

To: Criminal Rules Committee

From: Rule 55 Sub-Committee

This memo will provide an important update about the Civil Rules Committee's decision regarding Rule 80, information about CJD 05-03 and 00-02, case law and proposals regarding Rule 55(e).

1. The Civil Rules Committee voted to repeal Rule 80. Jenny Moore reports that the majority of the committee voted to repeal because they could not come up with a scenario where CJD 05-03 would not control. They also believed that a court rule would not add anything to the CJD.
2. Attached for your review are CJD 05-03 and CJD 00-02. For this discussion it is only necessary for you to review the first two pages of CJD 05-03.
3. There is also some case law that is relevant to the force and effect of a CJD. The Chief Justice has authority over replacing reporters with electronic devices. *Yeager v. Quinn*, 767 P. 2d 766 (Colo. App. 1989). CJD's flow from the Chief Justice's administrative authority as the executive head of the Judicial Branch. *People in the Interest of D.L.C.*, 70 P. 3d 584 (Colo. App. 2003). CJD's are an expression of Judicial Branch policy and are to be given full force and effect in matters of court administration. *Hodges v. People*, 922 P. 3d 922 (Colo. 2007).
4. Attached is memo from Matt Holman which sets forth several options that the committee can consider. Among the options are waiting to see what the Supreme Court does with the Civil Committee's decision to repeal their rule, to propose a rule that cites the CJD or to rewrite the rule with one of the proposals in Matt's memo. The subcommittee did discuss importing the current language of Rule 80. This discussion centered on the Due Process implications of not having a reporter. This is one of the issues raised in the motion filed in Alamosa and addressed in the order by Judge Gonzales.
5. Once we determine what we want to do with 55(e), we can decide what to do with the other parts of the rule which are obsolete.

October 5, 2017

## MEMORANDUM

**TO:** Rule 55 Subcommittee Judge Fish, Karen Taylor, and Matthew Holman)

**FROM:** Matthew Holman

**RE:** Rule 55(e) Court Reporters and Electronic Recording.

This memorandum concerns possible language to be placed under Crim. P. 55(e) concerning court reporters and electronic recording. Currently, Rule 55(e) simply references C.R.C.P. 80, which is being amended by the Civil Rules Committee. Rule 80 currently indicates that the district court “shall” direct that evidence be taken stenographically unless the parties stipulate to the contrary.

However, Chief Justice Directive 05-03 is a fairly comprehensive provision covering court reporting and recording services. Subject to certain limitations, it provides for recording of court proceedings through the use of stenographic reporting by a certified Registered Professional Reporter or by using digital electronic sound recording equipment, depending on whether the case is a class one or two felony case or a death penalty case.

CJD 05-03 also provides for the hiring of reporters, for reporters’ compensation, and for the ownership and retention of reporters’ notes. It seems unnecessary to address these matters in Rule 55(e), a rule of procedure.

A Chief Justice Directive operates as a court order or rule. *Office of the State Court Administrator v. Background Information Services, Inc.*, 994 P.2d 420, 422 (Colo. 1999). And the Chief Justice has authority over such matters as replacing court reporters with electronic recording devices. *Yeager v. People*, 767 P.2d 766 (Colo. App. 1989). There are some statutes that discuss the use of court reporters and electronic recording. See, e.g., sections 13-5-127 and 13-6-309 (county court).

However, given that the Chief Justice has authority over this area and the Chief Justice Directive operates as a court rule or order, CJD 05-03 would seem to be the primary restriction on court reporting and electronic recording under Crim. P. 55(e).

There may be several options regarding how to modify Rule 55(e), including: (1) eliminating the section altogether under the presumption that CJD 05-03 governs this area; (2) referring to CJD 05-03 in Rule 55(e), or (3) modifying the language of C.R.C.P. 80 for placement under Crim. P. 55(e) without a reference to CJD 05-03.

Here are two options that modify the language in C.R.C.P. 80. The first incorporates some terminology from CJD 05-03. The second is the same but includes a reference to CJD 05-03. Note: I left in language from C.R.C.P. 80 concerning payment for transcripts, but modified it to allow for other methods of payment with a catchall “unless otherwise provided by law.” I don’t know if this is sufficient, see what you all think.

Option 1:

(e) The district court or superior court shall, and any other court or referee or master in its discretion may, direct that all proceedings be reported by a court reporter using a stenotype machine or recorded by use of a digital electronic sound recording device. Upon a stipulation by the parties to waive the reporting or recording of a court proceeding, a court may direct that the proceeding not be reported or recorded. The cost of a transcript shall be paid in the first instance by the party ordering the same, unless otherwise provided by law.

Option 2 (includes reference to CJD 05-03).

(e) The district court or superior court shall, and any other court or referee or master in its discretion may, direct that all proceedings be reported by a court reporter using a stenotype machine or recorded by use of a digital electronic sound recording device. Upon a stipulation by the parties to waive the reporting or recording of a court proceeding, a

court may direct that the proceeding not be reported or recorded. Notwithstanding this subsection (e), the reporting or recording of court proceedings is subject to the provisions of Chief Justice Directive 05-03. The cost of a transcript shall be paid in the first instance by the party ordering the same, unless otherwise provided by law.

One more thing: C.R.C.P. 80 also includes this provision concerning the use of transcripts as evidence:

**(e.5) Stenographic Report or Transcript as Evidence.** Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

I haven't researched this provision or whether it is necessary or if the Rules of Evidence cover this. I also wondered if it could apply to electronically recorded proceedings that are later transcribed by a court reporter. I will look into this.

## **SUPREME COURT OF COLORADO OFFICE OF THE CHIEF JUSTICE**

### **Management Plan for Court Reporting and Recording Services**

#### **Background**

An accurate record of all court proceedings is an essential requirement of due process of law and is required by Article VI and Article II, Section 25 of the Colorado Constitution.

This plan is adopted to promote the effective use of court reporters and electronic record operators (ERO) in the Colorado Judicial Branch and is applicable to all official court reporters, all personnel, and contract court reporters or transcribers employed by the Colorado Judicial Branch or under employment contract with the Colorado Judicial Branch. This plan does not apply to court reporters hired by a litigant to provide services as an independent contractor in a civil case unless explicitly stated.

The preferred method of making an accurate record of court proceedings is with the assistance of a realtime certified court reporter; therefore, all proceedings conducted before a district court judge may be reported by a court reporter using a stenotype machine on a “realtime” basis. An electronic record operator using digital electronic sound recording equipment can record proceedings. This provision shall in no way prohibit a judge or magistrate from operating the equipment needed to make an accurate record of any proceeding. Realtime court reporting is the standard in Colorado courts.

Pursuant to this directive, the chief judge of each judicial district shall determine which methods of recording court proceedings are to be used based upon current economic issues, availability of reporters, and other relevant factors.

#### **I. RESPONSIBILITIES OF CHIEF JUDGE**

##### **A. Prioritization of Reported vs. Recorded Cases**

Each district shall establish a case-type priority that shall be reported, if district resources permit, by court reporters.

##### **B. Prioritization of Felony Cases**

When a judicial district assigns a court reporter to report a proceeding that requires the taking of testimony in a class one or two felony case, the court reporter shall be at a minimum a Registered Professional Reporter (RPR) if an RPR certified reporter is available. Districts without an RPR court reporter should contact the State Court Administrator’s Office for assistance.

##### **C. Prioritization of Death Penalty Cases**

In a death penalty case, Realtime reporting shall be used. If reasonable attempts to locate or appoint a Realtime reporter have been made without success, districts without Realtime reporting capability should contact the State Court Administrator’s Office for assistance. A reporter reporting a death penalty case shall be, at a minimum, RPR certified. Should Realtime equipment failures or personnel emergencies occur, other court reporting methods may be used in extreme circumstances for the shortest amount of time possible.

#### D. Supervision of Court Reporters/Recorders

The chief judge is ultimately responsible for the administration of any court reporting services in her or his district as well as the timeliness of the production of transcripts whether on appeal or for other purposes. This responsibility may be delegated at the discretion of the chief judge.

1. All reporters (current and future) who are employees shall be under the direction and management of the chief judge of each district. Some of the functions assigned to the chief judge may be delegated, but the chief judge has the ultimate authority and responsibility for the supervision of court reporters and the implementation and enforcement of this plan.
2. All court reporters, except managing court reporters, shall be non-exempt from the Fair Labor Standards Act and shall provide timesheets of hours worked each workweek on a monthly basis to their supervisors.
3. The chief judge shall ensure that all judges provide court reporters regularly scheduled breaks during the workday.
4. The chief judge shall have the sole authority to assign or reassign court reporters and electronic recorder operators to courtrooms as necessary and appropriate in his or her discretion.
5. The chief judge shall have the authority to hire and designate court reporters and electronic recorder operators (including contract staff); however, each chief judge shall develop policies and procedures for hiring that include the district judges and any staff designated by the chief judge. The chief judge shall have the sole authority to reassign, correct, discipline or terminate court reporters and electronic recorder operators.
6. The chief judge shall be the ultimate supervisor of the district's managing court reporter, if appointed. The duty to supervise the district's managing court reporter may be delegated, in part, by the chief judge. The person supervising the managing court reporter shall have the following duties and may delegate these duties to the managing court reporter including but not limited to the following:
  - a. Investigating complaints of improper state-paid transcript billings. All court reporters/transcribers must take necessary measures to assure that authorized transcript rates are charged and transcripts are in proper form. (See Appendix A for rates and Appendix C for information required to be included on all billings.)
  - b. Monitoring the timeliness of the transcription of the record, or such parts thereof, as a judge, party or attorney may request. This applies to the transcript being prepared by a court reporter, transcriber, or outside firm preparing transcripts on behalf of the court.
  - c. Monitoring transcripts produced by transcription services to assure compliance with the transcript format and fee requirements of this Chief Justice Directive (CJD) or applicable contract.
  - d. Preserving the audio records (tape, digital or other electronic), court reporter transcripts or notes according to the current Colorado Judicial Department Retention and Disposition Schedules.

#### E. Managing Court Reporter

1. Each district with two or more court reporters shall have a managing court reporter selected in a manner designated by the chief judge, or the chief judge shall assign these duties to administrative staff.
2. Districts may elect to rotate the responsibilities of the managing court reporter among all reporters on a regular basis.

3. The managing court reporter shall be an exempt employee under the supervision of the chief judge or designee.
4. The managing court reporter shall be responsible to:
  - a. Assign and reassign court reporters and EROs within the district for the purpose of distributing fairly and equitably the workload and transcript preparation of all court reporting services and transcribers, with goals of minimizing travel and assuring the lowest overall cost to the Colorado Judicial Branch and State of Colorado.
  - b. Supervise the business relationship among attorneys, litigants, other parties, and court reporters/EROs/transcribers.
  - c. Develop a form to monitor and keep a record of transcript orders and requests and, if necessary, tape and/or digital recording orders and requests made in district court. In larger districts this portion of the workload may be distributed between the managing court reporter and other administrative staff.
  - d. Coordinate any transcript requests involving court reporters who no longer work for the Colorado Judicial Branch or work in another district.
  - e. Report to the chief judge on a monthly basis any late or deficient transcripts.
  - f. Maintain certification records for all court reporters within a district.
  - g. Hire substitute court reporters. Court reporters may not hire substitute reporters at their own expense. The district administrator or designee at the state's expense must hire all substitutes.
  - h. Generate the appellate query of late transcripts and provide a report to the chief judge or designee on a monthly basis.

#### F. Cross-Training and Backup

To assure that the needs of the judicial district are met, the chief judge or designee shall provide cross-training for the EROs and court reporters so that they can perform work for any division. EROs and court reporters may be assigned to cover other division work as may be necessary.

#### G. Grand Jury

The costs associated with providing a Court Reporter for grand jury proceedings including transcript fees shall be the responsibility of the district and shall be billed to the applicable Colorado Judicial Department accounting codes for grand jury expenses.

## II. COURT REPORTER RESPONSIBILITIES

### A. RPR Certification

1. All court reporters hired shall be RPR certified unless the district is unable to hire an acceptable certified reporter within three months of posting the position. If the district hires a non-certified reporter, that reporter must become RPR certified within two years of hire. Non-certified reporters may be used on a per case basis if certified reporters are not available.
2. All certified court reporters must maintain certification by completing three continuing education units (CEUs) every three years and maintaining certification status with National Court Reporters Association (NCRA).
3. Current Colorado Certified Shorthand Reporters (CSRs) must obtain RPR certification and must take the RPR certification exam at least once per year until certification is obtained.
4. Current court reporters who are uncertified will be placed on a performance plan to assist the reporter in obtaining certification and must take the RPR certification exam at least once per year until certification is obtained.

5. Failure to obtain or maintain RPR certification may be grounds for corrective or disciplinary action in accordance with the Colorado Judicial System Personnel Rules.

**B. Realtime Certification**

1. Realtime reporting can help to alleviate the problems of late transcripts; assist trial judges in deciding issues faster by seeing and keeping the Realtime notes for review and having text files for their use for the preparation of their orders; allow reporters to get the bulk of transcript work done as they are reporting; and enable all reporting staff to be at the same or similar level of skill. All court reporters must obtain and maintain NCRA's Registered Professional Reporter status and must attain official status as a Colorado Certified Realtime Reporter by meeting one of the following requirements by passing the:
  - a. NCRA Certified Realtime Reporter (CRR) test with 96 percent accuracy; or
  - b. NCRA CRR test with 94 percent accuracy (the Colorado standard); or
  - c. NCRA Certified Broadcast Captioner (CBC) / Certified CART Provider (CCP) skills test with 96 percent accuracy; or
  - d. NCRA CBC/CCP test with 94 percent accuracy (the Colorado standard); or
  - e. Federal Certified Realtime Reporter (FCRR) test with 96 percent accuracy
  - f. FCRR test with 94 percent accuracy (the Colorado standard); or
  - g. Colorado Realtime Certified Reporter (CRCR) test with 96 percent accuracy; or
  - h. CRCR test with 94 percent accuracy (the Colorado standard)
2. Current court reporters who do not have Realtime certification as described in II.B.1. of this CJD must apply for waiver to certification once per year. In order for waivers to be approved, the court reporter must demonstrate at least one testing attempt per year to maintain employment.
3. Failure to obtain or maintain CRR certification may be grounds for corrective or disciplinary action in accordance with the Colorado Judicial System Personnel Rules

**C. Conduct of Court Reporter**

1. The court reporter shall present him or herself to the judge in charge of the proceedings in accordance with the assignment made by the chief judge or designee.
2. The reporter shall observe, comply with, and be bound by all of the assigned judge's instructions in matters affecting the composition of the record, the marking of exhibits and maintenance of the evidence, the public or private nature of the proceeding, the adjournment of the proceeding to other times or places, the appropriate demeanor of the reporter, and other like matters.
3. The court reporter shall report by appropriate equipment all of the proceedings that he or she attends.
4. The court reporter shall take all the testimony, rulings, exceptions, oral instructions, and other proceedings during the trial of any cause, and in such causes as the court may designate.
5. The court reporter is not required to report or transcribe .WAV files or other audio or video recordings submitted or presented as part of the record.

**D. Records to be Maintained by Court Reporters**



1. In order to permit the routine audit and inspection of records, court reporters shall maintain accurate, legible, and up-to-date records of their transcript orders, invoices, and transcript payments.
2. Extension of time for transcripts must be obtained from the court pursuant to the appropriate rule. The chief judge or designee shall be advised in writing by the reporter or transcriber at any time the reporter or transcriber requests an extension of time on any transcript. These written records shall be maintained at the direction of the chief judge. Court reporters shall provide the chief judge and designee a copy of any request for an extension to provide an appellate record prior to submitting the affidavit to the appellate court.

### **III. ELECTRONIC RECORDING OPERATORS RESPONSIBILITIES**

#### **A. Conduct of Electronic Record Operator**

1. The ERO shall present himself or herself to the judge in charge of the proceedings in accordance with the assignment made by the chief judge or designee.
2. The ERO shall observe, comply with, and be bound by all of the assigned judge's instructions in matters affecting the composition of the record, the marking of exhibits and maintenance of the evidence, the public or private nature of the proceeding, the adjournment of the proceeding to other times or places, the appropriate demeanor of the ERO(s), and other like matters.
3. The ERO shall record with appropriate equipment all of the proceedings that he or she attends.
4. The ERO shall record all the testimony, rulings, exceptions, oral instructions, and other proceedings during the trial of any cause, and in such causes as the court may designate.

#### **B. Records to be Maintained by EROs**

1. In order to permit the routine audit and inspection of records, EROs shall maintain accurate, legible, and up-to-date records of their transcript orders, invoices, transcript payments, expenses and attendance in court.
2. Extension of time for transcripts must be obtained from the court pursuant to the appropriate rule. The chief judge or designee shall be advised in writing by the transcriber at any time the transcriber requests an extension of time on any transcript. These written records shall be maintained at the direction of the chief judge. Transcribers shall provide the chief judge and designee a copy of any request for an extension to provide an appellate record prior to submitting the affidavit to the appellate court.

### **IV. COURT REPORTERS HIRED BY LITIGANTS IN CIVIL CASES**

#### **A. Scope**

Court reporters hired by a party in a civil case are not Colorado Judicial Department employees. Such individuals may provide services through a company or individually to party(ies) in a civil case.

#### **B. Hiring and Per Page Rates**

The party(ies) are responsible for the court reporter's page rate and for paying any associated fees based on the negotiated page rate. The court will not set the court reporter's page rate for parties in civil cases.

#### **C. Official File**

The court may, but is not required to, order the privately hired court reporter's notes and subsequent transcript to serve as the official record of the court in place of an electronic record in which event the court reporter's notes and dictionary will become the property of the Colorado Judicial Department.

D. Objections to Creation of the Official Record

If a party objects to the creation of the official record or per page rate negotiated, the court reporter's notes shall not serve as the official record. The objecting party shall make such objections at least seven working days prior to the commencement of the proceeding, at which time the Court shall determine the method for recording the official transcript for the proceeding.

E. Rates for the Court

Transcripts ordered by the Court from a privately retained court reporter will be paid for by the Colorado Judicial Department, and are subject to Appendix A regardless of rates negotiated between the parties.

**V. TRANSCRIPTS**

A. Persons Authorized to Prepare Transcripts from Electronic Recordings

1. Contract transcript service companies may prepare transcripts, as determined by each judicial district policy.
2. If a judicial district enters into an agreement with a transcript service company, such contract must be in the format prescribed by the State Court Administrator.
3. Non-court reporter Colorado Judicial Branch employees shall not be allowed to transcribe court transcripts outside working hours unless the employee is a member of an independent contracting firm that provides contract transcript services as a company that has been selected by the district to prepare transcripts. This is in compliance with the requirements of the Fair Labor Standards Act, PERA rules, and IRS regulations regarding the issuance of a 1099 and W-2 to the same employee.
4. If non-court reporter Colorado Judicial Branch employees prepare transcripts from electronic recordings during established working hours, this task shall be included in the individual's normal work assignment and compensation and such individual shall not be paid the per-page rate, §13-5-128, C.R.S.

B. Compensation

1. Total Compensation

The total compensation package offered to court reporters shall be established in accordance with the Colorado Judicial System Personnel Rules and Annual Compensation Plan. Base salary, benefits, paid time off, and paid time off prorated for part-time employees for continuing education required to maintain certification shall be provided to classified court reporters, as well as variable pay, such as per page rates. When determining the total compensation package of court reporters, consideration shall also be made for expenditures incurred by court reporters on equipment, software, employment of scopists and proofreaders used during the course of business conducted for the state. Appendix F of this CJD provides a more exhaustive list of items, which should be taken into consideration in the determination of fair and equitable compensation for court reporters.

a. Court reporters are eligible for promotional increases for obtaining certification under the following conditions:

- (i) In instances where the difference in compensation midpoint between the Court Reporter's current job class and the job class the Court Reporter will promote to is more than 5%, the Court Reporters shall receive a promotional increase for attaining the certification in accordance with the Colorado Judicial System Personnel Rules.

- (ii) In instances where the difference in the compensation midpoint between the Court Reporter's current job class and the job class the Court Reporter will promote to is less than 5%, a 4% pay increase will be given for attaining certification.
2. Transcripts requested by judges
    - a. Colorado Judicial Branch court reporters and other employees who prepare transcripts as part of their regular duties shall provide transcripts requested by and used only by the judge or magistrate who presided over the matter or the chief judge and shall not be paid the transcript page rate in addition to their regular salary. These employees shall be allowed to prepare transcripts requested by judicial officers during work hours.
    - b. Court reporters and transcribers who are not Colorado Judicial Branch employees shall be considered "substitutes" and shall be compensated the state-paid transcript rate to prepare a transcript requested by and used only by the judge or magistrate who presided over the matter or the chief judge. The judicial district shall be responsible for compensation of the "substitute" court reporter or transcriber if not paid by the parties in a civil case as described in Section IV above.
  3. State-Paid Transcripts
    - b. a. State-paid transcripts are all transcripts requested by judicial officers, the district attorney, public defender, the Office of the Child's Representative and its contract attorneys, pro se indigent criminal defendants or advisory counsel representing an indigent criminal defendant, the Attorney General's Office, the Office of the Alternate Defense and its contract attorneys the Office of Respondent Parents' Counsel and its contract attorneys. Colorado Judicial Branch court reporters who prepare transcripts as a normal part of their job and compensation shall be allowed to prepare state-paid transcripts during work hours.
    - c. Copy costs for state-paid transcripts are eliminated and the original per-page cost applies in accordance with Appendix A of this directive. The court reporter shall provide a state-purchased disk or may email a PDF or other word-searchable protected version of the transcript to an attorney or party requesting a copy of a transcript.
  4. Private-Paid Transcripts
    - a. Private-paid transcripts are all transcripts requested by all parties, attorneys, media and entities not listed in 3 (a) above.
    - b. Colorado Judicial Branch court reporters and other employees who prepare transcripts shall not be allowed to use state time, equipment, supplies or copiers to prepare private-paid transcripts; except that a court reporter may prepare private-paid transcripts during regular working hours in the following circumstances:
      - i) Criminal transcripts requested by non-state paid attorneys
      - ii) Juvenile court transcripts requested by non-state paid attorneys
      - iii) Transcripts prepared for cases on appeal
      - iv) Transcripts of an oral ruling of a trial court ordered for the preparation of the written order at the request of the trial court.
    - c. The original per page rate and copy rates are applied as defined in Appendix A.
    - d. Court reporters shall delineate the fees for originals and copies separately in all transcript invoices.
  5. Non-Appellate Transcripts

The full price may be charged only if the independent contractor delivers the transcript within the time frame agreed upon, including any extensions that have been authorized by the chief judge.

6. Appellate Transcripts

In accordance with §13-5-128, C.R.S., the shorthand reporter of a court of record shall be compensated for preparation of the original and copies of the **transcript** of notes at such rates described in this policy.

The full price may be charged only if the transcript is delivered within the time frame prescribed by the chief judge of the district court or the appellate court. A transcript delivered within the time allowed by a timely extension granted for good cause pursuant to Colorado Rules of Appellate Procedure (C.A.R.) 11(a) and (d) is entitled to full payment. The appellate court may extend the due date for a transcript and order the reduced rate if the “good cause” requirement is not met. (See Appendix D for computation of transcript delivery dates and reductions in per page rates for late transcripts.)

C. Hourly or Daily Transcripts

Unless otherwise ordered by the trial judge assigned to the case, there shall be no hourly or daily transcripts delivered to any party or attorney. If any person desires such services, he or she must seek permission of the court to have a Realtime court reporter present for a hearing or trial.

D. Unedited Transcripts

The use of an unedited transcript as a working document shall be permitted if allowed and approved by the trial judge and the court reporter, or as permitted by court rule such as C.A.R. 3.4(e)(6). Such transcript shall not be the official record of the court unless so certified by the court reporter. The rate for the unedited transcript shall be applied according to Appendix A. Pursuant to CAR 3.4 the reporter may require a signed waiver of liability for any errors in the unedited transcript. Unedited transcripts shall include the disclaimer, Uncertified Transcript Disclaimer, in Appendix G.

E. Ordering of Transcripts, Tapes or Digital Recording Disks

Each district shall determine and post on the Colorado Judicial Branch website a policy that outlines the procedures for that particular district for ordering of transcripts, tapes or digital recording disks.

1. Transcripts may be ordered from the court following the procedure below.
  - a. The requesting party should use the request forms for transcript of a hearing or trial approved by the State Court Administrator. Blank forms can be procured from the clerk of the court or district administrator as set forth by each district. The completed form should be sent to the address listed on the form for the appropriate district.
  - b. Persons ordering transcripts will be contacted directly by the court reporter or transcriber concerning payment of the appropriate fees. Transcripts will not be started and the time limits stated for delivery of transcripts will not commence until satisfactory arrangements are made with the transcriber for the payment of required fees.
  - c. It is the requestor’s responsibility to properly pay or obtain a court order approving waiver of the fees in ordering transcripts. The requestor also must obtain and the reporter or transcriber must produce a dated receipt for the payment. This is to avoid any dispute as to the date, manner of payment and whether payment has in fact been made.
2. Copies of all or part of tapes or digital records (CD-ROM) may be ordered in those districts that are able to provide this service. The court may, based upon each district’s policy, reproduce tapes or create CDs on its own duplicating equipment and may sell copies of electronic sound recording tapes made. The district may sell a whole or partial copy of the

- proceeding if available on CD, disk or tape to the public at the prevailing rate prescribed by this CJD. The rate shall be that rate in effect at the time of ordering.
- a. Orders for copies should be submitted to the court on the request forms for tapes or CDs approved by the SCAO. Blank forms can be obtained from the clerk of the court or district administrator as set forth by each district. The completed form should be sent to the address that is listed on the form for the appropriate district.
  - b. Copies of tapes or CDs shall not be used as the official record for purposes of appeal, motions or other court proceedings. Only certified transcripts by reporters or authorized transcribers shall be used as the official records of court proceedings.
  - c. In those districts that do not provide this service, parties shall request a transcript using the procedure outlined in V(E)(1) above.
3. Districts shall not accommodate requests to listen to recorded proceedings (tapes or CDs).

#### F. Standards for the Production of Transcripts

The following standards apply to the production of all transcripts for Colorado courts:

1. All transcripts shall be produced in the format required by this CJD (Appendix B).
2. No court reporter/transcriber employed by the Colorado Judicial Branch shall charge fees for transcripts of official proceedings that exceed those set forth in this CJD, except as approved by the chief judge in writing for extraordinary circumstances.
3. Each court reporter/transcriber is required to certify on each invoice that the fees charged and page format used conform to this CJD.
4. If transcripts of proceedings are prepared by contract transcription services and paid for by the state:
  - a. All format, delivery time schedule, and fee requirements adopted by this CJD apply as if the transcript was produced by one of the court's reporters or other Colorado Judicial Branch employee unless the contract entered into provides otherwise.
  - b. The transcriber designated to transcribe the proceedings recorded by electronic sound recording shall clearly specify on the billing or invoice and the transcript cover page that the proceedings which were transcribed were recorded on an electronic recording, and shall clearly certify the transcript as follows: "I (we) certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter." [Signature of transcriber and date].
  - c. Each transcriber may charge and collect fees for transcripts requested at rates prescribed by this CJD.
5. Appellate transcripts may be provided in electronic format as part of an electronic record submitted pursuant to C.A.R. 10 and 11. In criminal cases, an electronic transcript may be provided as part of an electronic record where electronic records are available.

#### G. Time Limits for Delivery of Transcripts

1. Original transcripts ordered by judicial officers shall be provided to the judicial officer within the time prescribed by the order.
2. All transcripts of official proceedings prepared for the purpose of appeal shall be delivered to the ordering party, if a copy is requested, and the original filed with the clerk of court within the prescribed time limits of the Colorado Rules of Appellate Procedure.
3. Extension of time for appellate transcripts must be sought from the court pursuant to the appropriate rule.

**H. Distribution of Transcripts**

1. At the request of the ordering party, a non-appellate transcript may be provided in electronic format, if the reporter or transcriber agrees.
2. For state-paid transcripts, the court reporter shall provide the transcript in PDF or other word-searchable protected format to the party requesting a copy of a transcript. Replacement copies shall be made available in accordance with the fee structure below for both state-paid and private-paid requests. The intent of this provision is for only one state agency to pay for the transcript; therefore, copy costs for state-paid copy requests shall not apply. If the state agency requests the first copy, copy costs for private parties shall be in accordance with Appendix A.
3. Any requests for transcripts from persons or entities who are not parties to the case must be forwarded to the district administrator or chief judge prior to the court reporter agreeing to arrangements to furnish a copy. No court reporter or transcriber shall create a distribution list for anyone other than parties or attorneys of record.

**VI. OWNERSHIP, CUSTODY, USE, RETENTION AND FILING OF THE NOTES AND ELECTRONIC RECORDINGS**

**A. The notes of all court reporters:**

1. Shall remain property of the Colorado Judicial Branch controlled by the chief judge or designee to ensure transcripts may be prepared by another reporter, if and when necessary;
2. Shall be retained by the appropriate court for a period prescribed by the Colorado Judicial Department Retention and Disposition Schedules; AND
3. Are not public records.

**B. The work of all court reporters shall be readable and shall remain in the ultimate control of the chief judge or designee so that another reporter, if necessary, can read the notes of a court reporter.**

**C. Each court reporter shall be required to sign a statement (Appendix E) acknowledging the ownership of the notes and of the dictionary provision below.**

1. When a court reporter leaves the employment of the Colorado Judicial Branch, the court reporter shall provide the chief judge with paper or electronic notes and a copy of his or her dictionary for the cases they have done while a state employee prior to the reporter's last day of employment.
2. The court reporter leaving employment with the branch shall be given a right of first refusal regarding preparation of any outstanding transcripts on those cases so long as:
  - a. The Court Reporter provides the district with the reporter's address, phone number and other contact information and keeps that information current with the district administrator and chief judge, and
  - b. The Court Reporter does not have more than one outstanding appeal transcript beyond the 180 day allotted time frame.
3. In the event that another court reporter must prepare any such outstanding transcripts, that court reporter shall not use the departing court reporter's dictionary for any purpose other than preparation of the outstanding transcripts.

**D. During the trial or the taking of other matters on the record, the paper or electronic notes shall be considered the property of the Colorado Judicial Branch, even though in custody of the reporter, judge or clerk.**

- E. After the trial and review or appeal period, the reporter shall list, date and index all of the notes and shall properly pack them for storage. The court shall store such records.
- F. There shall be no additional charges for securing the record of a proceeding and for transporting the record to the clerk of court. The costs of these services are included in the schedule of rates for transcripts.
- G. During the period of retention, paper or electronic notes shall be made available to the reporter of record, or to any other reporter or person the court may designate.
- H. An electronic PDF or other word-searchable protected format version of any final transcripts prepared in all criminal and juvenile cases by any court reporter or transcriber shall be filed with the court.
- I. Copies of these transcripts may be obtained from the court reporter at the rates designated within Appendix A herein.
- J. The court may provide additional copies of these state-paid transcripts without any additional expense to the attorney general, district attorney, public defender, Office of the Child's Representative, pro se indigent criminal defendant or advisory counsel representing an indigent criminal defendant, Alternate Defense Counsel and state-paid respondents' attorneys in dependency and neglect cases. If a court reporter is no longer a full-time, part-time or contract employee of the Colorado Judicial Branch, individuals may obtain copies of these transcripts at the rate set forth in the Colorado Judicial Department Fiscal Rules by contacting the district administrator of the district.

## **VII. TRANSCRIPT BACKLOGS**

The chief judge or designee is authorized to take necessary steps to reduce backlog transcript, tape, or disk copy production delays. Such steps may include, but are not necessarily limited to the following:

- A. Adjusting the workload of the court reporter or transcriber to reduce backlogs.
- B. Terminating a contract with an outside vendor of transcription services and/or adding contract vendors of transcription services.

## **VIII. APPELLATE TRANSCRIPTS**

All transcripts in appellate cases shall be uploaded to the Court of Appeals or Supreme Court as read-only PDF documents.

CJD 05-03 is amended and adopted effective March 14th, 2017.

\_\_\_\_\_  
/s/  
Nancy E. Rice, Chief Justice

## APPENDIX A

Below are transcript fee rates for the preparation and transcription of court proceedings. Additionally, in accordance with V(B)(6) of this directive, and pursuant to §13-5-128, C.R.S., the shorthand reporter of a court of record shall be compensated for preparation of the original and copies of the transcript of notes at such rates described in this policy.

|  | Original Per Page  | Copy to State Agency per Page** | Copy to Non-State Agency Party per Page | Each Add'l Copy to Non-State Agency Party or Non-Party Per Page |
|--|--|---------------------------------|---|---|
| <b>State-paid Ordinary Transcript</b>  | \$3.00   | \$0.00                          | \$.75                                   | \$.75   |
| <b>Private-paid Ordinary Transcript</b><br>(Private paid original)<br>(within 11 days and up to 30 calendar days, or as agreed upon by the requesting party and transcriber) | \$3.00   | \$.75                           | \$.75                                   |   |
| <b>Expedited Transcript</b><br>(10 calendar days)  | \$3.75   | \$0.00                          | \$.75                                   | \$.75   |
| <b>Daily Transcript</b><br>(Prior to normal opening of court the following day)  | \$5.25   | \$0.00                          | \$1.00                                  | \$1.00  |
| <b>Unedited Transcript</b><br>(Rough draft, unedited, non-certified)   | \$.75 per page per agency. If ordered by two agencies, limit \$1.25 per page | \$0.00                          | \$1.25                                  | \$1.25  |
| <b>Hourly</b>  | \$6.25   | \$1.25                          | \$1.25                                  | \$1.25  |

\*\*State agency as defined in V.B.3.a (excluding judicial officers).

REPLACEMENT OR ADDITIONAL CD'S OF TRANSCRIPTS (Applies to transcripts prepared by a court reporter where the per-page costs have already been paid in accordance with the fee structure above.)

\$35

### REDUCED RATES

Reduced rates for late delivery to the appellate court may apply. The rate for a late transcript, which would be billed at the ordinary rate if submitted on time, is 90% of the ordinary rate if 10 days or less; 75% if 11 to 30 days late and 50% if more than 30 days late.

A transcript ordered on an "expedited" basis shall be billed at the "ordinary" rate if not delivered within 10 days.



The above rates are applicable to each page of transcript, excluding the certification page, which must be at the end of each volume of transcript.

#### **DEFINITIONS OF METHOD OF TRANSCRIPTION**

**ORDINARY:** Appellate transcripts shall be delivered within time prescribed by C.A.R. 11(a) and (d). Any other transcripts shall be prepared within 30 days from the date when the requesting party and the reporter agree on arrangements for the transcript or a mutually agreed upon time frame outside the 30 days that is reasonable and meets the needs of the requesting party.

**EXPEDITED:** Transcript to be delivered within 10 days from the date when the requesting party and the reporter agree on arrangements for the transcript. When transcripts are delivered on or after the 11th day after the arrangements for the transcript, the ordinary transcript rates shall apply.

**DAILY:** Transcript to be delivered following adjournment and prior to normal opening hour of court on following morning whether or not it is a court workday.

**HOURLY:** Transcript, ordered under unusual circumstances, to be delivered within 2 hours of adjournment.

**UNEDITED:** Daily rough draft, unedited, non-certified transcript, which is not an official transcript.

**PARTIAL:** If the appellate court has previously received a partial transcript and the entire transcript is later ordered the reporter must put the entire transcript in sequential order in one document before it is sent to the appellate court.

## Appendix B

### STANDARDS FOR TRANSCRIPT PREPARATION

The standards for transcript preparation by all court reporters, including court reporters hired by litigants in civil cases, are:

**Paper:**

Size-Standard letter size, 8 ½ x 11

Weight- Not less than 13#

Paper shall be line numbered, 1 to 25, with no fewer than 25 typed lines

Type size- No fewer than nine or ten characters to the typed inch

Ink color- black

**Margins:**

- a) Typed margins shall start one inch from the top and no more than one and three-quarters inches from the left of the page. A justified left margin is used throughout.
- b) The right margin shall be no more than three-eighths inch.
- c) The lower margin will be set by line 25.

**Binding:** Transcripts shall be bound at the left. Binding shall be in daily volumes, approximately one inch thick.

**Title pages:** Prepare in accordance with attached sample, using plain language.

**Page numbering:** Official page numbering for transcripts shall be at the upper right, above line 1. Reporters shall ensure that page numbering is consecutive within each volume. If more than one volume is required, the reporter may number all volumes under a consecutive number sequence, or may begin each volume with page 1. Since citations will be by volume, one, and line number, the beginning number for each volume is no longer critical.

**Parenthetical and exhibit markings:** Begin no more than 15 spaces from the left-hand margin, with carry-over line to begin not more than 15 spaces from the left margin, with carry-over lines to begin no more than 15 spaces from the left-hand margin.

**Quoted material:** Begin no more than 15 spaces from the left-hand margin, with carry-over lines to begin no more than 10 spaces from the left-hand margin.

**Colloquy material:** Begin no more than fifteen spaces from the left-hand margin, with carry-over colloquy to the left-hand margin.

**Question and Answer:** Each question and answer to begin on a separate line. Each question and answer to begin no more than five spaces from the left-hand margin with no more than five spaces from the Q and A to the text. Carry-over Q and A lines to begin at the left-hand margin.

**Electronic:** Electronic transcripts standards adopted by the appellate courts pursuant to C.A.R. 10 and 11 apply.

All appellate transcripts shall be delivered to the trial court appeal clerk at least 2 working days prior to the date the record is due in the appellate court.

**SAMPLE**

1

1 -----  
2 DISTRICT COURT |  
3 BOULDER COUNTY |  
4 COLORADO |  
5 1777-6th Street |  
6 Boulder, CO 80306 |  
7 ----- |  
8 |  
9 |  
10 |  
11 |  
12 |  
13 |  
14 |  
15 ----- |

16 The matter came on for hearing on \_\_\_\_\_, before the HONORABLE Judge's  
17 Full Name, Judge of the District Court, and the following proceedings were had.

18 -----

19 (Recorded and Transcribed)

20  
21  
22  
23  
24  
25

## **APPENDIX C**

### **INFORMATION REQUIRED TO BE INCLUDED ON ALL BILLINGS**

1. Name of Client (Actual person ordering and paying for transcript)
2. Date Ordered
3. Date Delivered
4. Case Name and number
5. Number of Pages
6. Number of Copies
7. Type of Delivery Schedule
8. Discount
9. Refunds
10. Total Due
11. Certification of Reporter or Transcription Firm of Compliance with Fee and Transcript Format Prescribed by CJD

## **APPENDIX D**

### **COMPUTATION OF TRANSCRIPT DELIVERY DATES**

Transcripts delivery dates are computed from:

- a. The date on which satisfactory financial arrangements for payment are made, except for transcripts to be paid for by the State of Colorado or free copies ordered by a judge;
- b. The date on which the appropriate Transcript Order is received by the reporter/transcriber when the transcript is to be paid for by the State of Colorado;
- c. The date on which the court order is provided to the reporter/transcriber when a judicial officer has ordered a transcript.

**APPENDIX E COURT REPORTER ACKNOWLEDGMENT**  
**(Concerning Stenographic and Electronic Notes)**

\_\_\_\_\_ **Judicial District**

I acknowledge that all stenographic and electronic notes produced by me during the time I am employed by the Colorado Judicial Department are the property of the \_\_\_\_\_ Judicial District.

I will regularly back up all electronic notes as directed by the Chief Judge or designee. If I produce paper notes, I will maintain them in a secure location and in an organized fashion according to local policy.

Should I leave the employment of the Colorado Judicial Department, I will ensure that all the electronic notes for the cases I have reported while a state employee are properly lodged on the server or that I have provided a backup copy on CD. I also will ensure that a current copy of my dictionary is on the server, with a backup copy on CD, and that all docket sheets are current as required by local policy. I will provide verification of same to the Chief Judge, District Administrator or Managing Court Reporter.

I understand that I will be given first right of refusal regarding preparation of any transcripts on those cases I have reported so long as I provide the District with my address, phone number and other contact information and keep that information current with the Managing Court Reporter, District Administrator or Chief Judge, and provided I do not have more than one outstanding appeal transcript beyond the 180 day allotted timeframe.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

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Official Court Reporter

## APPENDIX F

### COURT REPORTER TOTAL COMPENSATION

The compensation package for court reporters in the judicial system is based upon two components: salary paid by the Colorado Judicial Branch and income generated from the production of transcripts. Transcription preparation is part of the court reporters' essential functions upon which they are annually evaluated. This method of payment adequately compensates court reporters for their status as professionals and also takes into consideration the costs borne by court reporters. Court reporters provide their own computerized equipment and Realtime software to produce the record owned by judicial and simultaneously provide the instantaneous (Realtime) feed for the immediate use and benefit of court and counsel. Upon request, court reporters are then responsible for transcribing their stenographic and electronic notes on their own equipment to produce the final transcript, which is provided to the court at no cost. Court reporters, as a result, incur additional costs in order to ensure accurate and timely transcripts by employing support staff (i.e. scopists and proofreaders). As professionals, the court reporters are also required at their own expense to obtain and maintain Colorado Judicial Branch mandated certifications, which require membership in professional organizations and yearly continuing education credits. By providing this compensation package, the Colorado Judicial Department reaps the benefit of state-of-the art advances in computer technology, but the expense is not taken from the state budget instead it is covered by the per page rate (see Appendix A) paid in part by private parties. Requiring reduced fees for non-judicial department state agencies (reduced by the elimination of copies for state agencies) serves to control and limit the transcript requests for nonessential proceedings. **This type of compensation package strikes a fair balance among the Colorado Judicial Department, court reporters, and litigants.** This method of payment also creates a built-in incentive for the timely preparation of transcripts and prevents unnecessary backlogs in our appellate courts; while at the same time attracts and maintains qualified employees within our state. Realtime court reporting also complies with ADA requirements, when requested.

As an example of Court Reporter unreimbursed expenses, which are borne by a typical reporter include:

- Steno machine and yearly maintenance contract of which covers parts, cleaning & loaner;
- Computer Aided Transcription software and annual support contract,
- Support and software upgrades;
- Realtime software and annual license fee;
- Personal Computer;
- Proofreaders;
- Scopists;
- Annual Professional Memberships;
- Continuing Education Seminars, plus travel expenses;
- Testing Fees, plus travel expenses;
- Expenses vary per reporter.

Court Reporters own and maintain their court reporting equipment including hardware and software. The listed equipment is owned and used by the court reporter for the benefit of judicial in producing the record owned by judicial and for providing Realtime for court and counsel.



## APPENDIX G

1                                   UNCERTIFIED TRANSCRIPT DISCLAIMER

2           The following transcript(s) of proceedings, or any  
3 portion thereof, is being delivered *UNEDITED AND*  
4 *UNCERTIFIED* by the official court reporter at the request  
5 of the ordering party.

6           The purchaser agrees not to distribute this  
7 uncertified and unedited transcript in any form (written or  
8 electronic). This is an unofficial transcript, which  
9 should NOT be relied upon for purposes of verbatim citation  
10 of proceedings and should not be filed as an attachment to  
11 any court pleadings. The judge in this case will be  
12 provided a copy of these rough draft proceedings.

13          This transcript has not been checked, proofread, or  
14 corrected. It is a draft transcript, NOT a certified  
15 transcript. As such, it may contain computer-generated  
16 mistranslations of stenotype code or electronic  
17 transmission errors, resulting in inaccurate or nonsensical  
18 word combinations, or untranslated stenotype symbols which  
19 cannot be deciphered by non-stenotypists. Corrections will  
20 be made in the preparation of the certified transcript  
21 resulting in differences in content, page and line numbers,  
22 punctuation, and formatting.

23          This realtime uncertified and unedited transcript  
24 contains no appearance page, certificate page, index, or  
25 certification.

**SUPREME COURT OF COLORADO**

**Office of the Chief Justice**

**Concerning Waiver of Application of C.R.C.P. 80(a)**

Colorado Rule of Civil Procedure 80(a), insofar as it requires that evidence be taken stenographically for proceedings in the district court, is waived for proceedings conducted by any district or county judge assigned to hear a district court case when the Chief Judge of the district determines that such a waiver is necessitated by exigent circumstances, such as the unavailability of a court reporter.

Effective September 22, 2000, and continuing until further order, district court proceedings mentioned above may be recorded by tape or other electronic means.

**DONE** this 22nd day of September 2000.

/s/

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Mary J. Mullarkey, Chief Justice