

Section 4: Reporting/Recording the Proceedings and Depositions

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Section 4: Reporting/Recording the Proceedings and Depositions

Chapter 1: Logging the Proceedings

A. Purpose and Content of Log Notes

Detailed, legible log notes are essential for preparing a complete and accurate transcript. The operator should remember that the transcriber must rely solely on the recording media and the log notes to produce an accurate transcript. Errors, omissions, misspellings, or inconsistencies make transcript preparation more difficult.

In general, log notes 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. The content of log notes includes: (1) the tape recorder counter number or digital time that correspond to the beginning of the specific portions of proceedings, (2) the times of specific events, (3) the names of speakers, (4) correct spellings of names and other uncommon words or phrases, (5) a description of the activity taking place, and (6) any other pertinent notes.

B. General Procedures

1. Preparing Log at Beginning of Day

Some information necessary for a complete log is available before proceedings begin each day. This information should be obtained from the court clerk and entered on the log before court sessions begin to ensure that log notes are not inadvertently misfiled and so that the operator can more readily identify the speakers when sessions begin. Courts will have different docketing systems, so the operator must determine how recording is accomplished in his or her particular court. Some type of calendar or list of the scheduled cases can be obtained from the court clerk. At the end of each day, the operator should make certain the log contains all necessary information.

Basic case information which should be included at the beginning of the log for each proceeding is as follows and is described in more detail in this chapter:

- a. case name,
- b. case number,
- c. court name,
- d. full name of judge and abbreviation,
- e. date,
- f. time,

- g. type of hearing,
- h. full name and "P" number of attorney for plaintiff and abbreviation,
- i. full name and "P" number of attorney for defendant and abbreviation,
- j. full names of witnesses and abbreviations,
- k. name of court recorder or operator and certification number,
- l. tape or CD number, and
- m. microphone channels (tracks) and name of speaker on each channel.

In addition to providing the full name of each speaker, an abbreviation should be developed for identifying the speakers throughout the remainder of the proceeding and log. See item 2 below for details.

2. **Developing Abbreviations**

Abbreviating the names of the speakers saves the operator time during logging. However, it is essential that each speaker still be identified by his or her full name at least once at the beginning of the log notes. It can be helpful to list the names and relevant abbreviations for the speakers at the beginning of the log notes. **Abbreviations should be used consistently throughout the log for each proceeding** and should be as different as possible from one another so the transcriber will assign the correct names to each speaker.

Use the last name or a recognizable abbreviation rather than a single initial or a number. For example, District Attorney John Beauchamp could appear as "Beau" or "Bea," or Defense Attorney Maria Hanson could appear as "Han" or "Hans."

There are four exceptions to not using a single initial or number. They are:

- a. Court which is "C;"
- b. Judge which is "J;"
- c. Interpreter which is "I;" and
- d. Witnesses which are "W1," "W2," "W3," etc.

3. **Counter Numbers or Digital Clock**

Counter numbers or digital time are logged for two main reasons:

- a. they are essential for playback of testimony in the courtroom, and
- b. they enable the transcriber to locate and identify specific parts of the proceeding on the recording media.

On an analog system, when the tape changes to another tape on the recording equipment, the operator must indicate the tape number on the log, reset the counter, and insert a clean tape. Be sure to let the tape overlap and record until the end of the tape. On a digital system, the digital time will be inputted into the log as the operator keys in the notes.

4. Indicating Courtroom Events

In addition to logging digital time or counter numbers, the operator must log the times for 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 and sidebar conferences,
- h. when a witness is sworn and excused, and
- i. when exhibits are marked, identified, and admitted.

The importance of indicating case event times and counter numbers in the log cannot be overemphasized. If a transcript of all or a portion of a proceeding is ordered, the transcribers will need this information to produce an accurate and timely transcript.

5. Identifying Multiple Speakers

The transcribers will be able to identify speakers by the channel or track on which they have been recorded only **when there is no more than one speaker per track**. Because the recording system will routinely have tracks on which more than one speaker is recorded, transcribers will depend on the operator's log for accurate speaker identification.

Court cases involving multiple attorneys will result in many speakers being recorded on a single channel. In such instances, it will be necessary to make certain that each attorney is clearly recorded and that proper speaker identification is marked in the log next to the counter number corresponding to the beginning of that speaker's recording.

There are numerous times during the course of a hearing where one microphone may be used by several attorneys, for instance, at the lectern or in front of the bench. For this reason, it is imperative that speaker identifications are clear, concise, and uniform throughout the log sheets in order to ensure accurate transcription.

C. Specific Procedures

The following are instructions for logging specific types of events in a proceeding.

1. Voir Dire (Jury)

Voir dire is logged the same as other proceedings. The words "Voir dire" should be written on the line opposite the counter number for the beginning of voir dire. Remember to verify spellings of all names, and use juror numbers or names when they are speaking. It is imperative that the recorder knows the seating chart/numbering arrangement of the jurors so as to properly identify any juror that may speak during the proceeding.

2. Witness Called

As each witness is called, clearly mark on the log sheet the witness' name and the time he or she was called. Example: Witness: Joseph Smith

3. Examination of Witnesses

For examination of witnesses, indicate on the log the type of examination, the name of the person conducting the examination, the time the examination began and concluded, and the key points of the testimony. Direct, cross-, redirect, and recross-examination should all be designated in the log with the corresponding times and counter numbers. Example: Direct - by Mr. Mazur

The following are definitions of the type of examinations.

a. Direct Examination

Direct examination is the first questioning of a witness by the party on whose behalf the witness is called.

b. Cross-Examination

Cross-examination is the first questioning of a witness by the party opposed to the

party who called the witness. A witness may be called as an adverse witness under MCL 600.2161 for cross-examination. That witness is then cross-examined by all parties.

c. Redirect Examination

Redirect examination follows cross-examination. Redirect examination is the subsequent questioning of a witness by the party on whose behalf the witness is called.

d. Recross-Examination

Recross-examination follows redirect examination and is the subsequent questioning of a witness by the party opposed to the party who called the witness. This procedure is followed with every witness until the prosecutor or plaintiff rests. The defendant may, at that time, call witnesses on his/her behalf and the above procedure is again followed with every witness until the defendant rests.

e. Rebuttal

If a new matter is brought out by the defense attorney during the presentation of the defendant's case, the prosecution or plaintiff may introduce evidence intended to contradict or rebut this new matter.

4. Testimony

- a. The content of testimony is logged by writing down key words. Below is an example of a question and three ways the question might be logged.

(Question asked by Attorney Hanson): "Where were you on the night of May 5th when you heard Louis tell you that he didn't want to work for the company any more?"

<u>Time</u>	<u>Counter #</u>	<u>Speaker</u>		
2:07	123	Hans	Q	Where/May 5/Louis/work
2:07	123	Hans	Q	Where were you/heard Louis/company
2:07	123	Hans	Q	/May 5/Louis/work

The slashes (/) in the above examples indicate there is a break in the sentence where the testimony was not logged.

- b. If there are long periods of question and answer examination, it is not necessary to log every exchange. Periodic notations throughout these long examinations will at

least provide various points for searching for a particular section when playback is requested from the court.

Instead of logging the speaker identification for every question and answer, simply draw an arrow pointing downward beside the speakers' names where they are initially logged. This arrow indicates that everything following represents questions by the same attorney and answers from the same witness. The "Q" and "A" can also be omitted after the first exchange. Of most importance is logging counter numbers and key words or phrases.

For example, if an attorney is questioning a witness about the theft of an automobile, the attorney may start by asking a series of questions about when and where the auto was last seen, then a series of questions on the condition of the auto, and then a series of questions about who stole the auto. This example could be logged as follows.

<u>Time</u>	<u>Counter #</u>	<u>Speaker</u>	
3:32	250	Hans	Q Where/auto/last time
		W1	A Afternoon/home
	330		Chipped paint/dented
	495		thief/blonde/30's

- c. Any time a person other than the original persons indicated in the continued "Q" and "A" period speaks, the counter number, person speaking, and a few key words must be noted. This is especially important with objections.

<u>Time</u>	<u>Counter #</u>	<u>Speaker</u>	
3:50	499	Hans	Q Yesterday/worked
		W2	A No/it was/Friday
3:55	546	Beau	Objection/Leading

When an objection is posed, it is important to log the reason for the objection and the court's ruling on that objection.

5. Colloquy

At times there may be extensive colloquy between two persons, and it may be difficult to log each exchange. This is especially true when attorneys are arguing about an objection or some other legal point. Use the same format used with continued "Q" and "A" in this instance.

<u>Time</u>	<u>Counter #</u>	<u>Speaker</u>
134	Hans	How/acres/place
	Beau	No/further
		Visit/place
		Problem/time

This example applies only when the exchange is between two persons. Any time there are more than two persons speaking, the abbreviations of each individual should be marked in the log along with as many key words as the operator is able to write down.

At times the discussion will be moving so quickly that it will be difficult to write down key words. In this event, the most important logging element is the individuals' names in the order in which they have spoken. During "fast" discussions, it is advisable to write down the speaker's abbreviation and the first words of the attorney or judge who is speaking to aid the transcriber in keeping track of the exchange.

6. Interruptions

There will be occasions the judge will interrupt one of the attorney's examinations and ask a few questions of the witness. This usually occurs when the judge wants to clarify something. It should be logged as follows.

<u>Time</u>	<u>Counter #</u>	<u>Speaker</u>
1:45	225	Hans Q What day/say
		W2 A Monday
	245	J Was that 24 days?
		W2 No/28

7. Interpreters

When the court is using an interpreter, the interpreter is sworn in. Log only what the interpreter says in English. If the person being interpreted to says something in English, it should be logged as well.

8. Objections

Mark all objections in the log. Write down the counter number, attorney abbreviation, and either "objection" or "obj." The basis of the objection should also be noted, such as "hearsay," "irrelevant," etc. Judges will respond differently to objections.

9. Guttural Utterances

Guttural utterances such as "uh-huh" or "uh-uh" may be marked on the log as such if the attorneys or judge fail(s) to clarify the record. However, **this should not become a common practice**. The operator is encouraged to ask the judge to instruct the witness to answer with a yes or no response. The operator should never interpret the proceedings: a verbal response should be requested by the judge, the attorneys, or the operator.

10. Conversations That are not Part of the Proceedings

There will be occasions when personal conversations among people at the counsels' tables are inadvertently picked up on the recording that are not to be recorded as part of the proceedings. If this should happen, a notation should be made in the log that this exchange is not part of the record and should not be transcribed. The attorneys should be instructed to move away from the microphones when they are conferring privately.

11. Exhibits

It is important to clearly note on the log each time an exhibit is identified, admitted/received, rejected, or withdrawn. Clearly mark the exhibit number and particular status as indicated by the judge. In some courts, exhibits are marked for identification prior to trial. In other courts, the court recorder is responsible for marking exhibits during the trial. Ordinarily, one of the attorneys states, "I would like to have this document (or this exhibit) marked for identification." At this point, the operator would note in the log that an exhibit was marked for identification. Below is an example.

<u>Time</u>	<u>Counter #</u>	<u>Speaker</u>
10:03	293	PX 22 (Glasses) - marked
12:20	599	DX 29 (Letter) - admitted or received

Sometimes the identification of a document may not be this clearly indicated, or a judge will admit several exhibits at once. The operator must pay close attention to the proceedings. If the log is unclear, the operator may need to verify the identification with the clerk of the court after the court session is closed or get a list of exhibits before or after the proceeding.

Objections or arguments by the attorneys may be stated regarding the admissibility of exhibits. The judge will make his/her ruling on the admissibility of the exhibit and may say, "PX 1 will be admitted into evidence at this time," etc. Again, the operator will need to note on the log that the exhibit was admitted into evidence. Again, the operator will need to note on the log that the exhibit was admitted into evidence and the time that occurred.

See also *Michigan Trial Court Case File Management Standards*, Component 20, pages 30 and 31 for standards on receipting and storing exhibits.

12. Special Terms and Proper Names

The operator must always note in the log the initial use of any special term or proper name for which the spelling will need to be verified. There may be many of these terms or names used in a technical, medical, or drug case. When possible, the operator should ask the attorneys to supply a list of names and terms prior to the court session. **Incorrectly spelled terms or names should never appear in the log.**

The operator is responsible for verifying the spelling of these special terms or proper names at the time of the proceeding. Most spellings can be verified by the individual who mentioned the terms or names. The operator should approach the person (such as an expert witness or the attorney) during a break in the court proceedings. If the person is not available, check with the keeper of the exhibits. If the term or phrase is one used by a foreign speaking person and it is to be included in the record in the foreign language, the best source for the correct spelling is the interpreter.

13. Bench and Sidebar Conferences

If a conference is off-the-record, the operator should make certain to record the judge announcing that it is off-the-record. The judge is the only person who can order an off-the-record discussion. The recording equipment should then be turned off. Note the counter number where the recording was interrupted, and indicate next to the counter number that an off-the-record conference occurred at that point and the time it occurred. When the conference is over, the recording equipment should be turned on, the time noted, and logging resumed.

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

- a. Note the counter number at the beginning of the conference and identify the event in the log.
- b. The operator must log all bench conference and keep the headphones on. Make certain that the judge's microphone is suitably close to all speakers.
- c. Note on the log the name of each person who speaks at the bench conference, and as thoroughly as possible, indicate what they say. The operator will not be able to log counter numbers if s/he is away from the recording equipment. Therefore, transcribers will need to rely exclusively on the log. All speakers will be recorded through a single microphone onto a single channel, and the transcriber will be more dependent on the log 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. In an analog system, the operator should note the counter number at which open-court proceedings resume, and indicate to the right of the counter number that proceedings have resumed.

- e. Resume normal recording and logging procedures.

14. Audiotape and Videotape Sources

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

a. Audiotape or Videotape Recorded

If the playback of the audiotape or videotape is to be recorded:

- 1) mark the counter number and time and note on the log "videotape (or audiotape) of (whatever it is) played in court;"
- 2) move a microphone to a position near the speaker through which the recorded material will be played;
- 3) log as much as possible to help the transcriber with speaker and content identification; and
- 4) mark on the log the counter number and time at which the playback of the audiotape or videotape concludes, note that the playback concluded, reposition the speaker microphone, and resume normal recording and logging procedures.

b. Audiotape or Videotape Not Recorded

If the playback of the audiotape or videotape is not to be recorded:

- 1) log the counter number preceding the playback of the audiotape or videotape;
- 2) make a note describing the material played back and turn the recording equipment off;
- 3) when the playback of the audiotape or videotape is completed, make certain that the recording equipment is turned back on and resume logging; and
- 4) note the time in the log that the playback of the tape began and ended.

15. In-Chambers Proceeding

Mark on the log the counter number and time at which the in-chambers proceeding began and identify the proceeding. Identify all parties and attorneys present for the conference at the beginning of the log. The operator must be particularly conscientious in noting counter numbers and key words and phrases for each speaker. Several speakers will use one or two channels and the transcriber will be dependent on the log for correct speaker identification.

Make certain to note the counter number at the end of the proceeding and the time the proceeding concluded in the log.

16. Telephone Conversations

Telephone conversations should be fed into the courtroom or chambers through a speaker box. The microphone should be placed next to the speaker. Log the counter number and the time at which a telephone conversation begins, and identify the person in the log. For example, "phone call between Judge Benjamin and Defense Attorney Rebecca Wilson regarding" Log the proceedings as you would any other proceeding, noting the speakers, times, and counter numbers, as appropriate.

If more than two persons are involved in a telephone conversation, ask each party to identify him/herself before speaking. It is crucial to note the counter number corresponding to each change of speaker. The operator may need to remind people to speak one at a time.

D. In-Court Playback of Testimony

There are a number of circumstances where the operator may be asked to play back testimony or some other portion of the recording. 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 log. The operator's goal should be to locate and play back requested portions of testimony as quickly as possible. This is another reason logging is so important.

1. Analog Recording

To play back a certain portion of the proceedings from an analog recording, it is first very important to make the parties aware that you cannot record and playback at the same time; therefore, the operator must make sure nobody speaks into the record. Procedures are as follows:

- a. Stop recording equipment and note the time on the log sheet.
- b. Note the counter number on the log sheet.
- c. Determine from the log the location of the starting counter number for the requested testimony.
- d. Rewind tape until counter number is at location of the requested playback and listen through the headset to make sure you have the appropriate portion requested.
- e. Play the requested portion,
- f. Mark on the log sheet that a specific portion of the recording was played and note the time the playback ended.

- g. Advance the tape in fast forward mode to just past the counter number where the recording was interrupted.
- h. Return the equipment to record mode.
- i. Inform the judge or attorneys to 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 logging.

2. Digital Recording

Digital recording equipment has the capability to playback and record simultaneously. However, it is still best not to permit the parties speak into the record during a playback if at all possible.

The procedures are as follows when a request is made to play back a certain portion of the proceedings from a digital recording.

- a. Note the request in the log notes (the time will be entered automatically).
- b. Change the panel from the recording screen to the playback screen.
- c. Find the requested portion and listen through the headset to make sure you have the appropriate portion requested.
- d. Play the requested portion.
- e. Note on the log that playback was concluded (the time will be entered automatically).
- f. Change the panel back to the recording screen and continue with the proceedings.

It is imperative that the operator has training and practice providing playback. This is an essential and mandatory function of an operator. The operator must be able to provide this service with professionalism, knowledge, and expediency. The operator must know and be comfortable with the recording equipment that is being used.

Chapter 2: Marking Exhibits

Exhibits shall be marked with an exhibit sticker containing the number of the exhibit, the witness's name, date exhibit marked, and reporter's initials. See the *Michigan Trial Court Case File Management Standards*, Component 20.

Chapter 3: Depositions

A deposition is a pretrial discovery procedure (see MCR 2.306) whereby parties or witnesses are examined by asking questions. A court reporter, a recorder, or an operator is present and records all questions and answers. Counsel for all parties are normally at a deposition. The person being examined is called the "deponent."

A. Taking Depositions

At a deposition, there is no judge to preside over the proceedings, and the reporter, recorder, or operator is in control. The reporter, recorder, or operator may arrange the equipment and the parties in whatever fashion he or she deems appropriate.

1. Obtain the complete case caption and name of the court in which the transcript is to be filed.
2. Obtain the name and address of the deponent and all attorneys present.
3. Administer the oath to the deponent.
4. Unlike courtroom proceedings, you may go off the record at any time for any party if all parties agree to go off the record. A reporter, a recorder, or an operator shall continue to report unless there is agreement among all parties present that they will go off the record.
5. After the deposition is completed, obtain orders for copies of the deposition transcript from the parties.

B. Producing the Transcript

Court reporters and recorders must follow the format prescribed by the State Court Administrative Office as published in Section 4 of this manual. ([MCL 600.2510\[2\]](#))

1. Furnish the transcript as timely as possible.
2. Prepare title page.
3. Prepare table of contents page (optional in depositions).
4. Prepare transcript page.
5. Prepare certificate page.

C. Delivering the Deposition Transcript

1. On payment of reasonable charges, the person conducting the examination shall furnish a copy of the deposition to a party or to the deponent.
2. If a party requests that the transcript be filed, the certified deposition shall be securely sealed in an envelope endorsed with the title and file number of the action and marked

"Deposition of [name of witness]," and promptly filed with the court in which the action is pending or sent by registered or certified mail to the clerk of that court for filing. Notice of filing of the deposition shall be given to all other parties, unless the parties agree otherwise by stipulation in writing or on the record.