

RULE 76H. ELECTRONIC SOUND RECORDING

(a) Establishment of mechanism for recording. The Administrative Office of the Courts and each Probate Court shall provide a mechanism by which the sound from any courtroom proceeding may be electronically recorded.

(b) Court's Recording of Proceedings.

(1) The court may record any proceeding.

(2) The court must record any proceeding that

(A) any statute, court rule, or administrative order requires be recorded; or

(B) any party requests, at least 24 hours before the start of the proceeding, be recorded.

(3) At all times, the operation of the recording equipment shall be subject to the direction and order of the court, subject to all applicable statutes, rules, and administrative orders, and subject to any right of any party to have the proceeding recorded.

(c) Independent Recordings.

(1) *When There is No Recording by the Court.* Except as provided in paragraph (3), any party or counsel may independently record or transcribe a proceeding that is not recorded by the court upon notice to the court and all parties.

(2) *When There is a Recording by the Court.* Except as expressly permitted by the court, no party or counsel may independently record or transcribe a proceeding that is recorded by the court.

(3) *Order prohibiting independent recording.* The court may prohibit any independent recording or transcription

(A) In any child protection proceeding;

(B) In any proceeding for protection from abuse;

(C) In any proceeding closed to the public by statute, court rule, or court order;

(D) When the court determines that an independent recording or transcription would create a risk to public safety; or

(E) When the court determines that prohibition of an independent recording or transcription is necessary to prevent intimidation of a witness or to protect an individual from harassment.

(4) *Conditions on party's or counsel's recording.* When a party or counsel is permitted to independently record a proceeding, the recording must be made at the expense of that party or counsel and without disrupting any part of the proceeding.

(5) *Non-Party Requests to Record.* A person who is not a party or counsel to a proceeding may record the proceeding only as permitted by Cameras and Audio Recording in the Courts, Me. Admin. Order JB-05-15, as amended.

(d) Official Record. When the court has not created a record, a transcript of a recording created independently by a party or by counsel shall become part of the official record of that proceeding after all parties have had an opportunity to review the transcript and do not object to it, or to a part of it, as inaccurate, incomplete, or misleading, unless the court determines after review of the transcript that the transcript, or a part of it, is inaccurate, incomplete, or misleading. If the transcript is offered for placement in the official record, or if the transcript is challenged, the court may require the production of the original recording.

(e) Transcription of a Court Recording.

(1) *In General.* Except as otherwise ordered by the court, any party may request a transcript of a proceeding that has been recorded by the court, and any person or organization may request a transcript of a proceeding that is open to the public.

(2) *Cost of Transcript.* The person or organization ordering a transcript of a proceeding that has been recorded by the court must pay the cost of the transcript

before the transcript will be provided, except when the court is authorized to approve, and has approved, the transcription at the State's expense. The fees that will be charged for transcript production are established in Revised Court Fees Schedule and Document Management Procedures, Me. Admin. Order JB-05-26, as amended.

(3) *Transcript on Appeal.*

(A) *Appeal to the Law Court.* In an appeal to the Law Court, the transcript of a proceeding that has been recorded by the court must be ordered and transmitted as provided in M.R. App. P. 5(b) and 6(c).

(B) *Appeal to the Superior Court.*

(i) *Transcript Order.* An appellant must file with the notice of appeal a fully completed transcript order form in order to include in the record on appeal from the District Court to the Superior Court a complete or partial transcript of a proceeding that has been recorded by the court. If the appellant does not order a transcript of the proceeding that has been recorded by the court or does not order the entire transcript, the appellee may, within 10 days after being served with the notice of appeal, order a transcript of all or any portions of the proceeding by filing and serving on all other parties a fully completed transcript order form. The ordering party must pay for the transcript as provided by M.R. App. 5(b).

(ii) *Transmission of Transcript.* Immediately upon completion of the transcript of a proceeding that has been recorded by the court, the office designated by administrative order must transmit the original of it to the clerk of the Superior Court for filing and inclusion in the record on appeal. The clerk shall serve notice of the filing upon all parties.

(4) *Correction of Transcript.* If either party claims an error in the transcript of a proceeding that has been recorded by the court, such error may be corrected at any time by order of the court.

(f) Standards and procedures. The Administrative Office of the State Courts and each Probate Court must establish in their respective courts standards and procedures to ensure that a clear recording is made of any recorded proceeding, that the transcriptionist has all information necessary to produce an accurate transcript, and that a timely and accurate transcript is produced upon

request of an authorized person. The established standards and procedures must include, but are not necessarily limited to, standards and procedures relating to

- (1) The courtroom operation of the electronic recording equipment;
- (2) The creation of a written record of any necessary information;
- (3) The retention of the recording and written records;
- (4) The transmission of the recording and written records to the transcriptionist;
- (5) The transcription of the recording and the filing of the transcript with the court; and
- (6) The retention and destruction of the recording and written records.

(g) Applicability. This rule governs only the recording and case-related use of the recording by the court, the parties, or counsel, not any potential recording or transmission of a recording by other entities, which is governed by Cameras and Audio Recording in the Courts, Me. Admin. Order JB-05-15, as amended.

**Advisory Note
April 2015**

Pursuant to Recording of Trial Court Proceedings, Me. Admin. Order JB-12-1 (as amended by A. 11-14) (effective Nov. 24, 2014), all proceedings of certain case types in the State trial courts must be “recorded and monitored by a court clerk or other court personnel whose primary function in the courtroom is to monitor the recording pursuant to standards issued by the Office of Transcript Operations.” *Id.* § II. The Administrative Order also provides that, even if a given proceeding is not among those that are routinely recorded, it “shall be recorded at the request of any party or at the request of the presiding justice or judge.” *Id.* § IV.

This rule applies to the Probate Court through Rule 76H of the Maine Rules of Probate Procedure and to criminal proceedings pursuant to Rule 27 of the Maine Rules of Unified Criminal Procedure.

The amendment to this rule is intended to clarify the process for civil and criminal proceedings, ensure that probate proceedings involving fundamental rights or liberty are also recorded, and to clarify that trial courts do have the discretion to limit independent recording and transcription in certain cases. *See, e.g.*, 22 M.R.S. § 4007.

**Advisory Note
2003**

This amendment to Rule 76H(e) removes the reference to a specific fee. The fees for allowing and supervising listening to recordings will be set and revised in the Court Fees Schedule.

**Advisory Committee's Notes
July 1, 2001**

The amendments to Rule 76H(d)(2) substitute references to the appropriate sections of the Maine Rules of Appellate Procedure for references to the provisions of Rule 74 and Rule 74A of the Maine Rules of Civil Procedure which are being replaced by the Maine Rules of Appellate Procedure.

**Advisory Committee's Note
January 1, 2001**

Rule 76H was amended by deleting subdivision (f). The subject matter of Rule 76H is to prescribe a procedure for the creation, transcription and retention of electronic sound recordings in the courts. Subdivision (f) required that any administrative orders, procedures and similar requirements established by the court shall be published and made available to members of the bar. This provision too narrowly focused on electronic sound recording procedures and, if broadened, would have been out of place in Rule 76H. Consequently, a new Rule 87 has been adopted to make clear that all administrative orders, standards, procedures, schedules and forms promulgated or established by any of the courts shall be published and made available to the clerks and the members of the bar.

Advisory Committee's Notes
May 1, 2000

Subdivision (d)(2)(B) is amended to recognize the requirements of the transcript production Administrative Order of September 19, 1997. Mostly this is accomplished by reference to Rule 74(b)(4), as recommended to be revised.

Advisory Committee's Notes
1993

Rule 76H is amended pursuant to 4 M.R.S.A. § 651-A, enacted by P.L. 1991, ch. 591, § E-3, to reflect the fact that electronic recording is now being used in the Superior Court in a number of counties and will be made available in that court throughout the state as funds permit installation of the necessary equipment. The Chief Justice of the Superior Court and the Chief Judge of the District Court will issue appropriate administrative orders to implement the rule in the two courts. Note that Rule 76H(d)(2)(3) continues to apply only to transcripts on appeal from the District Court to the Superior Court. Transcripts on Law Court appeals are governed by Rules 74(b) and 74A(b). [Now M.R.App.P. 5(b)(2) and 6(c).]

ADMINISTRATIVE ORDER
[Standards and Procedures for Recording]
Effective October 15, 1997

This order is adopted to address the method to be used in making a record of court proceedings. The order recognizes the resource limitations facing the courts in preparing records and the need for flexibility in using those resources. At the same time, it is necessary to establish criteria to ensure that transcripts can be provided when required.

1. Records of court proceedings will be created using one of the following methods:
 - a. Official Court Reporter.
 - b. Electronic recording.
2. These, methods will be used as follows:

- a. In the Superior Court, an Official Court Reporter will be used for jury trials and, when ordered, for testimony before the grand jury.
- b. In the Superior Court, an Official Court Reporter or electronic recording will be used for nonjury trials and other testimonial proceedings.
- c. In the Superior Court, an Official Court Reporter or electronic recording will be used for criminal nontestimonial proceedings.
- d. In the District Court and the Administrative Court, an electronic recording will be used for trials, other testimonial proceedings, and criminal nontestimonial proceedings,
- e. No record will be made in any court of civil nontestimonial matters.

3. In exceptional circumstances, the application of the criteria stated above may be modified as follows:

- a. No record at all will be made when the parties and the judge agree.
- b. Subject to a recognition of resource limitations, the presiding judge or justice may deviate from these criteria for good and sufficient reason stated on the record.
- c. Whenever both methods are approved pursuant to paragraph 2 above, the choice will be made by the Regional Court Administrator who will attempt to avoid adverse impact by considering staff availability and transcript production backlog status of both the Official Court Reporters and the Electronic Recording Division.

4. In District Court, twenty-four hours advance notice is required for recording of civil proceedings. Whenever electronic recording is used, a recording log, as specified by the Electronic Recording Supervisor, will be completed. For arraignments and misdemeanor pleas in the District Court, an abbreviated recording log, as specified by the Electronic Recording Supervisor, will be completed. Any electronic recording made without compliance with this paragraph will not be transcribed or copied.

5. In order to preserve resources, requests for transcripts will be controlled as follows:

a. Members of the bar are encouraged to use alternatives to transcription, such as agreed statements of fact or statements of the evidence.

b. Transcription of daily copy is prohibited except when approved by the trial judge in consultation with a Regional Court Administrator.

c. Judges may not order transcripts, other than brief excerpts, without the approval of the Chief Justice of the Superior Court or Chief Judge of the District Court.

Dated: September 19, 1997

For the Court

Chief Justice

ADMINISTRATIVE ORDER
Regarding [Duplicate Tapes of] Electronic Recording
in the Superior and District Courts
Effective March 15, 1995

Pursuant to Rule 76H, M.R. Civ. P., the preparation and availability of duplicate tapes of official court proceedings shall be governed as follows:

1. The Electronic Recording Division shall provide a duplicate tape recording of any official court proceeding which has been electronically recorded pursuant to Rule 76H, M.R. Civ. P., to counsel of record or a party upon request.

2. Duplicate tapes shall not constitute a part of an official record nor shall it be admissible into evidence.

3. No record or transcription made from a duplicate tape, nor any part thereof, shall be incorporated in or substituted for any portion of a transcript included in an official record without the consent of all parties to the proceeding and with the approval of the presiding justice or judge.

4. No record or transcription made from a duplicate tape, nor any part thereof, shall be incorporated in or substituted for any portion of a transcript which is to be admitted into evidence or used for the impeachment or rehabilitation of a witness in any official proceeding without the consent of all parties to the proceeding and with the approval of the presiding justice or judge.

5. Tapes of proceedings which are confidential by statute or rule may not be duplicated except by Order of the court.

6. The Electronic Recording Division shall charge a fee of \$20.00 for the first tape (Fn. 1) and \$7.50 for each additional tape of the same proceeding.

7. The Electronic Recording Division shall request a deposit in advance which shall be sufficient to cover the estimated costs of providing a duplicate tape.

8. This Order shall apply to both civil and criminal proceedings in the Superior and District Courts.

Fn. 1. This charge applies to the first tape, regardless of length. Each tape will record approximately 45 minutes of testimony.