

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
P. O. BOX 20207
NASHVILLE, TENNESSEE 37202

December 29, 2008

Opinion No. 08-190

Retention of Audio Recordings and Stenographic Notes of a Criminal Proceeding

QUESTIONS

1. Are the audio recordings and stenographic notes of a criminal proceeding utilized by a reporter for preparing the transcript required by Tenn Code Ann § 40-14-307 to be a part of the record that the court reporter must file with the court clerk?
2. Does Tenn. Code Ann. § 40-14-307 require the court clerk to retain and store these recordings and notes?
3. What are the retention requirements for audio recordings and stenographic notes of a criminal proceeding under Tenn. Code Ann. § 18-1-202?

OPINIONS

1. Yes. Tenn. Code Ann. § 40-14-307 requires a court reporter to record verbatim all proceedings in open court and file these records with the clerk.
2. Yes. Tenn. Code Ann. § 40-14-307 requires that the clerk preserve these items as part of the records of the trial.
3. Tenn. Code Ann. § 18-1-202 allows the clerk to dispose of these records after the passage of ten years following the final disposition of the case.

ANALYSIS

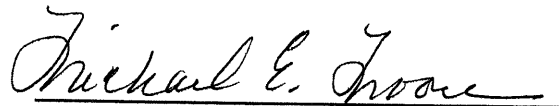
Tenn. Code Ann. § 40-14-307 requires that a court reporter attend all stages of every criminal case and “record verbatim” the proceedings. The administrative director of the courts has the duty of determining the appropriate method of creating these recordings, and it must be “of a nature that an accurate written transcript can be prepared from that method.” Tenn. Code Ann. § 40-14-306. Section 40-14-307 instructs the reporter to file the record “so taken” with the clerk. In construing legislative enactments, one must “presume that every word in a statute has meaning and purpose and should be given full effect if the obvious intention of the General Assembly is not violated by so doing.” *Overstreet v. TRW Commercial Steering Div.*, 256 S.W.3d 626, 630 (Tenn. 2008). Thus, if a

court reporter utilizes audio recording devices or stenography to make verbatim recording of a proceeding in a criminal case, the reporter must file the resulting recordings or stenographic notes with the court clerk, "who shall preserve them as part of the records of the trial." Tenn. Code Ann. § 40-14-307. If the final disposition of a case took place more than ten years previously, the clerk may dispose of these records under the directions and order of the judges of their respective courts. Tenn. Code Ann. § 18-1-202.



ROBERT E. COOPER, JR.

Attorney General and Reporter



MICHAEL E. MOORE

Solicitor General



BENJAMIN A. BALL

Assistant Attorney General

Requested by:

Director Elizabeth Sykes
Administrative Office of the Courts
Nashville City Center, Suite 600
511 Union Street
Nashville, Tennessee 37219

AOC COURT REPORTING SERVICES Quick Reference Guide

1. Court Reporter Statutes/Rules

a. T.C.A. §40-14-301 through §40-14-317

b. TN Rules of Crim. Proc.

c. TN Rules of App. Proc. 24

2. Official Reporters

Official reporters are full-time employees who receive State benefits, are paid a salary and a fee for producing transcripts, and may work for 1 or more judges.

3. Auxiliary/Per Diem Reporters

Auxiliary/per diem reporters are contractors who substitute for official reporters, may work as the primary reporter for a specific judge, or may substitute for another per diem reporter.

4. Qualifications to Become Reporter

Pursuant to T.C.A. §40-14-303, the qualifications of court reporters in the criminal trial courts are in accordance with standards adopted by the Administrative Director of the Administrative Office of the Courts.

5. Supervisor of Reporters

The hiring judge is the direct supervisor for official reporters. (T.C.A. §40-14-310) Auxiliary reporters have a more direct relationship with the AOC. However, auxiliary reporters are to communicate all concerns to the judge immediately.

6. Transcript Orders in Indigent Criminal Cases

According to Appellate Rule 24 (b), "Within 15 days after filing the notice of appeal, the appellant in a criminal action shall order from the reporter a transcript of such parts of the evidence or proceedings not already on file as the appellant deems necessary." T.C.A. §40-14-312 states that "if the defendant prays and is granted an appeal, and is determined by the trial judge to be without sufficient funds to pay for the preparation of the transcript of the proceedings, the trial judge shall direct the court reporter to furnish the defendant a complete transcript of the proceedings..."

AOC COURT REPORTING SERVICES

Quick Reference Guide

7. Compensation

Official reporters are paid a salary and transcript fee. Auxiliary reporters are paid according to the rates reflected in the contract.

Court Reporter Fund:

This fund is used to pay for the costs of the majority of indigent criminal transcript costs and official court reporter salaries and per diem costs. Reporters should use the AOC-created forms to request payment.

Indigent Defense Fund:

This fund is used to pay for other indigent criminal and civil costs pursuant to Supreme Court Rule 13. Prior approval is required for most cases.

8. Transcript Preparation

In indigent criminal cases the AOC is authorized to pay for 1 original and 1 copy (included as a set). The AOC is **not authorized** to pay for a transcript provided to the district attorney general.

9. Code of Professional Ethics

The AOC has adopted standards from the National Court Reporters Association (NCRA) {www.ncra.online.org}

The TN Board of Court Reporting has established rules and regulations that include standards of professional conduct for the licensed reporters in Tennessee.

10. Contact Information

Connie Turner
Coordinator of Court Rptg.
Services

(615) 741-2687, Ext. 1260

connie.d.turner@tncourts.gov

Mary Rose Zingale
Court Services Director
(615) 741-2687, Ext. 1350

mary.rose.zingale@tncourts.gov

Cindy Saladin
Human Resources Manager
(615) 741-2687, Ext. 1060

cindy.saladin@tncourts.gov

OFFICIAL COURT REPORTER MONTHLY WORK REPORT

Administrative Office of the Courts

Nashville City Center, Suite 600 • 511 Union Street Nashville, TN 37219 • Phone (615) 741-2687 • Fax: (615) 532-9481

REPORTER NAME
SOCIAL SECURITY
ADDRESS
CITY, STATE, ZIP CODE
TELEPHONE NUMBER

MONTH	YEAR
COUNTY OF RESIDENCE	
JUDICIAL DISTRICT	
TOTAL	\$

DATE	ACTIVITY			TOTAL HOURS	TOTAL MILES	REASON FOR ABSENCE FROM COURT (✓)			
	(County) IN-COURT HOURS	TRANSCR. HOURS	OFFICE TASKS HOURS			CANCELLED	SICK LEAVE (#HOURS)	COURT- APPROVED LEAVE	WORK RELIEF (document case #)
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
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21									
22									
23									
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25									
26									
27									
28									
29									
30									
31									
			TOTAL # MILES:						

ADDITIONAL OFFICE EXPENSE(S)(include date, description, & amount):

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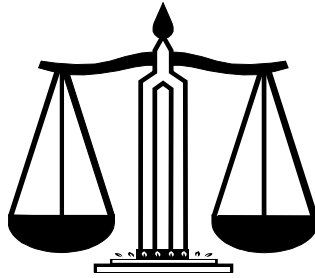
As an Official Court Reporter in this district, I hereby certify that the information contained in this monthly report is true and correct to the best of my knowledge. As presiding judge over the proceeding, I certify that the above-reported work was performed in my courtroom.

SIGNATURE OF COURT REPORTER

SIGNATURE OF JUDGE

AOC Form CR-5 (Rev 6/06)

AOC CRIMINAL COURT REPORTING SERVICES GUIDELINES FOR JUDGES



1. **Types of Court Reporters**

- Official/Salaried & Per Diem/Auxiliary/Contract
- Requirements - Court reporter services are provided by those who have a high school diploma and have received court reporter training or those that have experience as judicial assistants, paralegals, legal assistants/secretaries, and clerical workers.
- Licensure –Court reporters providing services pursuant to Title 40 do not have to be licensed. (T.C.A. §20-9-603)

2. **Applicable Statutes**

- T.C.A. § 40-14-301 - 40-14-317 -
<http://www.lexisnexis.com/hottopics/tncode>
- Tennessee Rules of Appellate Procedure 24 -26 -
<http://www.tncourts.gov/courts/court-rules/rules-appellate-procedure>

3. **Major Duties of Criminal Court Reporters**

- Be present to record verbatim court proceedings;
- Operate and maintain the recording system;
- Preserve the record – file recording/CD with clerk's office (see attached AG opinion);
- Mark exhibits if clerk does not do so;
- Prepare the Transcript of Evidence, if ordered.

4. **Judge's Role Regarding the Criminal Court Reporter**

- The judge is the official/salaried court reporter's supervisor;
- Encourage reporters to speak with you regarding concerns, prior to contacting AOC;
- Provide additional documentation if necessary;
- Encourage reporters to file original audio recording with clerk (see attached memo);
- Notify AOC of any issues regarding court reporter(s);
- If official/salaried court reporter retires, resigns, or is terminated, judge should:

- Immediately notify the AOC;
- Meet with reporter, and verify that any records in his/her possession (including steno notes and audio recordings) that were not promptly filed with the clerk of the court pursuant to T.C.A. §40-14-307, are transferred to the clerk's office for storage;
- If a different storage location needs to be determined, the reporter/judge should meet with the clerk to select a location. Additionally, the replacement reporter should be notified of this location. The records should be clearly marked including notations of the district(s), court(s), judge(s), date(s) and type(s) of hearing. The transfer of items should take place on the last day of employment of the reporter. The reporter/judge shall also notify the AOC that the transfer has taken place and to whom the items were provided.

5. Leave for Official/Salaried Court Reporters

It is the official/salaried court reporter's responsibility to find a substitute court reporter, if necessary.

- Sick
- Work Relief
- Court-approved

6. Forms - Official/Salaried Court Reporters

- Request for Payment of Transcript in Indigent Matter
- Work Relief Request
- Official Court Reporter Monthly Work Report

Forms - Per Diem/Auxiliary/Contract Court Reporters

- Request for Payment for Court Appearance by Per Diem Court Reporter
- Request for Payment of Transcript in Indigent Matter

7. Digital Recording Systems

- Types of systems purchased
- Training provided by system personnel and AOC

8. AOC Court Reporter Coordinator's Responsibilities

- Primary contact for court reporter matters (Connie Turner – (615)-741-2687 or connie.d.turner@tncourts.gov)
- Arrange for substitute reporters
- Audit pay requests
- Purchase equipment and supplies

9. Comments from the Official/Salaried Court Reporters

10. Court Reporter Resources at:

(<http://tncourts.gov/programs/court-reporters/resources-court-reporters>)

- AOC Court Reporter Quick Reference Guide (attached)



Administrative Office of the Courts

Nashville City Center, Suite 600
511 Union Street
Nashville, Tennessee 37219
615 / 741-2687 or 800 / 448-7970
FAX 615 / 741-6285

ELIZABETH A. SYKES
Director

TIM D. TOWNSEND
Deputy Director

MEMORANDUM

TO: All Trial Court Clerks with Criminal Court Jurisdiction

Cc: Trial Judges with Criminal Court Jurisdiction
Official/Contract Court Reporters

FROM: Elizabeth A. Sykes *EAS*

DATE: April 7, 2009

RE: Court Reporter Tapes/CD's



Please find attached a copy of an Attorney General Opinion (Opinion 08-190) that our office requested and recently received. We requested an opinion on these issues because of confusion expressed to us by clerks across the state regarding the retention of audio recordings and stenographic notes of criminal proceedings and also confusion regarding what the record consisted of pursuant to Tenn. Code Ann. § 40-14-307. Please note also that the opinion advises as to the length of time these records must be retained.

We have contacted many of you in the past regarding the filing of the court reporters' audio tapes/cd's of criminal court hearings and many of you receive these items and preserve them as part of the record. We also met with many of the members of the Board of Directors of the Tennessee State Court Clerk's Association by phone conference on March 6, 2009 and discussed many of the issues you have regarding the filing/storage of these records. While all concurred that these records are the responsibility of the clerks to maintain, there was concern that some counties do not have storage space for these records. Many court reporters have retained the tapes/cd's and stenographic notes. If the clerk wishes to continue this type of retention agreement, please note that ultimately the clerk is responsible for the records and should any member of the public, the court system or the legal system request the records, the clerk's office will ultimately be responsible for providing these records to those requesting the same. If the records are not physically in the clerk's office, the clerk must obtain them from the

court reporter and provide them as requested. Clearly, there are myriads of issues for the clerk if the records are not retained in the clerk's office.

Also reviewed during the recent conference call were issues some clerks expressed regarding an inability at times to obtain these records from the court reporters. Please know that our office has consistently advised the court reporters that these records are not their personal records and are not their work product. Should you have any inability to obtain these records from the court reporters working in criminal court, please contact Mary Rose Zingale, Court Services Director and she will review the issue.

Whenever changes are made in processes there are issues that will come up. We ask that you work with the court reporters and if resolution to the issues cannot be found, please feel free to contact our office.

We all have the same ultimate goal to make sure that justice is served. This includes the right of the defendant and the public to know that records are preserved and all have access to the same. Thank you for your continuing commitment to the Tennessee justice system and for your willingness to work with the court reporters on these issues.

REQUEST FOR PAYMENT FOR COURT APPEARANCE BY PER DIEM COURT REPORTER

Administrative Office of the Courts

Nashville City Center, Suite 600 • 511 Union Street, Nashville, TN 37219 • Phone (615) 741-2687 • Fax: (615) 532-9481

REPORTER NAME	
SOCIAL SECURITY #/TAX I.D. #/EDISON #	
ADDRESS	
CITY, STATE, ZIP CODE	COUNTY OF RESIDENCE
TELEPHONE NUMBER	

INVOICE NUMBER
DPA #
JUDICIAL DISTRICT
COURT IN WHICH PROCEEDING HELD
OFFICIAL COURT REPORTER

Appearance Date	Location (COUNTY)	Total Number of Hours Worked in Court (do not include lunch period)	Hours Worked in Excess of 8 hours	Per Diem Fee	Fee for Additional Hours Worked (# hrs x \$25)	Mileage		
						TO	FROM	TOTAL MILES

Per Diem Fee

Fee for Addt'l Hrs Worked

Mileage Amount

TOTALS			
GRAND TOTAL (add all totals together)			

- ☐ The official court reporter named above was unavailable to be in court due to the following reason(s):
☐ Sick Leave ☐ Court-Approved Leave ☐ Workload Relief ☐ Other _____
- ☐ There is no official court reporter assigned to this court.
- ☐ I am the primary/designated court reporter for this court.

I certify that I was the per diem court reporter for this court for the date(s) reported above.

Signature of Court Reporter

Date

I certify that the per diem court reporter named above worked in my court on the reported date(s).

Signature of Judge

Date

REQUEST FOR PAYMENT OF TRANSCRIPT IN INDIGENT MATTER

Administrative Office of the Courts

Nashville City Center, Suite 600 • 511 Union Street Nashville, TN 37219 • Phone (615) 741-2687 • Fax: (615) 532-9481

PLEASE PRINT

STATE OF TENNESSEE VS.

INVOICE NUMBER		COUNTY	JUDICIAL DISTRICT
DATE OF PROCEEDING	DATE OF REQUEST	TYPE OF PROCEEDING	DPA #

REPORTER NAME
SOCIAL SECURITY #/TAX I.D. #/EDISON #
ADDRESS
CITY, STATE, ZIP CODE
TELEPHONE NUMBER

DEFENDANT'S NAME
CHARGE
CASE NUMBER(S)
MULTIPLE DEFENDANT <input type="checkbox"/>
CONTRACT <input type="checkbox"/> OFFICIAL <input type="checkbox"/>
COURT IN WHICH PROCEEDING HELD

TOTAL NUMBER OF ORIGINAL PAGES PREPARED	
COMPENSATION PER SET @ \$3.50 (ORIGINAL AND ONE COPY)	
TOTAL NUMBER OF ADDITIONAL SETS	
COMPENSATION PER ADDITIONAL SETS @ \$0.50/page	
TOTAL COMPENSATION DUE	

I, the undersigned, do hereby certify in accordance with T.C.A. §40-14-312, that the defendant was declared indigent by the Court, that the court reporter was authorized by the Court to properly prepare Transcript of the Evidence or parts thereof in accordance with the Tennessee Rules of Appellate or Criminal Procedure, and that the request for compensation is in compliance with the schedule of compensation as authorized by the Administrative Director of the Courts.

SIGNATURE OF COURT JUDGE

I, the undersigned, do hereby certify that the said transcript has been properly prepared and lodged with the Clerk/Attorney/Court Reporter's Office. This, the _____ day of _____, 20____.

SIGNATURE OF COURT REPORTER

I (We), the undersigned, Clerk/Attorney(s) of Record, hereby acknowledge receipt of Transcript in this cause.

CLERK/ATTORNEY OF RECORD

DATE OF RECEIPT

REQUEST FOR WORK RELIEF OFFICIAL COURT REPORTER

*THE INFORMATION BELOW MUST BE COMPLETED, FAXED TO THE AOC,
AND APPROVED BY THE AOC PRIOR TO CONTACTING A PER DIEM
REPORTER FOR WORK RELIEF:*

NAME: _____ DISTRICT: _____

JUDGE'S NAME: _____

NUMBER OF DAY(S) NEEDED FOR WORK RELIEF: _____

REASON FOR REQUEST (Please check one):

____ Notice of appellate transcript received by me on _____ and
transcript due to court of appeals on _____.

____ Transcript ordered by judge on _____ and due
to judge on _____ attach copy of judge's order)

____ Other: _____

I HAVE CONTACTED THE FOLLOWING OFFICIAL REPORTERS, AND THEY ARE UNABLE
TO ASSIST: _____

LIST WHO WILL SUBSTITUTE IF WORK RELIEF APPROVED: _____

Signed: _____
Court Reporter

I have reviewed the request of the above-named official court reporter and
concur with his/her request for work relief.

Signed: _____
Judge

TO BE COMPLETED BY THE ADMINISTRATIVE OFFICE OF THE COURTS

Date: _____

____ Approved ____ Denied and Reason: _____