

## **ELECTRONIC AUDIO RECORDINGS PRESENTED OR OFFERED INTO EVIDENCE**

### **A. Admissibility of Electronic Audio Recordings Into Evidence at Hearing**

#### **1. Prior Court Hearing**

- a. The official audio recording of a prior court hearing may be obtained by contacting the clerk's office and paying the required fee. Official audio recordings obtained from the clerk's office are self-authenticating under Federal Rule of Evidence 9002 when accompanied by a written certification by the clerk that the audio recording is a true copy of the official record.
  
- b. Audio files on the court's docket (a/k/a CourtSpeak Recordings) are not official audio recordings because such recordings are single-channel recordings and not multi-channel recordings. Nevertheless, for purposes of evidentiary admissibility, a party seeking to introduce a CourtSpeak audio file into evidence may do so by properly authenticating the recording. A CourtSpeak audio recording may be self-authenticating if the audio recording is certified to be a correct copy by the clerk's office. CourtSpeak audio files on the court's own docket are self-authenticating without the need to provide the court with a copy of the audio recording at hearing.

#### **2. Deposition, § 341 Meeting, Telephone Conversation, etc.**

The objective of authentication is to provide reasonable assurances that the audio or video recording accurately portrays what each party to any conversation actually said. To authenticate an audio recording, or video recording, of a deposition, § 341 meeting, telephone, or other type of person-to-person communication, the party offering the audio recording should be prepared to show:

- a. The operator's competence;
- b. The fidelity of the recording equipment;
- c. The absence of material alterations; and
- d. The identification of the relevant sounds or voices.

In addition to the above, the court may require a showing that the original recording was preserved, statements as to the chain-of-custody of that recording, and that the elicited conversation was made without inducement. A duplicate of the audio or video recording should be provided to the court under Fed. R. Evid. 1003 unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

### 3. Written Transcript of an Audio or Video Recording

Any submission of an audio or video recording must be accompanied by a written transcript prepared by a qualified transcriptionist (unless both sides stipulate to the accuracy of a transcript that is prepared by an individual who is not a qualified transcriptionist). When used to assist the court as an aide to understanding the audio or video evidence, the transcript does not have to be certified. The presiding judge may waive the requirement for a written transcript to accompany an audio or video recording under the following circumstances:

- a. The contesting parties request that the written transcript requirement be waived;
- b. The proceeding is uncontested or the responding party fails to appear; or
- c. Good cause exists for waiving the written transcript requirement as determined by the presiding judge.

### B. Redaction

Neither the clerk nor the court will remove or redact any electronic evidence containing personally identifiable information, confidential information, or proprietary information. The filer submitting electronic evidence is responsible for redaction of such information, or seeking authority to limit access to such information.

### C. Equipment

The court provides audio-video presentation equipment in each courtroom. Available courtroom technology can be found at the court's website. Any additional equipment required to view and/or listen to electronic evidence is the responsibility of the party offering the evidence. Parties should contact the courtroom deputy at 304-234-4003 to test equipment before a scheduled hearing.

### D. Pretrial Determinations of Admissibility

Whenever possible, parties and the court should determine the authenticity of audio and video recordings in advance of the trial. *In limine* hearings are useful when the opponent raises substantial questions based on the unintelligibility of the tapes, gaps in their coverage of the recorded conversation or event, the extent of the proponent's editing, or the accuracy of written transcripts accompanying the audio or video recording.