If the parties advise the court that the matter will proceed to trial, the parties and the court shall confer to determine:

(a) through (e) [no changes]

f. How a verbatim record of the dependency adjudication hearing will be made.

(C) [no changes]

Section 4. Permanent Guardianship

Rule 62. Initial guardianship hearing.

(A) and (B) [no changes]

C. Procedure. At the initial hearing the court shall;

(1) through (7) [no changes]

8. Determine how a verbatim record of the guardianship adjudication hearing will be made.

(D) [no changes]

Section 5. Termination of Parental Rights

Rule 65. Initial termination hearing.

(A) and (B) [no changes]

C. Procedure. At the initial hearing the court shall:

(1) through (6) [no changes]

7. Determine how a verbatim record of the termination adjudication hearing will be made.

(D) [no changes]

D. RULES OF FAMILY LAW PROCEDURE

Rule 76. Pretrial Procedures

(A) and (B) [no changes]

C. Pretrial Statement, Inventory of Property, and Financial Affidavits; Preparation; Final Pretrial Conference.

1. Except in the case where there is domestic violence between unrepresented parties, the parties shall file a joint pretrial statement. If there has been domestic violence between unrepresented parties, the parties may file separate pretrial statements. Upon the initiative of the petitioner or counsel for the petitioner, the parties or counsel, if the parties are represented, shall confer and prepare a written pretrial statement, signed by each party or counsel, to be filed by the petitioner no later than twenty (20) days prior to trial, unless another time is set by the court. Such pretrial statement shall contain the following:

- a. the nature of the action
- b. names and addresses, if not confidential, of the parties;
- c. names and dates of birth of all minor children;
- d. the length of the trial if different from that scheduled by the court;

- e. a list of the names, addresses, and phone numbers of witnesses intended to be used by each party during the trial, . . . ;
- f. a list of exhibits that each party intends to use at trial, . . . ;
- g. stipulations or agreements of the parties;
- h. a statement of uncontested facts;
- i. statements of contested issues of fact and law by each party;
- j. a statement by each party that all pretrial discovery and disclosure has been completed . . . ;
- k. a statement as to whether the parties have in good faith discussed settlement, and if not, the reasons for not discussing settlement; ;
- l. a statement by each party on how a verbatim record of the trial will be made.

(2) through (5) [no changes]

(D) [no changes]

3. Related statutory amendments

A.R.S. § 12-221 Appointment and oath.

Each superior court judge of the superior court shall appoint a court reporter ensure that an accurate verbatim record of proceedings is made. In discharging this responsibility, each superior court judge is entitled to use the services of a certified court reporter, and the cost of providing for the presence of the court reporter shall be a county charge. Subject to A.R.S. § 38-424, a superior court judge may alternatively discharge this responsibility through the use of electronic or other means, in accordance with rules established by the supreme court. Before entering upon his duties, the court reporter shall take and subscribe the official oath to be administered by the judge of the court.

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

This state or any agency of this state, including the judiciary, and each political subdivision of this state, including any courts of ~~law record~~, may for any purpose use ~~tape recorders or other recording devices~~ electronic means in lieu of certified court reporters or stenographers. This section does not apply if the matter to be recorded arises out of court proceedings in a court of record and either party timely requests that a certified court reporter or stenographer be used.

Videotaping Depositions Proposed Amendments

Rule 30(b). Notice of Examination; General Requirements; Special Notice; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) Absent a stipulation of all parties to the action or an order of the court authorizing a briefer notice, a party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least ten days prior to the date of the deposition. The notice shall state the date, time and place for taking the deposition, ~~the technique for recording the deposition and the protocols to be used for such recording, the identity of the person recording the deposition, the placement of camera(s) if any, and~~ the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and the name and address of the person before whom the deposition shall be taken. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

If the deposition is to be recorded by audio or audio-video, the notice shall state the technique for recording the deposition and the protocols to be used for such recording, the identity of the person recording the deposition, and the placement of camera(s), if any.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the State of Arizona, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11(a) are applicable to the certification.

If a party shows that when the party was served with notice under this subdivision (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) Unless the parties stipulate or the court orders otherwise, the deposition shall be recorded by a certified court reporter ~~stenographic means~~ and may also be recorded by audio or audio-video ~~sound or sound and visual~~ means.

When a deposition is recorded by a certified court reporter and the testimony is requested to be transcribed by one of the parties, the party noticing the deposition shall be responsible for the cost of the original transcript. The deposition shall contain the certified court reporter's name, certification number, and business address; the date, time and place of the deposition; the name of the deponent; the administration of the oath or affirmation to the deponent; and an identification of all persons present. The party taking the deposition shall bear the cost of the

recording. If audio or audio-video is additionally requested by one of the parties, the requesting party shall be responsible for the cost of such recording.

If the deposition is recorded only by audio or audio-video, the party noticing the deposition shall bear the cost of the recording. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a ~~stenographic~~ certified transcription made at the party's own expense.

Any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition ~~recorded by nonstenographic means~~. Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement or notation on the record by the officer that includes (A) the officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. The officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state or note on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, ~~or concerning other pertinent matters.~~

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate or the court may order that a deposition be taken by telephone. For the purpose of this Rule and Rules 28(a), 37(a)(1), 45(c)(3)(A)(ii), and 45(e), a deposition is taken in the county where the deponent is to answer questions propounded to the deponent.

Rule 30(e). Submission to Witness; Changes, Signing

Before completion of the deposition and if not otherwise informed by counsel, the officer shall advise a deponent of the right to review, modify, and sign the transcript or affirm the accuracy of the audio or video recording. If requested by the deponent or a party before completion of the

deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the witness does not submit such a statement or a written explanation why such statement cannot be submitted within the time period provided, the officer shall ~~state on the record~~ indicate in the certificate prescribed by subdivision (f)(1) or by affidavit the fact of the refusal to submit a statement with the reason therefore, if any, and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to submit a statement require rejection of the deposition in whole or in part.

Rule 30(f). Certification and Delivery by Officer; Exhibits; Copies.

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer must securely seal the deposition in an envelope or package endorsed ~~indorsed~~ with the title of the action and marked "Deposition of [here insert name of witness]" and must promptly send it to the attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness must, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, ~~the officer shall retain stenographic notes and tapes of any deposition and a copy of the recording of any deposition taken by another method for a period of ten years which shall be retained by the officer in such place and manner as to ensure their availability to the court or any party upon request~~ the certified court reporter shall preserve the record of any deposition for a period of (see retention schedule?). Upon payment of reasonable charges therefor, the ~~officer~~ certified court reporter shall furnish a copy of the transcript ~~or other recording~~ of the deposition to any party or to the deponent.

If the record of the deposition is created solely by audio or audio-video means, and unless otherwise ordered by the court or agreed by the parties, the officer shall retain the original recording of any deposition for a period of (see Standards workgroup retention schedule) in such place and manner as to ensure its availability to the court or any party upon request. Upon

payment of reasonable charges therefor, the officer shall furnish a copy of the recording of the deposition to any party or to the deponent.

Rule 16(d) Joint Pretrial Statement: Preparation; Final Pretrial Conference.

. . . Such pretrial statement shall contain the following:

* * *

(6) A statement by each party indicating any depositions intended to be offered by that party at the trial, indicating with respect thereto the portions to be offered and the party or parties against whom they will be offered. If any deposition or portion thereof is so offered and such deposition was not transcribed ~~stenographically~~, a ~~stenographic~~ certified transcript of the pertinent portions of the deposition testimony shall be prepared and submitted by the person so offering the deposition.

* * *

Rule 32(a). Use of Depositions

At the trial or at any hearing, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, and had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. The party who seeks admission of ~~said~~ the testimony by deposition may do so without proof of the deponent's unavailability to testify at trial. Nothing contained in this Rule shall be construed to limit, in any way, the right of any party to call the deposed witness to testify in person at trial.

If only part of a deposition is offered in evidence by a party, the court may require the offeror to introduce contemporaneously any other part which ought in fairness to be considered together with the part introduced.

Except as provided in Rule 56(e), the use of the deposition transcript may be supplemented with contemporaneously recorded audio and video files, that may be synchronized to the deposition transcript, if any.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Arizona Rules of Evidence.

**PROPOSED RULE
GOVERNING TRANSCRIPTION IN ARIZONA COURTS**

Rule ____. Transcripts of court proceedings; standards

A transcript is a document containing a verbatim record of the spoken words of a court proceeding prepared from either the certified reporter's notes or other verbatim record of the proceeding. Transcripts certified for use by any court shall be:

1. Prepared and certified by an authorized transcriber in accordance with the standards set forth in the Arizona Manual of Transcript Procedures. The current version of this manual is available from the Administrative Office of the Courts.
2. For purposes of this rule, an "authorized transcriber" means:
 - a. a certified reporter; or
 - b. an individual or a transcription service under contract with an Arizona court.

COMMENT

This rule is not intended to prevent a party from retaining a transcriber, at the party's expense, to prepare an unofficial transcript of all or part of a proceeding. An unofficial transcript cannot be referenced or used in any court proceeding.

STANDARDS FOR ELECTRONIC (DIGITAL) RECORDING IN KEEPING THE RECORD

SCOPE OF THE STANDARDS

These standards result from deliberations of the Keeping the Record Committee established by Arizona State Supreme Court Administrative Order 2003-104. Digital recording in the courtroom shall, at a minimum, meet the required standards listed below. In addition to setting minimum standards, this document also contains recommendations intended to guide electronic recording operations. This document is not intended to mandate digital recording in the court.

Due to the ever-changing nature of technology, these standards should be reviewed once a year. The purpose of the yearly review is to identify areas requiring updating or revision.

Courts must comply with the accessibility, migration, storage and retention requirements contained in ACJA §§1-504(E)&(F) and 1-506(D)(4)(b) when procuring and using digital recording equipment.

STANDARDS

1 Equipment

- 1.1 The system shall use equipment with open architecture and industry standard interfaces.
- 1.2 Peripheral devices used for transcription (e.g. foot pedals) shall be able to connect with the system using standard interfaces.
- 1.3 Microphones may have a “push-to-mute” function. Mute buttons with a toggle switch shall not be used. Microphones that visually indicate when they are on and off are recommended to increase the likelihood that confidential communications are not recorded unintentionally.
- 1.4 Video recording may be performed. It is not mandated.
- 1.5 The system shall employ confidence monitoring to confirm, at a minimum, that the channels are receiving a signal.

2 Storage and Backup

- 2.1 Recordings shall have a file size/compression rate to allow, at a minimum, 6 hours of recording to fit on a single non-rewriteable optical media.
- 2.2 Backup to non-rewriteable optical media (CD or DVD) shall be performed daily, if not more frequently.
- 2.3 Where possible, an additional backup should be made for offsite storage purposes.

- 2.4 Simultaneous storage to multiple devices is recommended. For example, recording to the local PC in the courtroom and simultaneously storing to a remote server. Simultaneous storage does not replace the requirement for daily backup described in 2.2.
- 2.5 Retention of electronic recordings shall be in compliance with retention schedules established by the supreme court.
- 2.6 Non-rewriteable media containing copies of the electronic record shall identify hearing location and date. Identification of the hearing officer is recommended. Labeling with felt-tipped pens is preferable to paper-based labels.

3 Procurement Requirements

- 3.1 The court shall obtain a minimum 1-year warranty on all recording and related equipment as part of the installation services.
- 3.2 The court shall obtain a minimum of both staff training and train-the-trainer training as part of the installation services.
- 3.3 The court shall procure only from vendors who possess necessary state contractor licenses required to perform the work of installing the electronic recording systems in courtrooms.

4 Operation of Equipment

- 4.1 Each day prior to court beginning, a system check shall be made to guarantee proper operation of electronic recording equipment. The system check shall, at a minimum, consist of a test recording that confirms all microphones are properly functioning. The court shall establish a procedure for employees to follow in the event of an equipment malfunction. A backup system should be in place for use in the case of primary equipment failure.
- 4.2 The system shall not be turned on and allowed to run unattended for the day. Courts shall establish guidelines addressing when recording systems are to be turned on and off consistent with judicial necessity.
- 4.3 To the extent possible, courts are strongly encouraged to have properly trained personnel dedicated to the operation of electronic recording equipment. In any event, staff operating the recording systems shall be adequately trained to proficiently operate the system. 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 items:
 - Storing and copying of records including partial records.
 - Special handling of sealed or confidential hearings.
 - Creation and retrieval of annotation files.
 - Troubleshooting of equipment 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.

5 Playback

- 5.1 The recording system shall allow for isolation and identification of different speakers for transcription purposes.
- 5.2 Tools shall be included to allow users to clip portions of a proceeding to accommodate partial record requests on CD.
- 5.3 The system shall allow for playback of recordings in the courtroom while simultaneously recording courtroom events.
- 5.4 The system shall produce an audio or video record that can be placed on a standard CD-R with no licensing restrictions for playback, including no licensing restrictions on playback software.
- 5.5 The system shall provide the ability to save files to an industry standard format such as AVI, MPG or WAV.

6 Annotation

- 6.1 The system shall include an interface to annotate hearing/event information. This interface shall create an index to allow the user to go directly to the desired point in the hearing.
- 6.2 The system should allow for the ability to import case information from a case management system for annotation purposes.
- 6.3 A search function shall be provided to allow searching of a recording's annotation.

7 Security

- 7.1 Sealed and confidential matters shall be noted by annotation if an annotation system is used.
- 7.2 Procedure shall be established to limit access to recordings of sealed and confidential matters.

8 Transcription

- 8.1 When implementing electronic recording technology, consideration shall be made to probable transcript volume.
- 8.2 When an Arizona-certified court reporter records a proceeding in a superior court that is simultaneously recorded by electronic recording equipment, the court reporter's record shall be the official record.
- 8.3 When an Arizona-certified court reporter records a proceeding in a limited jurisdiction court that is simultaneously recorded by electronic recording equipment, the judicial officer shall determine which recording is the official record, and the judicial officer's decision shall be noted on the record.
- 8.4 Official transcripts of court proceedings recorded by electronic recording equipment shall comply with the Arizona Manual of Transcript Procedures and shall be produced by either an Arizona certified court reporter or a professional transcriber.
- 8.5 The Arizona Manual of Transcript Procedures obligates transcribers of electronic recordings who are under contract with a court to notify the court when they encounter poor-quality recordings. The court shall establish

procedures to ensure these reports are investigated and any problems are remedied.

- 8.6 Difficulty related to recording quality encountered by the transcriber shall be reported to the court.
- 8.7 Courts shall assign a staff member to act as a transcript coordinator to ensure timely production of transcripts required for appellate proceedings. This staff member should be familiar with the rules and practices involved in transmitting the verbatim record to the appellate court.

9 Records Management and Public Access to Electronic Records

- 9.1 Courts shall establish an infrastructure and procedures 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 Supreme Court Rule 123 and Arizona Code of Judicial Administration sections 1-504 and 1-506.
 - 9.2 Courts shall 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.
 - 9.3 Courts may charge reasonable fees for copies of audio or video recordings of court proceedings, consistent with the requirements of Supreme Court Rule 123. The court may waive or defer such fees as it deems appropriate or where law requires such waiver or deferral.
-

Recommended Specifications for Transcription Services Contracts

Because authorized transcribers who are not certified reporters will be contracting with local courts to provide transcription services, courts should observe certain minimum standards in the contractual arrangements they develop with transcribers and transcription services. At a minimum, these contracts should address:

1. A description of the types of recordings the vendor will be transcribing,
2. Turnaround times,
3. A 98% transcript accuracy rate,
4. Protocol for handling recordings and transcripts of confidential proceedings,
5. Adherence to transcript formatting standards,
6. An established pick-up and delivery process, and
7. A per-page pricing schedule for 20-day, 10-day, 3-day and/or overnight transcript preparation.
8. Agreement to submit to the jurisdiction of the Arizona courts.

To identify qualified vendors, courts should inquire into the vendors':

- a. ownership of appropriate play-back technology,
- b. response time, business hours and contact information,
- c. education, training, or related experience in transcript preparation.

Courts may wish to incorporate language from the model RFP document developed by the Keeping the Record Committee, available from the Administrative Office of the Courts.

ARIZONA SUPREME COURT

Administrative Office of the Courts
1501 West Washington, Suite 221
Phoenix, Arizona 85007

Request for Proposals

RFP (number)

Transcription Services
for Court Proceedings

(publication date)

TABLE OF CONTENTS

	<u>Page Number</u>
SECTION 1	
Introduction and Overview	
1. Introduction.....	2
2. Proposers' Conference.....	2
3. Proposal Schedule	2
4. Proposal Evaluation.....	3
5. Proposal Discussions	3
6. Americans with Disabilities Act.....	3
SECTION 2	
Instructions and Procedures for Submitting Proposals	5
SECTION 3	
Specifications	8
SECTION 4	
Proposal Evaluation Criteria	10
SECTION 5	
Proposal Submittal Documents	
Proposal Submittal Checklist.....	11
Submittal Letter	12
Vendor Profile	13
SECTION 6	
General Conditions Addendum.....	14

SECTION 1 INTRODUCTION AND OVERVIEW

1. Introduction

The Arizona Supreme Court (“the Court”) is requesting proposals from bidders who wish to be pre-qualified to provide transcription services to Arizona courts on an “as-needed” basis. Bidders who wish to submit a sealed proposal based upon the specifications and conditions in this document shall submit it by *** (date and time) *** in accordance with the schedule below.

This Request for Proposals (RFP) is being issued solely for the procurement of contracts in which no warranty, expressed or implied, is made to the contractor(s) by the Court that any purchases will be made during the term of the contract. Any contract(s) awarded pursuant to this RFP shall state that purchases will be made only on an “as-needed” basis. Any Arizona Court, any political subdivision acting on behalf of a court, or any authorized purchaser may obtain services under this agreement.

It is the intention of the Court to award contracts for a two-year period with options to extend for additional years, pending availability of funds and satisfactory contractor performance. Multiple contracts may be awarded.

The public opening will be conducted on *** (same date and time as above) *** at the Arizona State Courts Building, 1501 W. Washington, Conference Room ***, Phoenix, Arizona.

NOTE: ARIZONA CERTIFIED COURT REPORTERS ARE DEEMED PRE-QUALIFIED TO PRODUCE TRANSCRIPTS FROM ELECTRONIC RECORDINGS AND ARE NOT REQUIRED TO RESPOND TO THIS RFP.

2. Proposers’ Conference

No proposers’ conference will be held.

3. Proposal Schedule

Activity	Date
a. Request for Proposals (RFP) published	*** (date) ***
b. Deadline to Submit Written Questions	*** (date) ***
c. Response to Written Questions/RFP Amendments	*** (date) ***
d. Proposal Due Date*	*** (date) ***

The Court reserves the right to deviate from this schedule.

- * **Proposals received after *** (date and time) *** will be accepted but will not be opened and will not be taken into consideration in the evaluation of proposals.**

4. Proposal Evaluation

Following the public proposal opening, proposals will be evaluated based upon the criteria outlined in Section 4 of this document. The contract(s) shall be entered into with the responsible bidder(s) whose proposal is determined in writing to be the most advantageous to the Judicial Branch Unit taking into consideration the evaluation factors set forth in the Request for Proposals. The Court reserves the right (prior to contract award) to inspect a vendor's facilities, and to consider other sources of information to determine evaluation scores.

No other factors or criteria may be used in the evaluation. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the most advantageous proposal if a competing bidder located outside of this state is not subject to a transaction privilege or use tax of a political subdivision of this state.

If there are no bidders who adequately meet the Court's specifications and/or budget, the Court reserves the right to reject any or all proposals or parts thereof. This RFP does not commit the Arizona Supreme Court to award any contract or to pay any costs incurred in the preparation of proposals. The Court reserves the right to accept or reject, in whole or in part, all proposals submitted and/or to cancel this RFP.

5. Proposal Discussions

Discussions may be conducted with responsible bidders who submit proposals determined to be reasonably susceptible to permit a contractual agreement for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Bidders shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and before finalization of a contract for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing bidders.

6. Americans with Disabilities Act

People with disabilities may request special accommodations such as interpreters, alternative formats, or assistance with physical accessibility.

Requests should be made as early as possible to allow time to arrange the accommodation.

If you require special accommodations, please call (602) 542-9329 or text telephone (TDD) 542-9545.

SECTION 2 INSTRUCTIONS AND PROCEDURES

1. Necessary Documents. Vendors who wish to submit proposals for RFP *** shall complete all necessary documentation as identified in Section 5 of this Request for Proposals.
2. Specifications. The specifications included in this package provide adequate information as to whether or not vendors can meet the needs of the Court. Significant deviations from the specifications may be grounds for disqualification of the proposal.
3. Procurement Rules. The Rules Prescribing Procurement Policies and Procedures for the Judicial Branch (hereafter referred to as the Judicial Procurement Rules) adopted by the Arizona Supreme Court in accordance with the provisions of the Arizona Revised Statutes 41-2501.E are incorporated by reference herein and are made a part of this document as if they are fully set forth herein. Copies of these rules can be obtained from Don Bentley, Arizona Supreme Court at the address referenced on the cover page.
4. Subcontractors. The vendor has sole responsibility for any contracts or agreements made with any subcontractors in relationship to this RFP, and shall disclose all such agreements.
5. Vendor Certification. By submission of a proposal, the vendor certifies that:
 - A. The vendor has not paid nor agreed to pay any person, other than a bona fide employee, a fee or a brokerage resulting from the award of the contract.
 - B. The prices in the proposal have been arrived at independently without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other vendor.
6. Preparation of the Proposal
 - A. Vendors are expected to examine all rules, documents, forms, specifications, standard provisions, and all instructions. These materials can be made available in alternative formats upon request. Failure to do so will be at the vendor's risk.
 - B. Each vendor shall furnish all information required by the RFP. The vendor should refer to Section 5 which contains the proposal submittal checklist, to ensure all required materials have been enclosed.

C. Time, if stated as a number of days, will be calendar days.

7. Explanation to Bidders

Any inquiries/questions related to this RFP are to be directed in writing to the contact person below. Any verbal or written inquiries directed to anyone other than the contact person specified below will not be considered. All questions must be submitted by *** (date) *** to:

Don Bentley, Procurement Officer
Arizona Supreme Court
1501 West Washington, Suite 221
Phoenix, Arizona 85007-3231
Email: dbentley@supreme.sp.state.az.us
Fax: (602) 542-9735

The question and response will be posted to the Arizona Judicial Department's website. Any explanations or clarifications given at the website will be considered added to the specifications. Interested parties must check the website at <http://www.supreme.state.az.us/rfp>.

8. Submission of Proposal

- A. Sealed proposals are due on or before *** (date and time) *** to Don Bentley, Arizona Supreme Court, 1501 West Washington, Suite 221, Phoenix, Arizona 85007-3231. Proposals must be in the actual possession of the Court on or prior to the exact time and date indicated. Late proposals will not be considered under any circumstances.
- B. **Proposals must be submitted in a sealed envelope with the RFP number and the vendor's name and address clearly indicated on the outside of the package.** All proposals must be completed in ink or be typewritten.
- C. The vendor must submit one original and *** copies of each proposal.
- D. Vendor submitting a proposal shall indicate the vendor's name and the RFP number on each page of the document.
- E. Erasures, interlineations, or other modifications in the proposal must be initialed by a person authorized to sign the proposal and contract.

9. Public Opening

A public opening of proposals shall be held at *** (date and time) *** at the Arizona State Courts Building, 1501 W. Washington, Conference Room ***. At that time, the name of each vendor shall be publicly read and recorded. All other information contained in the proposal shall be confidential so as to avoid disclosure of contents prejudicial to competing vendors during the process of negotiation. This record shall be open for public inspection after a contract is entered into. However, where the vendor designates, and the court concurs, trade secrets, other proprietary data or financial information contained in the proposal documents shall remain confidential.

10. Contract

The contract(s) shall be entered into with the responsible vendor(s) whose proposal is determined in writing to be the most advantageous to the Judicial Branch Unit, taking into consideration the evaluation factors set forth in the RFP.

SECTION 3 SPECIFICATIONS

Background

The trial courts of Arizona record most proceedings occurring in the courthouses around the state. In the last several years, more than half the courts across the state have purchased computerized audio or audio/video recording equipment for use when court reporters are either not available or not required. On occasion, the electronically recorded verbatim record must be transcribed for appeals or other purposes. It is anticipated that the need for transcription services will grow in the future. The Court is interested in developing a list of qualified vendors to provide transcription services for use by courts throughout the state.

Description of Information to be Transcribed

To record on a computer hard drive, CD, or audio tape in the courtroom, courts use a variety of digital and analog software and hardware, e.g. For The Record (FTR), Jefferson Audio Video Systems (JAVS), or CourtSmart, Inc. Proposers must indicate which electronic formats they will be able to support and transcribe. Delivery of the recording to the contracted transcriber will be accomplished either by physical pick up, electronic delivery or other means (i.e., e-mail, FTP, etc.) as approved by the court.

No minimum or maximum volume of business will be guaranteed by a contract or a work order. Volume will be determined by the number of transcripts needed and the quality of performance provided by the vendor.

Because these court transcripts are used for legal proceedings, accuracy is of the utmost importance. It is expected that each transcript will be proofread and corrected, as necessary, to ensure accuracy. Each transcript must be certified as a true copy prepared from the verbatim recording. Transcripts must conform to the formatting and content standards set forth in the *Arizona Transcript Standards Manual* (attached).

In the response, the Proposer will describe the standard transcript preparation process to be used, including quality control. Proposer will state the length of time that the Proposer's electronic copy of the transcript will be retained, in case additional copies are requested at a later date. **The Proposer will prepare, and submit with the proposal, a sample transcript from a CD or tape provided by the Court.**

Turnaround Time Required for Transcription Services

There are typically deadlines for the completion of transcripts, as the parties may need to comply with certain deadlines established by court rule or statute. Keeping those deadlines in mind, the Proposer will submit a schedule indicating the estimated email, mail and physical delivery times for 50-page transcripts, 100-page transcripts, and up to 500-page transcripts. Successful Proposers will have submitted reasonable and realistic turnaround times that will allow good service, and yet be feasible for the Proposer to meet under all but extreme circumstances.

Pick-up and Delivery Process

Secure delivery of the media and transcript is vital. In the response, the Proposer will describe their intended secure delivery method. For physical delivery, provide a schedule of available pick-up and delivery times. Indicate whether company personnel or a courier service will perform pick-ups and deliveries. For electronic delivery, documents must be in PDF or TIFF format. The delivery method to be used is subject to the satisfaction of the court.

Pricing and Invoicing

The pricing schedule should include the prices for the original transcript, each additional copy, copy ordered at a later date, rush order, and CD or disk copy of transcript. To enable courts to provide an estimated cost to customers, please provide the cost per page including the cost per page for 20 day, 10 day, 3 day and overnight transcript preparation. Any costs associated with pick-ups and deliveries should not be billed as separate charges.

The cost of the transcript, any additional copies, plus all related charges need to be itemized on each invoice.

Minimum Requirements:

- Equipment for transcription of multi-track electronic or analog records, including computer equipment and software, footswitch, powered speakers and/or head phones.
- Ability to comply with format and content standards and the *Arizona Transcript Standards Manual*.
- Produce accurate transcripts (e.g., 98% or higher rate of accuracy).
- Maintain regular business office hours, with telephone and e-mail access and a two-hour response time.
- Established transcript pick-up and delivery processes.
- Established billing system.

Minimum Qualifications for Transcribers and Transcription Services Firms (If the applicant is an organization, all transcribers in the firm who will be working under the contract must meet minimum qualifications):

- Certification through the American Association of Electronic Reporters and Transcribers
- A high school graduate, GED certificate, or equivalent
- No record of felony convictions or pending criminal litigation
- Financial solvency (e.g., no cases in bankruptcy court, no back taxes owed, etc.)
- No outstanding fines, fees, court costs or other financial obligations to the Court.
- Agreement to maintain as confidential any transcripts produced of confidential court proceedings.

**SECTION 4
PROPOSAL EVALUATION CRITERIA**

Proposals will be evaluated in two phases:

1. An initial review to determine the responsiveness of the proposal to requirements for the Request for Proposals (RFP). For a proposal to be considered responsive, it must meet the following tests:
 - A. A sealed original and *** copies must be physically in the possession of the Arizona Supreme Court, 1501 W. Washington, Suite 221, no later than *** (date and time) ***.
 - B. The proposal must include all required items on the Proposal Submittal Checklist (Section 5).
 - C. The vendor must meet all Minimum Requirements and Minimum Qualifications listed under Specifications (Section 3).
 - D. The original and all copies of the proposal must be in ink or typewritten.
2. An in-depth analysis and evaluation will be based upon the following criteria. The evaluation criteria are listed in order of relative importance.

Evaluation Criteria	Relative Importance
Quality of Transcription Services, including but not limited to, quality of the prepared sample transcripts, transcription “turn around” times, and quality assurance program.	50%
Vendor Business Summary, including, but not limited to, past experience (including work with courts and the legal system), references, and a dispute resolution process at vendor expense (to address problems with the accuracy or timeliness of transcription services). Preference may be given for a local or in-state office presence.	30%
Cost of Transcription Services	20%

Proposers may be asked to give an oral presentation and/or demonstration of their transcription process and systems.

SECTION 5 PROPOSAL SUBMITTAL DOCUMENTS

The following materials must be submitted as part of a vendor response:

1. Proposal Submittal Letter (see page ***)
2. Three references (see page ***)
3. Vendor Profile (see page ***)
4. All information requested in Section 3, "Specifications", as follows:

A list of the recording system formats which the bidder is able to support and transcribe.

A description of the standard transcript preparation process to be used, including quality control.

The length of time that the electronic copy of the transcript will be retained.

Sample transcript prepared from the CD or tape provided with this RFP.

A schedule indicating the estimated delivery time for 50-page, 100-page, and 500-page transcripts.

Proposed secure delivery method. For physical delivery, provide a schedule of available pick-up and delivery times. Indicate whether company personnel or a courier service will perform pick-ups and deliveries.

For electronic delivery, documents submitted must be in accordance with "pick up and delivery process (Pg.9)".

A pricing schedule to include prices for 20 day, 10 day, 3 day and overnight preparation of the original transcript depending on delivery method, each additional copy, copy ordered at a later date, and CD diskette or electronic copy of transcript.

5. A description of vendor's dispute resolution process to address problems with the accuracy or timeliness of transcription services.
6. A description of exceptions (if any) to the contract terms provided in Section 6 of the RFP.
7. Additional Data (any additional descriptive/narrative data the vendor wants to submit).
8. Provide three business references, including name, address and phone number, along with a brief description of services provided.

PROPOSAL SUBMITTAL LETTER
(Use as page 1 of proposal)

Mr. Don Bentley
Arizona Supreme Court
Administrative Office of the Courts
1501 W. Washington, Suite 221
Phoenix, Arizona 85007-3231

Dear Mr. Bentley:

In response to your Request for Proposals (RFP) number ***, the following response is submitted

In submitting this proposal, I hereby certify that:

1. the RFP has been read and understood;
2. my company will comply with the requirements set forth in the RFP and with the *Arizona Transcript Standards Manual*;
3. the materials requested by the RFP are enclosed;
4. all information provided is true, accurate, and complete to the best of my knowledge;
5. this proposal is submitted by, or on behalf of, the party that will be legally responsible for service delivery should a contract be awarded.

Signature of Authorized Official

Date

Name of Signatory: _____

Company: _____

Title: _____ Phone: _____

Address: _____

Federal Employer ID# or SSN#: _____

VENDOR PROFILE

(Information can be on a separate sheet)

1. What is the physical address, mailing address, and fax number of your company's main office?
2. Who in your company will be our primary point of contact during the proposal evaluation process? (Please provide name, title, direct phone number, e-mail address, fax number, and mailing address).
3. Who in your company is authorized to negotiate a contract with us? (Please provide name, title, direct phone number, fax number, and mailing address).
4. Provide a brief history of your company.
5. Indicate the total number of employees in your company and their distribution by function.
6. Provide most recent annual report and financial statement.
7. Comment on any partnership(s) with other vendors.

SECTION 6
GENERAL CONDITIONS ADDENDUM

Contractor:

Contract: _____ *[service type and performance dates]* _____

This addendum supplements and modifies the terms and conditions of the vendor contract described above between the Arizona Supreme Court, Administrative Office of the Courts, and Contractor. In the event of any conflict between the terms of the vendor contract and these provisions, this addendum shall govern. "Court" means the Arizona Supreme Court, Administrative Office of the Courts, and any Arizona court purchasing services under the contract. "State" means the State of Arizona and its departments, agencies, boards and commissions. "Contract" or "Agreement" means the contract described above, including all attachments and exhibits.

1. **Prices.** The prices quoted in Contractor's proposal are fixed for the term of the contract.

2. **Availability of Funds.** Funds may not be currently available for the Court's performance under this Contract beyond the current fiscal year. No legal liability on the part of the Court for any payment may arise under this Contract beyond the current fiscal year until and only as long as funds are made available for performance of this Contract. The Court shall make reasonable efforts to secure such funds. If the necessary funds are not made available, then the Court shall provide written notice to the Contractor and may cancel this Contract without further obligation. The Court shall not be liable for any purchases or subcontracts entered into by Contractor in anticipation of funding.

3. **Confidentiality.** The parties acknowledge that this Contract and supporting documents are public records subject to the requirements of Supreme Court Rule 123. Any provision requiring non-disclosure is limited to the extent necessary to comply with that rule. In the event a public records request is received for information which Contractor has designated as confidential or proprietary, the Court will notify Contractor as soon as possible.

4. **Contractor's Records.** To the extent required by ARS §35-214, Contractor shall retain all records related to this Contract for five years after the completion date. Contractor shall make the records available at all reasonable times for inspection and audit by the Court or its auditor.

5. **Insurance.** Without limiting any liabilities or any other obligation of the Contractor, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State, and rated at least "A - VII" in the current A.M. Best's, the minimum insurance coverage below:

a. Commercial General Liability, with minimum limits of \$1,000,000 per occurrence and an unimpaired products and completed operations aggregate limit and general aggregate minimum limit of \$2,000,000. Coverage shall be issued on an occurrence basis and endorsed to add the State and Court as Additional Insureds with reference to this contract. The policy shall include coverage for:

- Bodily Injury
- Broad Form Property Damage (including completed operations)
- Personal Injury
- Blanket Contractual Liability
- Products and Completed Operations, and this coverage shall extend for one year past acceptance, cancellation or termination of the services or work defined in this contract
- Fire Legal Liability

b. Business Automobile Liability, with minimum limits of \$1,000,000 per occurrence combined single limit, with Insurance Service Office Inc. declarations to include Symbol One (Any Auto) applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any auto. The policy shall be endorsed to add the State and Court as Additional Insureds with reference to this contract.

c. Workers Compensation and Employers Liability insurance as required by the State Workers Compensation statutes, as follows:

Workers Compensation (Coverage A):	Statutory Arizona benefits
Employers Liability (Coverage B):	\$500,000 each accident
	\$500,000 each employee/disease
	\$1,000,000 policy limit/disease

Policy shall include endorsement for All State coverage for the state of hire. This coverage does not apply to any contractor exempt under A.R.S. § 23-901 where the contractor executes an appropriate waiver.

d. Professional Liability Insurance with minimum limits of \$1,000,000 Each Claim (or Each Wrongful Act) with a Retroactive Liability Date (if applicable to Claims-Made coverage) the same as the effective date of this contract. The policy shall cover professional misconduct or lack of ordinary skill for those positions providing services in the Description of Work of this contract. The policy shall contain an Extended Claim Reporting Provision of not less than one year following termination of the policy.

e. The Court reserves the right to request and receive certified copies of all policies and endorsements at any time during the term of the contract. Upon such request, contractor shall deliver the requested information within 10 calendar days.

f. Certificates of Insurance acceptable to the Court shall be issued and delivered prior to the commencement of the work defined in this contract, and shall identify this contract and include certified copies of endorsements naming the State and Court as Additional Insureds for liability coverages. The certificates, insurance policies and endorsements required by this paragraph shall contain a provision that coverages afforded will not be canceled until at least 30 days prior written notice has been given to the Court. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in this contract.

g. Failure on the part of the Contractor to meet these requirements shall constitute a material breach of contract, upon which the Court may immediately

terminate this agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the Court or the State shall be repaid by the Contractor upon demand, or the Court may offset the cost for the premiums against any monies due to the Contractor. Costs for coverages broader than those required or for limits in excess of those required shall not be charged to the Court. Contractor and its insurer(s) providing the required coverages shall waive their rights of recovery against the Court, State, and their Departments, Employees and Officers, Agencies, Boards and Commissions.

6. **Conflicts of Interest.** The Court may cancel this Contract without penalty or further obligation to the State pursuant to A.R.S. 38-511, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Contract on behalf of the Court was at the time or becomes at any time, while this Contract or any extension of this Contract is in effect, an employee, contractor or consultant of the Contractor in any capacity. Cancellation shall be effective when the Contractor receives written notice from the Court, unless the notice specifies a later time.

7. **Undue Influence.** The Court may terminate this Contract if the Court finds that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Court with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of a Contract. If the Contract is terminated under this section, the Court shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to all eligible customers of the Contractor is not prohibited by this paragraph.

8. **Disputes.** Any dispute arising under the Contract shall initially be decided by the contract administrator. The contract administrator's decision may be appealed according to Court Administrative Policy 7.04. Pending the final decision of a dispute hereunder, Contractor shall proceed diligently with the performance of the Contract in accordance with the contract administrator's decision. Notice is provided of the arbitration requirements of ARS §§12-1518 and 12-133.

9. **Non-Discrimination.** The parties agree to comply with all applicable court, state and federal laws, rules, regulations and executive orders governing nondiscrimination, including the Americans with Disabilities Act, equal employment opportunity, immigration, and affirmative action. Contractor shall include a clause to this effect in all subcontracts related to this Contract.

10. **Applicable Law.** The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of the Contract and any disputes thereunder. Any action relating to the Contract shall be brought in an Arizona court.

11. **Licenses and Permits.** Contractor shall, at its expense, obtain and maintain all licenses, permits, and authority necessary to do business, render services, and perform work under this Contract, and shall comply with all laws regarding unemployment insurance, disability insurance, and worker's compensation.

12. **Independent Contractor Status.** Contractor is an independent contractor in the performance of work and the provision of services under this Contract and is not to be considered an officer, employee, or agent of the Court or the State.

13. **Payment.** Contractor shall submit a detailed invoice for services rendered at the conclusion of the work or at such other time as may be specified in the Contract. Documentation, where appropriate, must accompany each invoice submitted. Court will

provide the Contractor with a contract number and the Contractor will reference the number on all invoices. Court shall process and remit payment to Contractor within 30 days of the date of receipt of Contractor's statement or invoice.

14. **Criminal History Check.** The Court may require Contractor to provide identifying information for Contractor and any individuals working in judicial facilities or having access to judicial information for the purposes of conducting a criminal history records check for security purposes. Contractor agrees to cooperate with such requests and understands that the Court may terminate this Agreement if the results of the criminal history records check would disqualify the Contractor or individual and there is no acceptable alternative.

15. **Amendments and Waivers.** Amendments to the Contract shall be in writing and shall be signed by all parties to the Contract. To the extent that any amendments to the Contract are in conflict with the basic terms and conditions of the Contract, the amendments shall control the interpretation of the Contract. No condition or requirement contained in or made a part of the Contract shall be waived or modified without a written amendment to the Contract.

16. **Jurisdiction.** Contractor agrees to submit to the Court's jurisdiction. As such, Contractor is subject to Order to Show Cause (OSC) hearings and must appear for such hearings set by the Court.

ARIZONA MANUAL OF TRANSCRIPT PROCEDURES

Proposed by the Committee on Keeping the Record
December 2005

TABLE OF CONTENTS

CHAPTER I: Style and Content	1
A. FORMAT/MATERIALS	1
1. Cover Sheet/Title Page.....	1
2. Appearances	1
3. Table of Contents	1
4. Paper.....	1
5. Weight.....	1
6. Color.....	1
7. Covers.....	1
8. Fastening	1
B. INK COLOR	2
C. LINE NUMBERING	2
D. PAGE NUMBERING	2
E. TYPING	2
1. Type Size.....	2
2. Number of Lines Per Page	2
3. Margins.....	2
4. Spacing.....	2
5. Hyphenation/Word Division	2
6. Indentations	2
7. Legibility	3
F. COPIES	3
G. ELECTRONIC VERSION	3
CHAPTER II: Format	3
A. VOLUMES	3
B. EXCERPTS	4
C. CONTENT	4
1. Verbal.....	4
2. Parentheticals	5
3. Identification of Speakers.....	6
4. Swearing of witnesses	6
5. Examination of Witnesses.....	7
6. Breaks in Speech	9
7. Indistinct Portions	10
8. Word Usage.....	10
9. Grammar and Punctuation.....	11
10. Interpreters	12
11. Miscellaneous.....	12
D. ROUGH DRAFTS	13
CHAPTER III: Certification	13
A. DEFINITION OF TRANSCRIPT ERRORS	13
B. FORMAT ERRORS	13
C. VERBATIM ERRORS	14
D. PUNCTUATION ERRORS	15

E. SPELLING ERRORS	16
F. INDISCERNIBLES	16
1. Bench Conferences.....	16
2. Speech Away from a Microphone and Telephonic Speech	16
G. TRANSCRIBER TAPE EVALUATION	16

CHAPTER I: Style and Content

A. FORMAT/MATERIALS

1. Cover Sheet/Title Page

Each transcript shall begin with a Cover Sheet reflecting the caption, case information, date of proceedings, and the following in accordance with Rule 10(d) ARCP.

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

2. Appearances

Appearances shall be stated on a second page.

3. Table of Contents

There shall be a Table of Contents, beginning on a separate page. Table of Contents shall show page numbers of opening statements and closing arguments, if transcribed, and for each witness the page numbers of direct, cross, and redirect examination. A witness' name is to be typed on the table of contents as it appears in the transcript, i.e., middle initial/no middle initial, full name, Jr., etc.

Examples of important events in each proceeding, if transcribed, are:

- a. Jury selection
- b. Opening statements
- c. Closing arguments
- d. Verdict

4. Paper

Paper size is to be 8-1/2 x 11 inches.

5. Weight

The weight of paper is to be at least 20 pounds for both originals and copies.

6. Color

Good quality white paper is required.

7. Covers

Each transcript furnished shall be bound with covers of good quality, with heavy weight transparent plastic or similar material for the front cover.

8. Fastening

Transcripts shall be punched with three (3) round 1/4 inch holes, 3-1/2 inch center-center, and shall be fastened in such a manner that they can be disassembled and reassembled with ease.

B. INK COLOR

Black ink is to be used for both originals and copies.

C. LINE NUMBERING

Each page of a transcript is to contain 25 numbered lines.

D. PAGE NUMBERING

Unless otherwise requested, begin at page one (1) for each day of proceedings, even in multiple-day proceedings. The page number is to be placed at the upper right corner. The page number does not count as a line. The pagination of the transcript, whether consisting of one or more volumes, is to be numbered in a single chronological sequence throughout all volumes. On a multi-day transcript, each day is considered a separate transcript and is not consecutively numbered.

1. Title pages are counted but not physically numbered.
2. The certification page is always the last page of every transcript.

E. TYPING

1. Type Size

The letter character size is to be no fewer than 9 or 10 characters to the inch.

2. Number of Lines Per Page

Each page of transcription is to contain 25 lines of text with the exception of those blank lines necessary to ensure readability. If applicable, the last page of the transcript may contain fewer than 25 lines of text. Page numbers, headers or footers are not to be considered part of the 25 lines of text.

3. Margins

Combined margins shall not exceed 2 and 1/8 inches.

4. Spacing

Lines of transcript text are to be double spaced.

5. Hyphenation/Word Division

Commonly accepted rules for proper hyphenation are to be followed. Hyphens are to be used when words or names are spelled out. Do not use hyphens for word division. Words are not to be hyphenated at the end of a line.

6. Indentations

a. Q and A: All Q and A designations are to begin no more than five (5) spaces from the left-hand margin with no more than five spaces from the Q and A to the text. Carryover Q and A lines to begin at the left-hand margin.

b. Colloquy: Speaker identification is to begin no more than fifteen (15) spaces from the left-hand margin, with carryover colloquy to the left-hand margin.

c. Quoted Material: Quoted material is to begin no more than fifteen (15) spaces from the left-hand margin, with carryover lines to begin no more than ten (10) spaces from the left-hand margin.

d. Parentheticals and Exhibit Markings: These are to begin no more than fifteen (15) spaces from the left-hand margin, with carryover lines to begin at the left hand margin.

7. Legibility

The original transcript and each copy is to be legible without any interlineation materially defacing the transcript.

F. COPIES

Transcript copies are to be reproduced by any method of reproduction that produces black text on white paper. There are to be no markings on the original or copies that would hinder the clear reproduction by mechanical means by any court official or party.

G. ELECTRONIC VERSION

Copies of transcripts may be tendered to an ordering party in PDF or TIFF format unless the ordering party determines an originally printed, executed and bound transcript is necessary for further court proceedings, appeal, etc.

CHAPTER II: Format

A transcript may not include more than one proceeding in a case held on separate days. For example, if instructed to transcribe several separate proceedings in one case such as the arraignment, evidentiary hearing, the trial and sentencing, each held on separate days, the four proceedings would be prepared individually as separate transcripts.

A. VOLUMES

Only one day of proceedings may be contained in a volume. Each volume must contain:

1. Volume title page

2. Transcribed proceedings
3. A table of contents, if required.
4. Transcriber certification as detailed in Chapter III of this manual.

B. EXCERPTS

Type of Proceeding If a portion of the proceedings is not transcribed as provided in court rules or by the person requesting the transcript, the portion not transcribed shall be indicated with a parenthetical such as the following:

(Jury selection not transcribed)
(Opening statements not transcribed)

When transcribing excerpted testimony, the following parenthetical/format is to be used:

After testimony of first witness is concluded, place . . .

(End of portion designated for transcription.)

* * *

THE COURT: Call your next witness.

MR. JONES: Jason Smith.

When transcribing an excerpted proceeding, the transcript title page shall state that it is an excerpt of the proceeding.

C. CONTENT

1. Verbal

Except as noted below, the transcript is to be verbatim and contain all words and other verbal expressions uttered during the proceeding:

a. Striking Portions of the Proceeding: No portion of the proceeding is to be omitted from the record by an order to strike. Regardless of the requesting party, material ordered stricken and the order to strike must all appear in the transcript.

b. Editing of Speech: The transcript is to provide a verbatim record of words spoken in the proceedings. All grammatical errors, changes of thought, contractions, misstatements and poorly constructed sentences are to be transcribed as spoken. In the interest of readability, however, uhms and uhs, and other verbal tics are not normally included in transcripts, but such verbalizations are to be transcribed whenever their exclusion could change a statement's meaning.

c. Reporting of Audio/Video Recordings: Generally, audio/video recordings played in court are entered as an exhibit in a proceeding. Since such recordings are under the direct control of the court, audio/video recordings need not be transcribed unless specifically instructed to do so. The transcriber is to place a parenthetical in the transcript at the start of the media being played as follows:

(Exhibit __ played)

(Videotape played beginning at [time] and ending at [time])

(Audiotape played beginning at [time] and ending at [time])

2. Parentheticals

Parentheticals are to appear in parentheses and begin no more than fifteen (15) spaces from the left-hand margin, with carry over lines to begin at the left-hand margin. The following is a list of common parentheticals:

(Simultaneous conversation.) - Everyone speaks at once, making it impossible to hear any one voice.

(Off the record.) - Attorneys indicate that they are taking the case "off the record" to discuss an issue.

(Jury sworn.) - A jury has been sworn in.

(Proceedings continued outside presence of jury.) - The case continues with no jury present.

(Proceedings continued in the presence of jury.) - The case continues with jury present.

(Sidebar conference.) - Attorneys hold a conference with the judge at his bench.

(Recess.) - When they say "Let's have a recess" or "We'll take a recess," a pause in proceedings.

(Whereupon, a discussion was held off the record at the bench.)

(Whereupon, the proceedings concluded at 10:42 a.m.)

(Whereupon, the following proceedings were held in open court.)

(Whereupon, the Court recessed at 10:00 a.m.)

(Whereupon, the following discussion was held at side-bar, outside the presence of the jury:)

(Proceedings before the jury.)

(Whereupon, the witness, James McCormack, was duly sworn by the clerk of the court.) Parenthetical is changed to reflect judge swearing in witnesses.

(The following is a partial transcript of the proceedings held on December 10, 2004:)

(Whereupon, voir dire of the jury was conducted.)

(Whereupon, the Jurors were sworn for cause by the clerk.)

3. Identification of Speakers

All speakers are to be properly identified throughout the transcript by using *MR.*, *MS.*, and their last name. The judge is to be identified as *THE COURT*, and the in-court clerk is to be identified as *THE CLERK*. The witness is to be identified as *THE WITNESS* when not responding in Q and A format.

4. Swearing of witnesses

Testimony of witnesses is to be set-out as follows:

THE CLERK: State your name for the record.

THE WITNESS: John Doe.

THE CLERK: Spell your last name.

THE WITNESS: D-o-e.

THE COURT: Your witness.

MR. JONES: Thank you, Your Honor.

JOHN DOE

called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q

A

CROSS-EXAMINATION

BY MR. SMITH:

Q

A

During examination of a witness under oath, the witness is identified as *THE WITNESS*.

a. The attorney who is conducting the questioning is identified only as Q. There is no punctuation following Q or A.

b. Before a jury has been selected, the group of prospective jurors is identified as *PROSPECTIVE JURY PANEL*.

c. After a jury has been selected, the jury is identified as *THE JURY*.

5. Examination of Witnesses :

a. Witness Identification: When a witness testifies, the witness setup is as follows:

(1) The witness' name centered and in caps.

(2) On the line following the witness' name starting at the left margin is a brief statement indicating *called as a witness, having been duly sworn, testified as follows* followed by a colon. If a party testifies on their own behalf, type the phrase *called as a witness on his own behalf, having been sworn, testified as follows on*, followed by a colon.

(3) On the next line centered and in caps is the type of examination such as direct, cross, redirect, recross or continued examination, if known. If not known, use *examination*.

(4) On the next line starting at the left margin, identify the person doing the questioning.

b. Types of Examination:

(1) Direct Examination is typically questioning by the attorney who has called the witness. Usually a witness is questioned only once on direct examination during proceedings of the same nature.

If a witness testifies telephonically, indicate in the initial witness setup *called as a witness, having been duly sworn, testified telephonically as follows*.

(2) Cross-Examination is questioning by the opposing attorney. A witness is usually questioned only once on cross-examination with the same exceptions as noted for direct examination.

(3) Redirect Examination is questioning again by the first attorney reexamining the witness on matters raised on cross examination.

(4) Recross-Examination is questioning by the opposing attorney re-examining the witness on matters raised on redirect.

(5) Continued Examination is used in the following circumstances. The word *CONTINUED* is included on the examination line when:

(a) Questioning of a witness has been interrupted by one or more pages of argument, voir dire examination or offer of proof. The full witness setup need not be repeated except after an offer of proof. The type of continued examination and the attorney's introduction line is included.

(b) At the beginning of a new day when questioning under the same type of examination as the end of the previous day is resumed or if a witness' testimony has been interrupted by testimony of another witness. In this instance, the entire witness setup is required with the words *having been previously sworn*.

(6) Voir Dire Examination is used primarily during jury selection when a prospective juror is questioned as to their qualifications as a juror or in expert testimony to test the qualifications and knowledge of an expert witness. Voir dire should be transcribed in colloquy format. For witness voir dire, the words *VOIR DIRE EXAMINATION* are to be centered and in caps. The next line is the attorney identification line as in any examination.

Example:

MR. SMITH: Your Honor, may I voir dire the witness?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. ATTORNEY:

Q

A

Voir dire examination is used in most instances when the testimony of a witness is interrupted by the opposing attorney who wishes to question the witness on a particular subject. It is usually referred to as voir dire but not always. The jury may or may not be excused. At the conclusion of voir dire examination, the original examination is set up as continued along with the attorney identification line.

DIRECT EXAMINATION (Continued)

BY MR. ATTORNEY:

Q

A

6. Breaks in Speech

Often a speaker will break speech mid-sentence. This is indicated in the transcript as described below.

a. Dashes: A series of two dashes (--) is used to show:

(1) Changes of Thought: When the speaker has a change of thought leaving a sentence unfinished to begin a new one.

(2) Repetition: When a speaker repeats a word or phrase.

(3) Mid-word: When a speaker leaves a word unfinished or starts another word.

(4) Interruption: When a speaker has left a sentence incomplete due to an interruption. Frequently a speaker will be interrupted by another speaker before completing the sentence. Should this happen, the interrupted sentence would end with two dashes (--). If the speaker resumes the sentence after the interruption has ended, two dashes (--) would appear at the beginning of the resumed sentence.

(5) Fade Out: If a speaker fades out before ending a sentence, the two dashes are used.

(6) Change of Addressee: When an attorney who is questioning a witness interrupts a question mid-sentence to address the court or any courtroom participant other than the witness, this is shown by the two dashes. When addressing the witness, type Q. When addressing the court or any other courtroom participant, type the introduction line of Mr., Ms., etc.

Q Let me show you --

MR. SMITH: Your Honor, may I approach?

THE COURT: You may.

BY MR. ATTORNEY:

Q Let me show you Exhibit 1.

A

7. Indistinct Portions

Occasionally when transcribing, there may be a word or words that cannot be heard or are garbled. Make every effort to transcribe it, but do not guess. If the phrase still cannot be deciphered, use one of the following summary phrases to clearly show the portion not transcribed.

a. Indiscernible: When a word or phrase is unintelligible and cannot be transcribed, it is indicated by the word *indiscernible* in parentheses. If the indiscernible phrase is the first word in a sentence, it should be capitalized. A description may be used for why the word or phrase was indiscernible, but do not guess. Example:

(1) (indiscernible)

(2) (indiscernible - away from microphone)

(3) (indiscernible - interrupted)

(4) (indiscernible - simultaneous speech)

b. Inaudible Reply: Occasionally a witness may answer by a shake or nod of the head that obviously is not recorded. If a question has clearly been asked and answered but no sound is heard, this is shown as a summary phrase *no audible response* in parentheses. If any sound is heard that may be interpreted as the witness's reply but it is indistinct, type the word *indiscernible* in parentheses.

8. Word Usage

a. Phonetic: If the correct spelling of a word or name cannot be ascertained from available resource material, type the word as it sounds phonetically followed with (phonetic). It is not necessary to use the (phonetic) each time the word is transcribed.

b. Sic: If a non-existent word is used, type the non-existent word with the word *sic* in parentheses immediately after the word. *Example*:

A I thunk (sic) to myself --

c. Incorrect term: Should a speaker use a term that is known to be incorrect, type the term as spoken followed by the word *sic* in parentheses.

d. Sic throughout: If a non-existent word is consistently used throughout a transcript or if a word is consistently used incorrectly, place *sic throughout* in parentheses immediately after the initial occurrence.

e. Colloquialisms and sounds intended to convey meaning: The following is a brief list of colloquial terms frequently heard. They are typed as follows:

- (1) “Yeah”
- (2) “Uh-huh” or “um-hum” - Affirmative
- (3) “Huh-uh” - Negative

9. Grammar and Punctuation

a. Capitalization: To simplify format uniformity, capitalization is limited as closely as possible to names, dates, addresses, direct personal titles, company names, countries, states, races and nationalities, initials instead of organization names such as FBI, CIA.

b. Numbers:

(1) Numbers written out are the figures one through ten, fractions less than one (e. g., two-thirds, three-quarters) and numbers at the beginning of a sentence except those listed below. All numbers 11 and above are to be written in figures (e. g., 11, 12, 13). If a speaker says the word *number* preceding one through nine, type *number 1*, *number 2*.

(2) The following numbers are written in figures even at the beginning of a sentence:

- (a) Exhibit numbers, e. g., “4 is admitted.”
- (b) Legal citations, e.g., A.R.S. section 12-341.01; P.2d.
- (c) Counts in an indictment are Roman numerals, e.g., Count I, Count II, Count III.
- (d) Time followed by the word “o’clock,” if stated, 11 o’clock.
- (e) Dates and years, e. g., January 1, 1997.
- (f) Case numbers, e. g., 3AN-95-54 Cr.
- (g) Addresses, e. g., 303 K Street.
- (h) Money, e. g., \$1.95 or \$100.
- (i) Height and weight, e. g., 5'6" and 140 pounds.

(j) Caliber, e. g., .22 Winchester automatic, .357, .44 Magnum,
30-06.

c. Quotation marks: Use quotation marks only in the unlikely event that quoted material is available to verify a direct quotation. If the word “quote” is used, transcribe it as follows:

(1) And then she said, quote, stop right there.

10. Interpreters

When a witness speaks no English, or only partially, an interpreter is used whose sole purpose is to literally translate the questions from English to the foreign language and the answers to English.

a. Literal Translation: A literal translation is when the attorney asks questions and the interpreter answers the question for the witness in the first person. The witness setup is as follows:

JOHN DOE

called as a witness on behalf of the defendant, having been sworn, testified by and through an interpreter, as follows :

DIRECT EXAMINATION

BY MR. JONES:

Q How old are you, Mr. Doe?

A I'm 29.

b. Non-literal Translation: At times an attorney will lapse into third person when asking questions or the interpreter will lapse into the third person when translating a witness' answer. When this occurs, the non-literal translation is transcribed as shown in this example:

MR. JONES: Ask him where he was born.

THE INTERPRETER: He says Mexico.

11. Miscellaneous

a. Depositions or Other Documents Read Into the Record Whenever a deposition or other document is read into the record, use the format parenthetical referenced previously.

b. Polling of Jury: After the verdict is read, there may be a request to poll the jury. Transcribe the polling as colloquy.

c. Case Citations: Case cites are underlined. Italics is not used.

D. ROUGH DRAFTS

1. When a transcriber is requested to provide a rough draft transcript, each page must contain the following footer in all capital and bold letters: "ROUGH DRAFT - NOT CERTIFIED"

2. A rough draft transcript must not contain a certification page.

3. A title page, if included, must indicate the transcript is a rough draft.

CHAPTER III: Certification

Each transcript prepared for the Arizona Court System must be certified either by the person who transcribed the proceedings or by the person who proofed and finalized the transcript, and bear that individual's signature. If prepared by an Arizona certified reporter, the certification must include that reporter's certificate number and title or abbreviation. In order to be considered a certified transcript of the proceedings, the transcriber must be an authorized vendor approved by the Supreme Court, except as noted in Chapter 2, Section D, of this manual.

A. DEFINITION OF TRANSCRIPT ERRORS

Transcripts prepared for Arizona courts by transcribers must comply with the guidelines as set out in this manual. Vendors are expected to produce transcripts with a 98% accuracy rate and of a quality acceptable to the court for which the transcript is being produced. These standards were developed for transcribers under contract with the judicial branch of the state to explain what the court system regards as major errors that compromise the quality of the transcript. To determine the accuracy rate of a transcript, the court system considers the allowable number of major errors in a transcript or a random sample.

B. FORMAT ERRORS

The judicial branch of the state expects contractors to follow the format requirements set out in this manual, including all amendments thereto. Major errors include, but are not limited to:

1. Information on volume title page or day page is inaccurate;

2. No table of contents;
3. Table of contents, if applicable, does not contain all required information or contains inaccurate information (e.g., incorrect page numbers, etc.);
4. Page numbering does not comply with the manual or with special instructions given;
5. Any errors contained in the certificate;
6. Any other significant departures from the format required by the manual.

C. VERBATIM ERRORS

The Manual of Transcript Procedures requires that a transcript contain all words and other verbal expressions uttered during the course of the proceeding.

MAJOR verbatim errors are those which affect the quality of the transcript which include, but are not limited to:

1. Inclusion or exclusion of a negative or affirmative that is not in the electronic record. Examples:

Recorded: I did not commit the murder.

Transcribed: I did commit the murder.

Recorded: I wouldn't care if you did.

Transcribed: I would care if you did.

2. Omission of a spoken word or phrase that affects the meaning of the sentence. Examples:

Recorded: Mr. Smith possessed a handgun.

Transcribed: Mr. Smith knowingly possessed a handgun.

Recorded: Do you think you understand what you're being charged with?

Transcribed: Do you think you're being charged with?

3. Incorrect word that affects the meaning of the sentence or whose usage is obviously wrong to a person familiar with legal terms and proceedings. Examples:

Recorded: A small package was simulating marijuana.

Transcribed: A small package was assumably marijuana.

Recorded: The officer observed illegal conduct.

Transcribed: The officer was served illegal conduct.

Recorded: Your Honor, it's my motion.

Transcribed: Your Honor, it's my mission.

Recorded: They are excused from their subpoenas.

Transcribed: They are excused from these proceedings.

Recorded: Anything in the wallet or concealed anywhere.

Transcribed: Anything in the wallet or sealed anywhere.

Recorded: In reference to our motion for judgment of acquittal on Counts 1, 2, and 3 --

Transcribed: In reference to our motion for judgment and put them on Count 1, 2, and 3 --

4. Failure to recognize legal terms or phrases. Examples:

Recorded: motion in limine filed by the defense.

Transcribed: motion to eliminate a file by the defense.

Recorded: That would justify the warrantless search.

Transcribed: That would justify the warrant was search.

Recorded: The plain touch doctrine is being adopted.

Transcribed: The play and touch doctrine is being adopted.

5. Wrong dates, days of weeks, years, times, exhibit numbers. Examples:

Recorded: It was Monday, February 5, 1996.

Transcribed: It was Tuesday, March 4, 1995.

Recorded: It was at 10:30 in the morning.

Transcribed: It was at 11:30 in the morning.

Recorded: Exhibit D is admitted.

Transcribed: Exhibit B is admitted.

6. Omission of *uh-huh* when used as an expression of assent.

7. Incorrect speaker. Example:

Recorded: MR. SMITH: Yes, Your Honor.

Transcribed: MR. JONES: Yes, Your Honor.

If the transcriber is uncertain who is speaking after listening to the tape a reasonable amount of time, one minute maximum, the transcriber should type the words *UNIDENTIFIED SPEAKER*.

8. Any error that alters the meaning of the record.

D. PUNCTUATION ERRORS

The judicial branch of the state expects transcribers to use commonly accepted rules for punctuation. In determining the accuracy rate of a transcript, the court system only counts punctuation errors that alter the meaning of the record.

E. SPELLING ERRORS

1. A transcript that has an average of more than two spelling errors per page will be returned for correction.
2. A typographical error will be classified as a misspelled word.
3. It is the expectation of the judicial branch of the state that transcribers use the Spell Check feature on computer software, but they should not rely solely on Spell Check to ensure the correct spelling and use of words in the transcripts they prepare.
4. Correct spelling of homonyms is required.
5. Transcribers are expected to refer to specialty dictionaries such as medical, legal, etc., and to use other reference material such as a phone book, atlas, etc., when necessary to achieve correct spelling.

F. INDISCERNIBLES

Transcribers are expected to isolate individual channels on transcribing equipment to assist in clarifying indiscernibles. In determining the accuracy rate of a transcript, the court system counts as a major error an indiscernible that is discernible to another person when listening to the same audio used by the transcriber, except in the circumstances listed below:

1. Bench Conferences

Due to the nature of bench conferences, transcribers are only required to transcribe what is discernible to them. Transcripts will not be rejected because of indiscernibles in a bench conference unless the transcriber failed to transcribe speech that was easily discernible to another person after listening to the conference no more than one minute.

2. Speech Away from a Microphone and Telephonic Speech

Transcribers must attempt to transcribe what is said by people who have stepped away from a microphone and by people who are participating telephonically. However, if the transcriber cannot discern what was said, the transcriber must type a summary phrase in parentheses *Indiscernible - away from microphone* or *Indiscernible - telephonic speech*. Transcripts will not be rejected because of indiscernibles that are marked in this manner unless the transcriber failed to transcribe speech that was easily discernible to another individual after listening to that portion of the tape no more than one minute.

G. TRANSCRIBER TAPE EVALUATION

All transcribers under contract with the court system are required to submit a completed Transcriber Tape Evaluation form, as necessary, to the courts administrator or designee in order to assist the Court and the parties in capturing an accurate record of the proceedings.

What Every Lawyer and Other Participants Should Know About the Electronic Recording System in This Courtroom

Proceedings in this courtroom are recorded using a digital or analog recording system, which may be on at all times. This technology creates a verbatim record without the use of a court reporter. The following practice tips are intended to help you make a clear recording of your proceeding.

- The system uses ultra-sensitive microphones, therefore, avoid making any statements you do not want recorded. Use the mute button (if available) during client consultation; be sure the microphone is turned back on before proceeding.
- Upon speaking for the first time, identify yourself for the record. Spell your name and state whom you represent.
- Give the recording equipment operator the correct spellings of unusual or technical names and vocabulary used by you or your witnesses.
- Speak clearly and audibly.
- Only one person should speak at a time.
- The recording system can only pick up verbally spoken words. Avoid “uh huh” and gestures. Be sure that verbal responses are elicited from all witnesses.
- When reading from a document, read slowly and clearly.
- Avoid moving the microphones: alert court personnel if adjustments are needed.
- Remain within arm's reach of a microphone.
- Avoid tapping on or striking the table or microphone.
- To request a play-back of particular testimony or argument, you will need to know the approximate time when the pertinent statements were recorded. If available, use the recording system's clock.
- When at sidebar, avoid covering the microphone with documents, and speak one at a time directly into the sidebar microphone. When a sidebar conference is to be on the record, attorneys should not whisper. The microphones in use in this courtroom, although quite sensitive, have an initial threshold for sound, just as the human ear does.
- If you are interested in obtaining a copy or a transcript of the recording, see court personnel. Any Arizona certified court reporter or a transcriber under contract with an Arizona court is qualified to transcribe an electronic recording.

APPENDIX L
MINORITY POSITION STATEMENTS

<u>Submitted by:</u>	<u>Page</u>
Arizona Court Reporters Association	1
Julie Ottmar, RPR, CR	5
Hon. Barbara Mundell	8
Hon. Jan Smith Florez	12

COMMITTEE ON KEEPING THE RECORD
Final Report – Dissenting Opinion
Arizona Court Reporters Association

The Arizona Court Reporters Association (ACRA) respectfully submits this dissenting opinion for inclusion in the Keeping the Record (KTR) final report.

KTR's duty to safeguard the record is made clear in the Administrative Order establishing it:

"The Committee shall review current methods used for keeping the record of judicial proceedings and shall conduct a comprehensive review of the relevant state statutes, court rules and administrative code sections In its deliberations and in developing its recommendations, *the Committee shall give highest regard to ensuring the integrity, completeness and accuracy of the record made.*"(emphasis added)

The Committee itself recognized the unique contribution only the certified court reporter can provide:

"Certified court reporters are highly trained, valuable professional members of the justice system. Their skills are important to the provision of justice and, like all resources, are limited in their availability. The court system needs to ensure these resources are utilized efficiently...."

In the many meetings, discussions, and proposals put forth during the long months that the KTR Committee labored, the accepted premise and often-stated belief was that certified court reporters are highly valuable to the Arizona legal community – they are, for good reason, the tried and true gold standard of keeping the official record.

However, at the final meeting of the KTR Committee, it was asserted by some that electronic recording machines are the equivalent of trained, experienced professional court reporters that have been certified by the Arizona Supreme Court. It was then recommended that the electronic recording machine be considered adequate replacement of the Arizona certified court reporter in any and all circumstances.

This recommendation is fundamentally wrong. It is flawed on the basis of both common sense and logic. To again quote the KTR Administrative Order, "The availability of an accurate record ... can make the difference in winning or losing your property, your family or even your life." Given the information available to this

committee, the wholesale replacement of veteran court reporters with electronic recording machines is reckless and unnecessary.

The performance and reliability of electronic recording equipment was never discussed by the KTR. When known recording problems and failures were presented, including those in Arizona courts, such information was dismissed as anecdotal, unimportant, or irrelevant. Committee members were asked to proceed under the assumption that “It works fine” and “It’s cheap,” with no evidence to back those assumptions. During the two-year tenure of this committee, no comparative cost analysis was performed, nor was a performance review done of Maricopa’s existing electronic recording systems.

While ACRA believes that the final KTR report has much to appreciate, there is one area of the report with which ACRA has sharp disagreement: the proposed rule regarding the use of court reporter resources. As was stated by ACRA representatives many times in discussions and meetings, this proposed rule change is accompanied by a significant proposed statutory change to A.R.S. 12-221 that would eliminate the requirement of all superior court judges to appoint a certified court reporter. This statutory change is enormous. The proposed rule was structured in such a way to help offset some of the potential consequences this change might bring about. The rule was envisioned by the various committees and subcommittees who drafted it as a balanced, thoughtful compromise that would help keep the "gold standard" as the presumptive record-keeper for those cases deemed most vital. Again, this is exactly what KTR was tasked with exploring.

From the original proposal, here are the superior court case types where a court reporter would be presumptively required:

1. Grand jury proceedings;
2. All proceedings in a first degree murder case once the notice of intention to seek the death penalty has been filed;
3. Felony jury trials;
4. Initial determinations of sexually violent person status;
5. All proceedings conducted in civil cases in which a jury trial has been requested;
6. Evidentiary hearings and adjudication hearings in juvenile delinquency cases;
7. Contested parental rights termination adjudication hearings;
8. Proceedings on a request for authorization of abortion without parental consent.

ACRA supports this original subcommittee proposal. It is a solution that fulfills the charge of the Committee, allows the courts flexibility while maintaining the sanctity of the record, and strikes the balance between where electronic recording could be used and where certified court reporters should be used.

In the end, however, categories 5, 6, and 7 were stricken from the original proposal. This included the provision that would have presumptively required certified court reporters for all matters in which a civil jury trial was involved. Though it might have been a reasonable compromise to limit this provision simply to civil jury trials (rather than "all matters"), the Committee voted to eliminate this presumptive requirement entirely. Similar provisions for certain juvenile matters were also eliminated completely in the same discussion. It should be noted that in both areas (and in those areas not eliminated by the Committee) such a presumption could be waived by the parties and the court, freeing the court to use electronic recording machines.

While perhaps understandable in lower-level matters, those proceedings involving civil jury trials or concerning Arizona's young people should, at a minimum, be presumptively assured of the most accurate, complete record available. The alternative will do nothing but damage the public's trust and confidence in Arizona's court system. The Arizona Judicial Council and Arizona Supreme Court should carefully consider such a drastic move, especially when it would run hand-in-hand with the proposed statutory change to A.R.S. 12-221.

Again, it is important to note that these provisions were stricken in the final meeting of the KTR Committee.

Without the protection of these key provisions, it is reasonable to believe that litigants will be increasingly subject to superior courthouses in Arizona that lack any meaningful number of certified court reporters, since they will be slowly eliminated per the desires of presiding judges and court administrators. Thus, the assurance that all parties can have a certified court reporter "on request" becomes a hollow promise.

ACRA endorses the original subcommittee proposal containing eight case types where a certified reporter is presumptively required. This original proposal was the culmination of countless hours of effort by the Committee and subcommittee members. This version, coupled with the absolute statutory right of any party to request a reporter pursuant to A.R.S. 38-424, allows the courts flexibility while maintaining the sanctity of the record. This reasoned and reasonable solution strikes the balance between where electronic recording could be used and where certified court reporters should be used.

The Supreme Court is now faced with deciding the future course of Arizona's official record. The due process rights of a child, the freedom of a defendant, the livelihood of an individual ought not be sacrificed for the potential of a few dollars saved.

Thank you very much for your consideration.

Vivian McClard
President
Arizona Court Reporters Association

Minority Position Statement Submitted by Julie Ottmar, RPR, CCR, Member of the Committee

November 22, 2005

Honorable Michael Ryan
Arizona Supreme Court
1501 West Washington
Phoenix, AZ 85007

RE: Keeping the Record Committee Dissenting Opinion

Dear Justice Ryan:

Thank you for the opportunity to sit on the Keeping the Record committee as one of the Certified Court Reporter members.

Since I did not concur with the decision of the majority of the committee, and I feel the final report of this committee could greatly influence the future of court reporting in the state of Arizona, I feel it is my responsibility to write this dissenting opinion.

My major disagreements fall into these categories:

- 1) Removing the requirement for a Certified Court Reporter in A.R.S. 12-221 without a rule that includes a *court reporter presumption* in proceedings that greatly impact the ability of each of the parties to appeal their case if they so choose.
- 2) The proposed rule that *presumes* electronic recording as the method of recordation and that a court reporter will be made available if requested. The presumption, in my opinion, should lie with the court reporter, which presumption can be waived if the parties feel electronic recording will suffice in a particular proceeding.
- 3) Civil jury trials dealing with complex litigation, medical malpractice, and wrongful death very often include witnesses testifying on subject matter that is highly technical and unfamiliar to the average transcriptionist who would not be present during the proceedings. An expert witness or physician who speaks with an unusual accent or uses obscure terminology makes transcription even more challenging. The transcripts from these types of proceedings are oftentimes needed on an expedited or daily basis and should be recorded by a Certified Court Reporter.

- 4) Insufficient statistics were presented to this committee with regard to failures logs of electronic recording. Actually, there was *not a single piece* of information submitted from any county in this state (including Maricopa County where the majority of electronic equipment is used and for the longest period of use) that referred to how many times equipment failed to record or how many times court reporters were called in to record proceedings when equipment failed. When I requested this information, I was told it was not available in a format that could be reported without extensive man-hours expended. That is unacceptable to me, and I find it hard to believe. Does our county government really spend incredibly large sums of taxpayer money with such little regard to how the equipment has actually performed?

Administrative Order 2003-104 establishing this committee stated in its "Purpose" the following: "The Committee shall review current methods used for keeping the record" and "the Committee shall give highest regard to ensuring the integrity, completeness and accuracy of the record made." However, the fundamental topic of the reliability and trustworthiness of electronic recording systems was never addressed by the committee.

- 5) Undue weight was given to the argument from three lightly populated rural counties that they had difficulty finding court reporters to timely cover proceedings. Over the two-year span this committee performed its duty, the Arizona Court Reporters Association set up a broadcast e-mail system to help match reporters seeking work with counties seeking court coverage. To my knowledge, this system has done an excellent job of providing reporters to rural counties, and the counties requesting assistance have been very happy with the results. Another factor to consider: In 2006, voice writers will begin certification testing, with the potential of greatly enlarging the pool of available Certified Court Reporters.

Much faith appears to be placed on the equipment itself without much interest in who will transcribe the proceedings. This committee proposes using a test given by the AAERT, a national transcribers association, as the certification requirement for transcribers. This test consists of 100 very simple questions. It contains no questions on Arizona law or Arizona transcriber requirements. *Two* people were tested at the last AAERT testing in Phoenix. There was a request for references, which I assume was to verify that test takers had the required two years of transcribing experience. I am acquainted with two applicants who have taken and passed the test. Neither of their references were contacted – this I know because I was one of the references.

- 6) Transcript pages are filled with personal and confidential information; for example, Social Security numbers, credit card numbers, and bank account numbers. These vital numbers, in the wrong hands, could possibly ruin a person's financial standing. They need to be protected.

The Arizona Supreme Court has required that court reporters be certified. This certification includes an arduous skills and written knowledge test done through the National Court Reporters Association, fingerprinting for a background check, a state test on rules, statutes, and codes, and a yearly continuing education requirement. Not one of those items is required of transcriptionists. Yet they are the ones that possibly will be transcribing civil jury trials and serious felony proceedings.

- 7) That more members of the state bar associations were not asked to participate. There was only one attorney who was not a government employee on this committee. This committee appeared to be mainly concerned with how the court budget might be benefited from more electronic recording and less court reporter useage.

Court reporters in the state of Arizona, and I know the majority of them, take their jobs very seriously and work hard to guard the record every day.

With all that said, I did, however, enjoy working with you. Thank you again for the opportunity to serve on this committee.

Kindest Regards,

Julie Ottmar
Certified Court Reporter Member

CC: Ms. Jennifer Greene

Minority Position Statement Submitted by Maricopa County Presiding Judge Barbara Mundell, and endorsed by Marcus Reinkensmeyer and Brian Karth, Maricopa Superior Court Administration, and Michael Jeanes, Clerk of Court in Maricopa County, Members of the Committee

**PRESIDING JUDGE OF
MARICOPA COUNTY
MINORITY REPORT**

This minority report is directed only to the proposed new Supreme Court rule on using court reporter resources. The Presiding Judge of Maricopa County does not oppose the many technical changes to the rules to account for electronic reporting of the record, or the amendments to the pretrial rules. The Supreme Court, however, should decline to enter a new rule favoring the use of court reporters over digital recording technologies.

THE STATUS QUO

In 2000, Maricopa County opened four new electronic courtrooms for civil judges. The courtrooms utilized the Jefferson Audio Visual System (“JAVS”) to capture the record, and then state of the art evidence presentation technology. Attorneys were comfortable utilizing technology to keep the record. Court reporters were only requested by attorneys approximately 20% of the time in civil cases in these courtrooms

When the state fiscal crisis hit in 2001 and 2002, the Maricopa County Superior Court, in agreement with its Board of Supervisors, began investing in expanding technology to preserve the record of court proceedings. The investment was made to save taxpayer dollars. An analysis of costs by the County demonstrated considerable taxpayer savings in utilizing electronic recording technology. The Maricopa County Superior Court also began pooling court reporters to better utilize court reporter resources.

Electronic technology has revolutionized how the record is kept in Superior Court. Maricopa County now has 90 courtrooms using either audio or audio/video technology to keep the record. All family court, juvenile and probate courtrooms have electronic digital recording systems. Many civil courtrooms also have these systems. The technology is becoming more sophisticated. The new Juvenile Durango courthouse, the new Northeast courthouse and the original four civil e-courtrooms now all have audio/video recording technology with a centralized control room where staff index and auto log proceedings simultaneously. Judges and authorized court staff can access the digital recordings of court proceedings via their desktop p.c.’s.

Maricopa County Superior Court operates under A.R.S. section 38-424 which allows the Court to use technology to keep the record unless a party asks for a court reporter. To a large extent, the comfort level with utilizing technology is generational. Some older attorneys who grew up with only court reporters have the greatest difficulty adjusting to technology. Most_new attorneys who grew up with electronic law research skills, pc networks and electronic courtrooms at their law schools are very comfortable with the technology to record the proceedings.

The use of electronic recording has been very beneficial to the Maricopa County Superior Court. A \$1,000,000.00+ budget for contract court reporters was eliminated, allowing the court to transfer funds to other budget areas cut during the fiscal crisis of the early 2000's. As the use of electronic recording grew, the Court was able to transfer three vacant court reporter positions into a new commissioner position. By slowing the growth of new court reporter positions, the Court is able to allocate new budget dollars into other areas of critical need for the Court.

WHAT IS THE PROBLEM THAT THE NEW RULE ADDRESSES?

The Maricopa County Superior Court supports changes to the rules that address how electronic digital recording transcripts will be prepared and changes to the pretrial rules. The rules need to be amended to reflect actual changes in practice in the Superior Court. The new rule on court reporter resources, however, is a rule in search of a problem that does not exist.

The current statute allows for use of electronic technology and, if a lawyer requests a court reporter, a court reporter is provided. The Maricopa County Superior Court follows the statute. The statute protects the rights of an older generation of lawyers who want court reporters only, and fosters innovation among a newer generation of lawyers who want technology.

Because of the cost savings in using technology, the Superior Court has taken an active role in persuading agencies and attorneys to utilize electronic reporting. After discussions, the county attorney and public defender agreed to use electronic reporting in juvenile delinquency proceedings. After discussions, the county attorney and public defender agreed to use electronic recording in the early disposition court and the regional felony center courts where the Court does preliminary hearings, changes of plea and sentencing in a high volume calendar setting.

The Superior Court has been discussing with the county attorney and public defender using electronic recording in low-end felony criminal trials. Cost savings could be achieved if driving under the influence (DUI) cases and many other two day criminal trials could be recorded electronically rather than by court reporters. This change, of course, is a change in culture and takes time.

Into this evolving change in court practices, the Committee on Keeping the Record recommends a presumption that court reporters be used in certain types of

cases. There is no need for this presumption under the current statutes, and it does not address any perceived problem. Rather, it is a transparent political attempt by court reporters to capture a segment of the market for themselves. The court reporters would not be likely to get these concessions from the legislature, or the Boards of Supervisors, where fiscal issues speak against such a favored change.

Technological change is difficult and discomfoting; but markets create competition and efficiencies. Certainly, if it could, Kodak would ask for a rule change that all photographs in court proceedings be on photochemical film unless the parties waive the rule for digital photographs. The Supreme Court would not think of doing such a rule for Kodak; why would it do so for court reporters.

THE GOLD STANDARD

The assumption behind the new rule as explained to the Committee is that court reporters are the “gold standard” for reporting court proceedings. There is no factual record in the Committee proceedings to support this assumption. The Supreme Court can review any number of electronically recorded proceedings, fully indexed by auto-logging, or transcripts prepared from electronically recorded proceedings, to dispute this assumption. There is no difference in quality between digital recording transcripts and court reporter transcripts.

Anecdotal problems that have been identified in certain cases have been problems in transcription, which the Committee recommendations address by certified transcriptionists, not problems in technology. If court proceedings can be effectively recorded either by court reporters or electronic technology, then the Supreme Court should not weigh in on the scale preferring one method of recording over the other.

The market for court reporting is changing. Digital recording technology is capturing an increasing share of the market for both business and market-driven reasons: digital recording is cheaper, it is capable of easy storage on servers, the electronic recordings are easy to access, and transcriptions can be done quickly with outside vendors. The debate about digital recording that will take place in the future either in the Courts or the legislature is whether an attorney should have a choice at all for a court reporter; or, if they do, who should bear the cost of this choice, the taxpayer or the attorney.

One other example in Maricopa County illustrates why favoring one form of reporting over another is costly. The Maricopa County Attorney is considering whether to use indictments in all criminal cases. Maricopa County currently uses nine grand juries; to do all cases it may need eighteen grand juries. Space in the West Court Building may be remodeled for a much larger grand jury function in the next two years. Many grand jury proceedings involve a police officer reciting from a police report of a reported crime. Couldn't electronic digital reporting capture these proceedings as well as a court reporter? Would criminal trials be able to proceed quicker if defendants were given a cd disc of the grand jury proceeding at

arraignment? Would it be less costly and more efficient to blend court reporters and technology into a new grand jury center?

**CONFLICT WITH LEGISLATURE AND COUNTY BOARDS OF
SUPERVISORS**

Funding for court reporters and/or electronic technology comes from the Maricopa County Board of Supervisors. Although the Committee on Keeping the Record had an ample number of court reporters on its committee, and the court reporter lobbyist participated in its activities, no one from a funding source for the courts, or the electronic recording companies, was represented on the committee at all. The new rule, which gives court reporters a preferred presumed role in certain types of proceedings, will be viewed by funding sources as union written legislation.

The new rule enters into a public policy debate that is politically charged and affects the expenditure of taxpayer dollars. It does so without any factually demonstrable record of whether one means of keeping the record is better than another, and rests on a committee report that is drafted with the help of partisans on one side of the issue.

The current statute has worked well to accommodate the competing viewpoints on this issue, and allowed for the growth of electronic digital recording in the Superior Court. The Supreme Court should leave the status quo where it is, and avoid needless conflict with other branches of government who fund the court's operations.

Respectfully submitted this 28th day of November, 2005

/s/ _____

Hon. Barbara R. Mundell, Presiding Judge, Superior Court

Minority Position Statement Submitted by: Hon. Jan Florez, Court of Appeals, Division 2 (retired), Member of the Committee

I reject that there is any "gold standard." The judicial system requires that courts of record provide a verbatim record for the purposes of the parties and the courts, including the appellate courts. How that record is preserved and transcribed is irrelevant as long as it is sufficient. Thus, I would delete any reference in the statutes, rules and administrative orders to a particular method of capturing and transcribing the record and leave to the presiding judge and the funding sources the method(s) which accomplish the necessary record. Doing that allows for innovation and technological change, consistent with budgets and availability of resources, to meet the needs of the courts today and in the future.