

**Supreme Court of Florida
Commission on Trial Court Performance and Accountability
Meeting
Teleconference
February 16, 2011
11:30 am to 12:30 pm**

Minutes

Members in attendance:

Judge Terry Terrell, Judge Paul Alessandroni, Judge Dawn Caloca-Johnson, Judge Leandra Johnson, Judge Peter Marshall, Judge Elizabeth Metzger, Judge Diana Moreland, Mike Bridenback, and Carol Ortman

Members absent:

Judge Brian Davis, Judge Kathleen Kroll, Judge Ellen Sly Masters, Gay Inskeep, Justice Jorge Labarga (Liaison), and Judge Lisa Davidson (Liaison)

Staff in attendance:

Greg Youchock, Maggie Geraci, Patty Harris, Sharon Buckingham, and Laura Rush

Judge Terrell called the meeting to order at 11:34 am.

I. Court Reporting Standards of Operation and Best Practices – Producing Copies of Recordings

Patty Harris provided an overview of the issue presented at the January 31, 2011 meeting. She noted that this issue was presented at the Court Reporter Managers' quarterly conference call held on February 11, 2011. Eighteen of the twenty circuits were in attendance. The managers were provided with information regarding the issues presented at the January 31, 2011 meeting relating to the standard of operation for producing copies of recordings, including:

- the current requirements of rule 2.420, Florida Rules of Judicial Administration;
- the burden placed on attorneys and other participants to safeguard confidential information under rule 2.535, Florida Rules of Judicial Administration;
- the workload burden on circuit staff to implement the policy; and
- the options presented to the members to revise the standard of operation.

The managers were presented with an amended Option #1, which would require a notice of confidential information submitted to the court by attorneys or self-represented litigants that would identify confidential information given during testimony. It would also require a non-disclosure agreement prohibiting the dissemination of confidential information contained on the recording to be signed by attorneys, parties, and/or self-represented litigants. Additionally, the public would not be able to receive a copy of the recording without the review and redaction of confidential information. The managers were asked to provide feedback on the amended Option #1.

Ms. Harris reported that some managers stated that it would be impractical to have attorneys fill out notices of confidential information, as it would be procedurally difficult for an attorney to anticipate or recall all confidential information mentioned during testimony. Managers also noted that self-represented litigants would have difficulty identifying confidential information. Overall, the managers felt the notice requirement could not be realistically relied upon.

As to the non-disclosure agreements, Sharon Buckingham stated that she asked the managers whether it would be practical to add a signature line on the already existing request forms. In response, some circuits noted they use email in lieu of hard copy forms, so there may be associated difficulties in obtaining signatures. After much discussion, the managers suggested providing a written acknowledgement with each recording stating that the requester understands that confidential information may be contained on the recording and agrees to not disseminate such confidential information.

Ms. Harris stated that, based on the feedback from the court reporting managers, a revised amended Option #1 has been drafted for the Commission's consideration. For attorneys, parties, and self-represented litigants, this option requires an acknowledgment that: 1) confidential information may be contained on the recording, 2) further dissemination of confidential information is prohibited, and 3) a violation of the prohibition may constitute contempt of court. For the public and media, the recording would still be reviewed before release.

Ms. Buckingham added that it was discussed with the managers that the acknowledgement could be formatted in many ways, such as a statement in an email or with an insert or sticker on the casing of the recording and would thus allow the circuits flexibility in how to implement the policy. She noted that Gay Inskeep had sent an email prior to the meeting stating she was in favor of the revised amended Option #1. Additionally, Judge Kroll sent comments in favor of the revised amended Option #1, but stated that she preferred there be some "contract" of release signed by the person receiving the documents and the court.

Mike Bridenback moved to accept the revised amended Option #1. Carol Ortman seconded the motion. Judge Marshall asked where the requests for recordings were coming from, questioning how many were coming from the public or media. Ms. Buckingham responded that the majority of requests are from the public defenders and the state attorneys. The public and media requests occur more often in metropolitan areas of the state. Ms. Ortman noted that in her large circuit, public/media requests are less than one percent of all requests. Judge Marshall expressed concern with the burden that the revised amended Option #1 would still have on the small circuits with minimal staff. Mr. Bridenback noted that it was a burden, but much less of a burden than the original policy and that it is a good compromise. Ms. Buckingham stated that OSCA is very aware of this problem and will work with circuits to implement the policy in ways that avoid as much of the burden as possible.

Judge Terrell stated that every circuit will face a burden, but noted that the Supreme Court gave clear direction on public accessibility to court records. He suggested coming up with standard language for the acknowledgement that could be used by the circuits. Ms. Buckingham responded that staff could design this language. Judge Johnson stated that uniformity would be very helpful to the state.

Upon a vote, the motion carried unanimously.

Judge Terrell complimented everyone involved in the follow-up to this issue, especially the court reporting managers and staff. Ms. Ortman noted that she was pleased with what the Commission has done.

Ms. Buckingham noted that based on the decision today, staff could draft a memorandum to the Chief Justice for Judge Terrell's review and signature. Judge Terrell stated that he would also like it sent to the members for review. Ms. Buckingham confirmed that staff would do this.

Judge Terrell asked if there were any further issues that needed to be discussed. Ms. Buckingham stated that the April 29, 2011 TCP&A meeting will not be an in-person meeting because of recent budget constraints, but could be held as a videoconference or teleconference. The members will be updated as more details are determined for the meeting.

Judge Terrell adjourned the meeting at 11:56 a.m.