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# Massachusetts Superior Court Standing Order 2-87: Electronic Recordation of Proceedings

(Applicable to all counties )

[Disclaimer]

To insure the efficient and orderly administration of civil and criminal sessions in the Superior Court Department, it is ordered that when a Court Reporter is not available to attend a session or proceeding which would have been taken by a Court Reporter had one been available, and subject to the availability and functioning of appropriate recording devices, the Presiding Justice shall have authority, to be exercised in his or her discretion, to record the proceeding electronically.

1. The term "Court Reporter" as used herein includes official Court Reporters of the Superior Court Department, and per them Reporters hired in the usual course by the Superior Court Department.
2. No electronic recording device (hereinafter "recorder") shall be used unless approved by the Administrative Justice of the Superior Court Department. Recorders shall be operated and monitored by the session Clerk or other employee the Clerk/Magistrate so designates by and under the direction of the Clerk/Magistrate. In the absence of the session Clerk or other designee of the Clerk/Magistrate, the Presiding Justice, having determined the potential adverse effect on the administration of justice, may, with the approval of the Administrative Justice, designate another Court employee to operate and monitor the recorder.
3. The Clerk/Magistrate shall have the care, custody and control of recorders and the original recordings of all proceedings. At the beginning of every proceeding being recorded, the operator shall announce clearly the name of the case and its docket number. The cassette number and, where more than one matter or proceeding is recorded, the index number representing the beginning and end points of the proceeding, shall be noted on the case papers and in a separate log. Cassette copies shall be identified by case name, docket number, court, date of copy, name of Presiding Justice and name of person who operated the recorder.
4. Counsel shall assist in creating an audible record by properly using the microphones provided. Counsel shall speak with sufficient clarity and in sufficient proximity to the microphones to insure an audible record, and shall be responsible for requesting the Presiding Justice, when necessary, to instruct other counsel, witnesses or others as to the proper use of the microphones in order to insure an audible record.
5. The Presiding Justice shall satisfy himself or herself that the recorder is properly functioning and that a verbatim record of the proceeding is being maintained. Should the Presiding Justice at any time during the proceeding not be satisfied that the recorder is functioning properly and

that a verbatim record of the proceeding is being taken, the Justice shall take such action as may be appropriate.

6. Cassette copies of an original recording, or portions thereof, shall be made available by the Court upon request on a form prescribed by the Administrative Justice of the Superior Court Department to any person, whether or not a party, of any proceeding which was open to the public, unless the record of such proceeding has been sealed or impounded. In order that multiple cassette copies may be made simultaneously whenever possible, any person making a request regarding a proceeding that is presently pending on appeal shall certify that he or she has notified all other parties of the request. Rule 8(b)(3) of the Rules of Appellate Procedure shall govern the method and manner of certification of the record on appeal and shall govern to the extent any of its provisions may appear in conflict with those of this Standing Order. The failure of a party to request a copy seasonably shall not be grounds for the delay of subsequent proceedings.

7. A cassette copy of the original recording, or any portion thereof, of a proceeding which was not open to the public, or of a proceeding whose record has been sealed or impounded, shall be deemed to be impounded and shall be subject to the provisions of law governing such closed proceedings, as well as to any additional restrictions with regard to its use which may be prescribed by the Justice who presides over the proceeding.

8. The cost of cassette copies shall be as established by the Chief Administrative Justice of the Trial Court pursuant to G.L. c. 262, s. 4B. There shall be no cost for a cassette copy produced for the use of the Court, or as authorized and approved by the Court. G.L. c. 261, ss. 27A-27G shall be deemed applicable to a request by or on behalf of a party determined to be indigent and the cost of a cassette copy shall be deemed an "extra cost" as defined in s. 27A.

9. No cassette copy shall be used for a commercial purpose, for public or private entertainment or amusement, or for any other purpose, detrimental to the administration of justice. The recording by news media of a proceeding open to the public is governed by Canon 3(A)(7) of Rule 3:09 of the Rules of the Supreme Judicial Court.

10. Original recordings shall be preserved for six (6) years or for such further time as the Court may order, and then erased or destroyed.

*Adopted June 24, 1988, effective July 1, 1988.*

This Standing Order supercedes Standing Order No. 2-87 dated December 11, 1987.

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