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DIRECTIVE # 08-19
[Supersedes July 16, 1990 Directive (Unnumbered)]
[Questions or comments may be directed to the Appellate Division at 609-815-2950]

TO: Assignment Judges
Trial Court Administrators

FROM: Glenn A. Grant, J.A.D.

SUBJ: Court Reporters – (1) Notice to Assignment Judge for Staff OCR Trial Coverage; (2) Backup Registry for CART Services; and (3) Use of Freelance Stenographers to Prepare Unofficial Records

DATE: June 3, 2019

This directive promulgates two separate yet related new policies regarding court reporters. The policies cover both Official Court Reporters (OCRs) – who are Judiciary employees – and Certified Realtime Court Reporters (CRCRs) – who are not employees. The directive (1) announces a new requirement that Assignment Judges must be informed of requests by trial judges to assign staff OCRs to cover court proceedings, and (2) establishes a process for using private court reporters to provide Communication Access Realtime Translation (CART) services as an accommodation pursuant to Title II of the Americans with Disabilities Act. Taken together, these two new policies are designed to support fair and efficient use of court reporters and to ensure access to and participation in court events by court users with disabilities. This directive (3) also reaffirms that with Assignment Judge approval freelance stenographers may be used by the parties at their expense to create unofficial daily records of court proceedings, with the understanding that such records cannot substitute for the official court record created by CourtSmart.

Background – CourtSmart and Current Uses of Court Reporters

In 2007 the Judiciary transitioned from tape recorders and frequent use of court reporters to the digital sound recording system CourtSmart. The CourtSmart system uses both a primary and a back-up recording server, one to provide a public record for playback in court or for creation of a transcript and the other to ensure a backup in the event of a failure of the primary recording. We transitioned to a digital recording system to provide enhanced functionality, greater convenience, and improved security of the record. The Judiciary's widespread reliance on CourtSmart reflects one of many ways in which we ensure consistent, high-quality services through technology while efficiently using staff resources.

While CourtSmart is now our primary method of recordation, the Judiciary does employ a limited number of OCRs to perform such services as real-time transcription of court proceedings, webcasting of Supreme Court oral arguments, and ADA accommodations for judges, Judiciary staff, and court users. The Appellate Division coordinates statewide OCR services. To date, we have maintained sufficient staffing to provide OCRs when requested for approved purposes, including coverage of court events and ADA accommodations.

(1) Trial Judge Requests for OCRs – Statewide Availability; Assignment Judge Involvement

Most trials proceed without involvement of OCRs, with CourtSmart providing a reliable record subject to review and replay or read-back. However, some judges state that OCRs fulfill an important role in complex and/or lengthy trials involving multiple parties and numerous witnesses. They suggest that reliance on CourtSmart for replay could pose a risk of inadvertent disclosure to jurors of information not intended for their consideration, such as sidebar conversations and discussion of evidence excluded by the court. Judges sometimes request the services of an OCR for read-backs in these circumstances. In addition, in an effort to ensure the integrity of certain complex and protracted proceedings, judges sometimes request the services of an OCR for those proceedings.

Effective immediately, trial judges who seek the assignment of a Judiciary OCR to provide in-court coverage for proceedings already being recorded by CourtSmart are required to notify the Assignment Judge. The trial judge should inform the Assignment Judge as to why an OCR is being requested. Over time, we anticipate that this process may support the development of a standard list of factors to be considered in assigning in-court reporters and may support Assignment Judges in evaluating these requests according to consistent criteria. As statewide employees, OCRs are available for use in any county or vicinage, and any trial judge can make a request for use of a court reporter, on notice to their Assignment Judge. We want to ensure that OCRs are assigned as needed, especially to cover certain types of cases. At this time, however, we are not mandating particular factors or promulgating a statewide form. If the Assignment Judge determines that there is a valid basis for assignment of an OCR, then a request will be submitted to the regional court reporter supervisor.

(2) Backup Registry of Court Reporters for ADA Accommodations

Judiciary OCRs currently are used to provide Communication Access Realtime Translation (CART) services as an accommodation pursuant to Title II of the ADA. To date, staff OCRs have been able to cover ADA accommodations while also providing coverage for court proceedings and webcasting of Supreme Court oral arguments. It is possible, however, that an increase in need – potentially including an influx of CART accommodations – could exceed current or future staffing resources.

As a matter of policy, the Judiciary will allocate staff OCRs first to cover trials and other court proceedings and next to cover webcasting of Supreme Court oral arguments, because aspects of these assignments require greater familiarity with and training on Judiciary

operations. Effective immediately, however, the Judiciary also will permit the use of qualified private Certified Realtime Court Reporters (CRCRs) to provide CART services, but only if there are insufficient staff OCR resources.

At the vicinage level, the process for handling a request for an ADA accommodation will remain largely the same. The Title II ADA Coordinator will engage in the required interactive process. If the interactive process indicates the need for CART services as part of an ADA accommodation to ensure effective communication, the Title II ADA Coordinator will contact the Regional Court Reporter Supervisor to arrange for CART services. A staff OCR will be provided if available. However, if no staff OCR is available to provide CART services, then the Regional Court Reporter Supervisor will contact one or more of the agencies listed in the State contract for Certified Court Reporters / Certified Realtime Court Reporters. This is a statewide contract containing a regionalized list of agencies approved to provide court reporting services. When a court reporter is obtained through this list to provide ADA accommodations, the reporter must be certified to provide real-time transcription services. A court reporter who has not been certified for real-time services cannot be used as a substitute. Coordination and payment of CRCRs will be in accordance with the terms of the State contract.

Private court reporters used for CART services must comply with all contractor provisions, including the requirement of compliance with the State's Business Ethics Guide. For Judiciary purposes, the requirement that personnel observe all laws and regulations includes the requirement of confidentiality. As with staff OCRs, the selected agency will be informed of the nature of the assignment and the CRCR will be required to bring the equipment necessary to provide CART services (neither the Appellate Division nor the vicinage will provide CART equipment). The costs of services provided by private CRCRs will be covered by the central office and will not be charged back to the vicinage. More detailed operational guidance may be provided to relevant vicinage staff, including the Operations Division Managers and the Title II ADA Coordinators.

(3) Credentials of Freelance Court Reporters; CourtSmart as the Official Record – Supersedes July 16, 1990 Directive (Freelance Stenographers & CourtSmart Recording)

In addition to approving trial judge requests for assignment of staff OCRs, the Assignment Judges can permit licensed freelance stenographers to make an unofficial record of court proceedings (even when a sound recording is made by CourtSmart) at the request of attorneys or parties and at the parties' expense. The CourtSmart recording remains the official court record, pursuant to R. 1:2-2 and Directive #07-10.

The division manager responsible for the trial must reach out to the Regional Court Reporter Supervisor to advise that a freelance stenographer has been proposed. The Regional Court Reporter Supervisor will then consult with the freelance stenographer, verify the status of the stenographer's license with the State of New Jersey, provide a copy of the "Transcript Format for Judicial Proceedings" handbook, and confirm that the freelance stenographer has provided all necessary information and completed all required forms.

As noted, the CourtSmart recording remains the official court record, notwithstanding the approval for a freelance stenographer to make an unofficial daily record.

Conclusion

The Judiciary continues to use technology to provide reliable, high quality services at reduced costs. We recognize, however, that there are ongoing and anticipated needs for certain limited services in particular situations to be provided in person. The policies set forth in this directive are intended to clarify and standardize appropriate uses of court reporters and freelance stenographers.

Questions regarding this directive may be directed to Karen M. Carroll, Deputy Clerk for the Appellate Division, at Karen.Carroll@njcourts.gov or at 609-815-2950 ext. 54730.

cc: Chief Justice Stuart Rabner
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