

Administrative Order
Transcription Procedures for Appellate Review

1. **Purpose.** The purpose of this Administrative Order is to set out in detail the procedure for the appellant, appellee, court reporter, approved transcriber, and clerk's office to prepare the transcript of trial court proceedings for inclusion in the record on appeal.

2. **Definitions.**

Clerk. "Clerk" shall include a Register of Probate or Recorder of Land Court, where applicable.

Forms. Where this order indicates a form for a particular purpose, the form, which may include online forms as well as forms available at a clerk's office, shall be promulgated and updated from time to time by the Chief Justice of the Trial Court or the Chief Justice of a Trial Court Department.

Office of Transcription Services. "OTS" means the Office of Transcription Services in the Executive Office of the Trial Court.

3. **Transcript requirements: formatting, content, and production.** The transcript must comply with the Uniform Transcript Format and be produced by a court reporter or approved transcriber from the OTS list. In addition, the transcript must be text searchable and shall not be password protected or otherwise locked in a manner that prevents a court or party from viewing or utilizing the transcript. The electronically signed certificate page required by the Uniform Transcript Format shall be completed by manually typing "/s/ name of signatory" and not by using an electronically inserted signature.

4. **Ordering the transcript in cases other than child welfare proceedings.**

(a) Proceedings recorded by court reporter.

(i) Appellant. Within 14 days of filing the notice of appeal, the appellant shall order a transcript of any relevant proceedings using the form promulgated for that purpose, together with a copy of the docket sheet. Within the same time period, the appellant shall file a copy of the transcript order form with the clerk and shall serve a copy on all other parties.

(ii) Appellee. If an appellee chooses to order the transcript of proceedings that the appellant has not ordered and that have not been previously transcribed, *see* Mass. R. App. P. 8(b)(1)(A), the appellee shall order a transcript of such proceedings using the form promulgated for that purpose, together with a copy of the docket sheet within 14 days of the service of the appellant's transcript order form. The form shall include the name, address, electronic mail address, and phone number of the appellant's counsel (or the appellant, if self-represented). The appellee shall file a copy of the transcript order form with the clerk and shall serve a copy on all other parties.

(b) Proceedings electronically recorded by For The Record (FTR) systems.

(i) Appellant—transcript order. The appellant shall promptly order a transcript of any relevant proceedings using the online form generated by Court.fm. The system will generate and transmit to the appellant a Transcript Order Form. Within 14 days of filing the notice of appeal, the appellant shall transmit the Transcript Order Form to OTS, file a copy of the form with the clerk's office, and serve a copy of the form on all other parties.

(ii) Appellee—transcript order. If an appellee chooses to order the transcript of proceedings that the appellant has not ordered and that have not been previously transcribed, *see* Mass. R. App. P. 8(b)(1)(A), the appellee shall promptly order a transcript of such proceedings using the online form generated by Court.fm. The system will generate and transmit to the appellee a Transcript Order Form. Within 14 days of service of the appellant's transcript order form, the appellee shall transmit the Transcript Order Form to OTS, file a copy of the form with the clerk's office, and serve a copy of the form on all other parties. The Transcript Order Form shall include the name, address, electronic mail address, and phone number of the appellant's counsel (or the appellant, if self-represented).

(iii) Indigent parties. In a civil case, any indigent appellant who requests the Commonwealth to pay for the transcript shall transmit a copy of the court order allowing for payment of the transcript costs by the Commonwealth to OTS with the Transcript Order Form. In a criminal case in which an indigent party is the appellant, if (a) the appeal is not a direct appeal of a conviction; (b) the expected cost of the transcript will be greater than \$1000; and (c) the appellant requests the Commonwealth to pay for the transcript, the appellant shall transmit a copy of the court order allowing for payment of the transcript costs by the Commonwealth to OTS with the Transcript Order Form. It shall be presumed that the expected cost of a transcript of more than nine hours will be greater than \$1000.

(iv) Impounded material. A party ordering the transcription of impounded material shall obtain an order from the court granting relief from impoundment under the Uniform Rules on Impoundment Procedure. The party ordering the transcript shall transmit a copy of the court order to OTS with the Transcript Order Form.

(v) Duties of OTS. OTS shall retrieve the electronic recordings and transmit them to an approved court transcriber.

(vi) Duties of the approved transcriber. The approved transcriber shall promptly notify the appellant of his or her identity and contact information and make payment deposit and production arrangements.

(c) Proceedings record electronically by Jefferson Audio-Video Systems (JAVS) or CourtSmart systems.

(i) Appellant—audio copy and transcript order. The appellant shall promptly order a transcript of any relevant proceedings from the clerk's office using the form promulgated

for that purpose and attaching a copy of the docket sheet. Within 14 days of filing the notice of appeal, the appellant shall serve a copy of the Transcript Order Form on all other parties.

(ii) Appellee—audio copy and transcript order. If an appellee chooses to order the transcript of proceedings that the appellant has not ordered and that have not been previously transcribed, *see* Mass. R. App. P. 8(b)(1)(A), the appellee shall promptly order a transcript of such proceedings from the clerk's office using the form promulgated for that purpose. The form shall include the name, address, electronic mail address, and phone number of the appellant's counsel (or the appellant, if self-represented). Within 14 days of service of the appellant's Transcript Order Form, the appellee shall serve a copy of the transcript order form on all other parties.

(iii) Indigent parties. In a civil case, any indigent appellant who requests the Commonwealth to pay for the transcript shall attach a copy of the court order allowing for payment of the transcript costs by the Commonwealth to the Transcript Order Form provided to the clerk. In a criminal case in which an indigent party is the appellant, if (a) the appeal is not a direct appeal of a conviction; (b) the expected cost of the transcript will be greater than \$1000; and (c) the appellant requests the Commonwealth to pay for the transcript, the appellant shall attach a copy of the court order allowing for payment of the transcript costs by the Commonwealth to the Transcript Order Form provided to the clerk. It shall be presumed that the expected cost of a transcript of more than nine hours will be greater than \$1000.

(iv) Impounded material. A party ordering the transcription of impounded material shall obtain an order from the court granting relief from impoundment under the Uniform Rules on Impoundment Procedure. The party ordering the transcript shall attach a copy of the court order to the Transcript Order Form provided to the clerk.

(v) Duties of the clerk. The clerk shall promptly transmit the completed transcript order form to OTS through electronic mail. The clerk shall promptly mail an audio copy of the requested proceedings to OTS.

(vi) Duties of OTS. OTS shall transmit the audio recording to an approved court transcriber.

(vii) Duties of the approved transcriber. The approved transcriber shall promptly notify the appellant of his or her identity and contact information and make payment deposit and production arrangements.

5. **Ordering the transcript in child welfare proceedings.**

(a) Duties of the clerk. If the parties do not file a stipulation designating the parts of the proceedings which need not be transcribed or a statement of intent to proceed under Mass. R. App. P. 8(d) within 14 days of the filing of the notice of appeal, the clerk shall promptly order the transcript. If the proceedings were recorded by the FTR system, the clerk shall order the transcript through Court.fm, transmitting the completed Transcript Order Form to OTS through electronic mail. If the proceedings were recorded by a JAVS or CourtSmart system, the clerk

shall transmit a completed transcript order form to OTS through electronic mail and mail an audio copy of the proceedings to OTS. The clerk shall transmit a copy of the transcript order form on all parties.

(b) Duties of OTS. OTS shall transmit the audio recording to an approved court transcriber.

(c) Duties of the approved transcriber. The approved transcriber shall promptly notify the appellant of his or her identity and contact information and make payment deposit and production arrangements.

6. **Proceedings to transcribe in criminal cases.** In criminal cases, except for compelling cause, the appellant shall order the transcription of at least the following proceedings:

- a. Hearings on motions to dismiss
- b. Hearings on motions to suppress evidence
- c. Hearings on motions in limine
- d. Jury empanelment
- e. Trial
- f. Verdict
- g. Disposition
- h. Evidentiary posttrial hearings

7. **Payment.**

(a) In general. Unless the parties agree otherwise or the trial court orders otherwise pursuant to Mass. R. App. P. 8(b)(1)(C), the appellant shall be responsible for making arrangements for payment for the transcript to be filed in the trial court and for the copies of the transcript for all parties. In the case of cross appeals, the party ordering any transcript shall be responsible for making arrangements for payment for those transcripts as if that party was the appellant.

(b) Non-indigent cases.

(i) Deposit—transcript requested by appellant. With the submission of any transcript order to a court reporter, the appellant shall remit to the court reporter a deposit equal to 50% of the estimated cost of the requested transcript. In the case of an electronic recording, within 14 days of the approved transcriber's notifying the appellant of his or her identity, the appellant shall remit to the approved transcriber a deposit equal to 50% of the estimated cost of the requested transcript. For this purpose, it shall be assumed that each hour of proceedings will produce 40 pages of transcript.

(ii) Deposit—transcript requested by appellee. Except in a cross appeal, upon receipt of a transcript order from an appellee, the court reporter or approved transcriber may promptly contact the appellant and require a deposit equal to 50% of the estimated cost of the

requested transcript, to be paid within 14 days. For this purpose, it shall be assumed that each hour of proceedings will produce 40 pages of transcript.

(ii) Notice of completion. Within 14 days of completing the transcript, the court reporter or approved transcriber shall send a bill for the balance of the cost of the transcript to the appellant and shall send a notice of completion to the clerk and to all other parties.

(iii) Balance. Within 14 days of issuance of the bill, the appellant shall pay the court reporter or approved transcriber the balance of the cost of the transcript. Failure by the appellant to pay the balance due within 14 days shall be grounds for dismissal of the appeal under Mass. R. App. P. 10(c), upon motion by the appellee.

(c) Indigent cases. In all cases in which counsel is required to be made available to the appellant pursuant to Supreme Judicial Court Rule 3:10, the cost of any transcript shall be paid in accordance with G.L. c. 261. The appellant shall be responsible for providing the court reporter or approved transcriber with all information necessary to obtain payment from the Commonwealth or other responsible entity.

(d) Cancellation. If an appeal is dismissed, or if a transcript order is cancelled for any other reason, the appellant shall promptly pay the court reporter or approved transcriber for such portion of the transcript as has been completed at the time of cancellation. Except where the appeal was dismissed, the ordering party shall notify the clerk's office and all other parties of the cancellation within 14 days.

8. **Delivering the Transcript.**

(a) Transmission of PDF to OTS. Within 14 days of receipt of the balance of payment, in a non-indigent case, or within 14 days of completion, where the appellant is indigent, the court reporter or approved transcriber shall transmit the transcript in electronic PDF form to OTS for review. OTS shall promptly review the transcript for compliance with Uniform Transcript Format requirements and paragraph 3 of this order and notify the approved transcriber of approval.

(b) Transmission of PDF to the trial court. Upon receipt of OTS's approval, the court reporter or approved transcriber shall transmit the transcript in electronic PDF form to the clerk. The file name shall be in the format [Docket number]-[Case name]-[Identity of proceeding] (Date of proceeding); e.g., 1618CR1542-Comm. v. John Smith-Trial Day 1 07262016.pdf. The court reporter or approved transcriber shall provide the clerk with a list of the proceedings included in each transmission, with the identity and date of the proceedings. If the transmission is through a CD or other physical media, the physical media shall have a label affixed to it that identifies the name of the case, the court division and department, the docket number, type of proceeding (e.g., jury trial), name and title of judge or presiding judicial officer, the date of each transcript, and the name and telephone number of the court reporter, stenographer, or transcriber.

(c) Transmission of PDF to the parties. Simultaneously with transmitting the transcript to the clerk, the court reporter or approved transcriber shall transmit a copy of the

transcript in electronic form to all of the parties to the appeal. If a party wishes to have the transcript delivered in any manner other than electronic transmission, that party must make satisfactory payment arrangements with the court reporter or approved transcriber to cover the cost of production and delivery before the transcript must be delivered.