

TRIAL COURT ADMINISTRATION

Policy 511

August 6, 2021

COURT RECORDING PROCEDURES

SECTION 1. Authority and Purpose

Under Administrative Rule 22, the Administrative Council is assigned the responsibility of developing uniform practices for the trial courts.

The Administrative Council recognizes that certain practices must be followed to ensure that accurate and timely transcripts may be prepared from proceedings taken electronically.

SECTION 2. Responsibility and Duties of Operator

The operator of the electronic recording equipment is responsible for the quality of the record of the proceeding. To ensure the quality the operator will:

1. test the recording system prior to each day's proceedings;
2. listen and monitor the proceeding through the headphones (confidence monitoring) to ensure that the proceedings are being recorded;
3. inform the judge if any equipment is malfunctioning or if any person's testimony is inaudible; and
4. create and maintain annotations/tags appropriate to the proceeding.

In carrying out these duties the operator will substantially comply with the procedures contained in Addendum I of this policy.

SECTION 3. Auditing Compliance

The state court administrator has the authority to audit compliance with this policy.

Addendum I: Electronic Court Recording Procedures

INTRODUCTION

These procedures are adopted to assist in achieving maximum quality in recording by establishing uniform methods for operating electronic court recording equipment and producing the record of electronically recorded court proceedings.

A. Definition of Annotation/Tag

An annotation/tag is a time stamped noted created during a proceeding to aid with the playback of a proceeding and preparation of a verbatim transcript.

B. Duties and Responsibilities of Operator

1. The operator should log into the software prior to a scheduled hearing to test the recording software and equipment, which should include a recording and playback of all channels. This test should be completed before the morning and afternoon sessions and enough time should be allotted to troubleshoot and resolve any issues that are discovered. If the operator is recording remotely, all remote recording equipment should be tested by the operator prior to court with the assistance of onsite staff. If issues cannot be readily resolved by the operator, the operator must contact the Judicial Branch Information Technology (JBIT) Help Desk for assistance prior to beginning the session.
2. The record consists of a digital record with appropriate annotations/tags.
3. The operator should listen to the recording through headphones and maintain a log of the proceedings. To assure the quality of the audio recording and the completeness of the annotations/tags, the operator may need to ask people to speak into a microphone, to speak louder, or to spell their names or the names of people or other areas/events. The operator should have the headphones on at all times to provide confidence monitoring. This ensures that the proceedings are being properly recorded and that the quality of the audio being recorded is acceptable.

C. The Judge

The following practices will assist in creating an accurate record by:

1. maintaining court decorum to permit an accurate record to be recorded;

2. making participants aware that the court proceeding is being recorded;
3. speaking loudly, clearly, and reminding participants to do the same;
4. calling the case by name, number, and type of proceeding;
5. reminding all participants to properly identify themselves when making their initial appearance during a proceeding;
6. announcing on the record if a side bar conference is to be recorded;
7. reminding counsel, when necessary, to remain within an appropriate distance of microphones;
8. reminding participants that excessive noise interferes with the recording. This includes rustling papers, tapping fingers on microphones, etc.; and
9. stopping all court proceedings when notified that the recording equipment is not working properly.

DAILY STARTING PROCEDURES

The operator should bring adequate supplies to prepare for court.

A. Supplies

The supplies needed on a daily basis include:

1. a court calendar;
2. a portable backup recording unit and annotation/tag sheets to ensure the record can be made if on-site recording equipment fails;
3. witness and exhibit lists; and
4. any notes, manuals, or guides regarding operation of the recording system and other equipment in the courtroom.

B. Testing Procedures

The operator must test the recording system before proceedings begin.

1. Ensure all microphones and the sound system components are powered on. If recording remotely, the operator should request assistance from on-site staff.
2. Check the batteries of all wireless microphones to be sure that they are connected and still have power if they are being used.
3. Log into the computer and sign into the recording software, open docket for the assigned courtroom, and start testing the equipment.
4. If possible, have an individual speak into all of the microphones while the recorder monitors through the headset to ensure the sound is both clear and loud enough to be readily understood. If no one is available to walk to each microphone during your test, start the recording and walk to each microphone yourself, speaking into the microphone, identify the microphone at each location and lightly scratch the surface of each microphone.
5. Playback a test recording to make sure the sound levels and quality of the recording are acceptable.

6. If any issues arise during the test recording, reboot the computer and start the test process over again.
7. If rebooting does not resolve the issue, call the JBIT Help Desk prior to beginning the court proceedings for the day.

C. Troubleshooting Equipment

If there are problems with the recording equipment, repeat the above steps. If they persist, try the following:

1. check connections for the microphone at each location and headset;
2. check volume control within the recording software and ensure that the sound is not set to “muted”;
3. check volume control within the mixer and touch panels within the courtroom and ensure that the sound is not set to “muted”;
4. restart the computer;
5. if the problem persists, contact the JBIT Help Desk. If the Help Desk is unable to resolve the issues, make arrangements to have the proceeding covered by a court reporter, switch courtrooms or use the backup recording unit.

D. Computer Usage While Recording

Programs required for court sessions such as e-mail, Odyssey, Zoom, and word processing programs may be open while recording. Internet use should be kept to a minimum to prevent recording failures.

ANNOTATING/TAGGING THE RECORD

A. Purpose and Content of Annotations/Tags

Annotations/tags are essential for the preparation of an accurate transcript and to search the recording software for specific hearings. However, the detail associated with annotations/tags is dependent on the type of proceeding. The operator should remember that the transcriber must rely solely on the audio record and the annotations/tags to produce an accurate transcript. Errors, omissions, misspellings, or inconsistencies make transcript preparation more difficult.

In general, annotations/tags serve three purposes: 1) to locate a specific proceeding, 2) to locate a specific portion of the proceeding, and 3) to aid the transcriber in preparing the transcript. Dependent on the proceeding, the content of annotations/tags includes: 1) the case number, 2) a time stamp that corresponds to the beginning of the specific portions of proceedings; 3) the times of specific events; 4) the names of speakers, 5) correct spellings of names and other uncommon words or phrases; and 6) any other pertinent notes.

B. General Procedures

1. Utilizing the Docket

By reviewing the docket within the court recording program prior to court, the operator should identify any missing information or cases and have them added to the calendar.

Basic case information which should be included at the beginning of the annotations for each proceeding is as follows and is described in more detail in this chapter. This might be the only information on the calendar.

- a. Case name;
- b. Case number;
- c. Full name of judge and abbreviation;
- d. Date;
- e. Time;
- f. Type of hearing;
- g. Full name of attorney for plaintiff and abbreviation;
- h. Full name of attorney for defendant and abbreviation; and
- i. Full names of witnesses and abbreviations.

Portable recording systems require additional information. In addition to providing the full name of each speaker, an abbreviation should be developed for identifying them throughout the remainder of the proceeding and annotate. See subsection 2 for details.

Note: The North Dakota Court System uses a standardized microphone assignment system as follows: #1 Judge; #2 Defendant/Witness/Teleconference/Interactive Video; #3 attorney; #4 attorney, but at times may vary in courtrooms. It is important to identify each speaker and the microphone channel they are using if the courtroom sound system is not using the standardized microphone assignments or seating arrangements of participants does not conform to the microphone assignments. If they move to another channel during the proceeding, as often as possible the operator should identify the change by inserting an annotation/tag of both the speaker's full name with the new channel. See subsection 3.

The following procedures apply primarily to trials:

2. Indicating Courtroom Events

Annotations are required to note the following:

- a. when the proceeding begins;
- b. when the proceeding ends;
- c. beginning and ending times of each recess;
- d. each time the jury enters the courtroom;
- e. each time the jury leaves the courtroom;
- f. beginning and ending times of noon recess;
- g. beginning and ending times of each off-the-record event;
- h. when exhibits are marked, offered and/or received; and
- i. oaths and examination of the jury, bailiffs, and witness(es).

The importance of indicating case events cannot be overemphasized. If a transcript of all or a portion of a proceeding is ordered, the transcriber will need this information to produce an accurate and timely transcript.

3. Identifying Multiple Speakers

Court cases involving multiple participants will result in many speakers being recorded on a single channel. In such instances, it will be necessary to make certain that each participant is clearly recorded and that proper speaker identification is annotated/tagged.

A similar situation occurs when attorneys use the speaker's stand (lectern). A single microphone will be used by a number of speakers during the course of a proceeding. These speakers will most likely be recorded on other channels as well during other parts of the same proceeding. Again, a transcriber will depend on the annotations/tags for proper identification of the speakers.

C. Specific Procedures

The following are instructions for annotating/tagging specific types of events in a proceeding.

1. Voir Dire (Jury)

If recorded, Voir dire is annotated/tagged the same as other proceedings. Remember to verify spellings of all names and use juror numbers or names when they are speaking.

2. Witness Called

Clearly annotate/tag the name of each witness when a witness is called and form of examination. Example: Direct Examination; Witness: Joseph Smith.

3. Interpreters

When the court is using an interpreter, the interpreter is sworn in. Annotate and tag what the interpreter says in English. If the person being interpreted says something in English, it should be annotated as well.

4. Guttural Utterances

Guttural utterances such as "uh-huh" or "uh-uh" may be marked on the log as such if the attorney or judge fails to clarify the record. (Review pertinent AAERT manual section regarding how to transcribe guttural and non-verbal responses).

5. Off-Record Conversations

Although not the responsibility of the court recorder, it is essential to note there will be occasions when conversations from people at the counsel tables are picked up on the recording. Ask the judge to instruct the attorneys to move away from the microphones when they are conferring off the record.

6. Special Terms and Proper Names

For proper names or special terms, if spelling has not been verified by the operator, it should be annotated/tagged accordingly so the transcriber will know to confirm the correct spelling.

7. Bench and Sidebar Conferences

If a conference is off-the-record, the operator should make an annotation or tag noting when the conference begins and ends.

If a conference is on-the-record, it must be recorded. The operator should indicate in the annotations/tags when a conference is on-the-record. The following are the steps in recording and annotating an on-the-record sidebar or bench conference.

- a. Note the time stamp at the beginning of the conference and identify the event in the annotations/tag list.
- b. The operator must annotate/tag all bench conferences and keep the headphones on. Make certain that the judge's microphone is suitably close to all speakers.
- c. Note in the annotation/tag the name of each person who speaks at the bench conference and, as thoroughly as possible, indicate what they say. All speakers will be recorded through a single microphone onto a single channel, and the transcriber will be dependent on the annotations for identifying the speaker. **Remember that all voices tend to sound the same when whispered**, so write their name (abbreviation) and the first words they say in order to identify the speaker.
- d. The judge's microphone should be repositioned after the conference ends if it was moved.
- e. Resume normal recording and annotating/tagging procedures.

8. Audio and Video Sources

Attorneys may on occasion play audio or video materials during the course of the proceedings. In such instances, the operator should follow these procedures:

- a. The playing of the audio or video is to be recorded.
- b. Make a note in your annotations/tags "video (or audio) of _____ played in court."

- c. Move a microphone to a position near the speaker through which the recorded material will be played.
- d. Annotate/tag when the playback of the audiotape or videotape concludes, note that the playback concluded, reposition the speaker microphone, and resume normal recording and annotating procedures.

9. In-Chambers Proceedings

All in-chambers proceedings are part of the court record and must be properly recorded unless the judge indicates that the proceedings will be “off the record”. Annotate/tag when the in-chambers proceeding begins. Identify all parties and attorneys present for the conference. The operator must be particularly conscientious in annotating key words and phrases for each speaker.

10. Telephone Conversations

Telephone conversations will be connected and recorded through the courtroom sound system. Annotate/tag the time at which a telephone conversation begins, and identify the person. For example, "phone call between Judge Benjamin and Defense Attorney Rebecca Wilson regarding . . .". Frequently, the operator will not know the subject matter of a telephone call before the conversation starts. This information should be provided in the annotations as soon as possible after a conversation ends.

If more than two persons are involved in a telephone conversation, ask each party to identify him/herself before speaking. It is crucial to enter an annotation/tag corresponding to each change of speaker. Any party appearing by telephone should identify themselves before speaking. It is crucial to enter an annotation/tag corresponding to each change of speaker. If necessary, the recorder may need to remind the judge to instruct the parties to identify themselves before speaking.

D. In-Court Playback of Testimony

There are a variety of circumstances where the operator may be asked to play back testimony or some other portion of the audiotape record. Most frequently, playback will be requested in open court. Discussion by an attorney and the judge over an objection to a particular question may result in a request to play the question back. In such instances, the operator's ability to quickly locate the question for playback will depend on the precision of the operator's annotations/tags. The operator's goal should be to locate and playback requested portions of testimony as quickly as possible. This is another reason annotations/tags are so important.

To play back a certain portion of the proceedings:

1. Use playback function of software to locate and play requested portion of the record.
2. Position microphone(s) near the computer speaker(s) if the playback is to be made a part of the record.
3. Unplug headset and play recording through the speaker(s) on the computer. Adjust speaker volume on computer, if needed.
4. Return equipment to record mode and make annotations/tags of playback.
5. Inform judge or attorneys that they can resume. **The operator should not let the attorneys, judge, or witness begin the proceeding before the recording equipment is in the record mode and the operator is ready to continue.**

Approved by Council of Presiding Judges 03/16/01; amended by Administrative Council 3/14/05;
amended by Administrative Council 12/14/15; amended by Administrative Council 08/06/21