

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ESTABLISHING STANDARDS FOR) Administrative Order
VERBATIM REPORTING IN) No. 2007 - 87
CAPITAL CASE PROCEEDINGS)
)

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In capital cases, all pre-trial and trial proceedings shall be transcribed within 45 days after the filing of the notice of appeal pursuant to Rule 31.8(b)(3) and (d)(3), Arizona Rules of Criminal Procedure. Appellate briefing is substantially delayed when transcripts are not promptly prepared.

More reporters are moving to computer-assisted technology for note-taking and no longer produce paper notes. Business practices are needed to ensure these records are refreshed and continue to be readable despite changes in the technology required to read and retrieve such records, as required by Arizona Code of Judicial Administration (ACJA) § 1-602(D)(6). Recently-enacted timelines for preserving reporters' notes appearing in ACJA § 3-402(C)(2)(b)(1) require courts to maintain readable notes for 50 years after sentencing in capital cases.

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

IT IS ORDERED that the superior court in each county shall establish standards to ensure reporters' notes in capital cases are available and can be transcribed by another party should the original reporter become unavailable. The standards shall provide at a minimum the following:

1. **Providing for substitute records.** In the event a court reporter's original notes are unavailable for transcription, an electronic audio or audio/video recording, if made by the court, may be used to reconstruct the verbatim record of the hearing. Accordingly, when practicable, courts shall schedule capital case hearings and trials in courtrooms equipped with an electronic recording system as a backup to the live court reporter.

2. **Managing court reporter assignments.** Courts shall assign reporters to capital case trials in a manner that will promote timely transcript preparation for capital case appeals, giving consideration to the volume of transcript orders outstanding for a particular reporter. Suggested methods for encouraging timely transcription of capital case proceedings include:

- a. Assign two or more reporters to cover capital case trial proceedings, one in the morning and the other in the afternoon, and rotate these reporters to other types of hearings less likely to generate transcript orders for the remainder of the reporters' work day when possible, to reduce the likelihood that the reporters will be faced with competing transcript deadlines.
- b. Promote reporters' use of subcontractors.

- c. Require per diem reporters to file transcripts of any pretrial proceedings they report in capital cases within a specified time after the hearing or within a specified time after the notice of intent to seek the death penalty has been filed.
- d. Avoid assigning any reporter to cover a capital case hearing who routinely seeks more than one extension to file appeal transcripts.

3. **Record management considerations.** Courts shall ensure that reporters who report capital case proceedings comply with the note storage standards as provided herein and as established by ACJA § 1-602(D)(6)(a)&(b) (Digital Recording of Court Proceedings) and ensure that capital case notes are preserved in such a way as to permit the 50-year retention requirement set forth in ACJA § 3-402 (C)(2)(b)(1)(Superior Court Records Retention and Disposition). These notes shall be segregated and stored so as to facilitate retrieval by case number.

- a. *Labeling.* The reporter shall label capital case notes, whether paper or electronic, with the reporter's name, the case number, the case name, and the date of the proceeding.
- b. *Segregation and storage format for original notes.* Reporters shall provide the court with a copy of their reporter's dictionary at least once each year. Reporters shall ensure the notes of any capital case hearing are filed with the court clerk or designee in a timely fashion, but not later than ten days after the date of the proceeding reported. Reporters who create notes in paper and not electronically shall store their original paper notes in a manner approved by the court separate from the reporter's notes in other case types. Reporters who create notes electronically shall store all electronic files needed to prepare the transcript of the proceeding along with the reporter's translated or real-time version of their notes on approved storage media or saved to an approved server. Reporters who store electronic notes under this subsection shall also store an Adobe Acrobat PDF version of their notes to ensure the original notes are preserved in an unalterable format.
- c. *Notice to court reporter.* When the prosecutor files a notice of intent to pursue the death penalty, the court shall provide notice within ten days to any reporter who has reported any proceeding in the capital case before or after the filing of the prosecutor's notice. When a notice of appeal has been filed in a capital case, the clerk shall provide notice within ten days to all court reporters who have reported proceedings in the capital case.
- d. *Per diem reporters.* Reporters working in courts on a contract basis who report capital case proceedings shall deposit their notes and reporter's dictionary with the clerk or a designee in the manner required by subsection (3)(b) not later than ten business days following the proceeding.

Dated this 29th day of November, 2007.

RUTH V. MCGREGOR
Chief Justice