

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 90-~~0015~~

---

## ADOPTION OF RULES FOR MONTGOMERY COUNTY FOR MAKING A RECORD OF COURT PROCEEDINGS BY ELECTRONIC RECORDING

---

**ORDERED:**

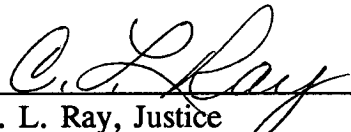
The attached rules are adopted for making a record of court proceedings by electronic recording in Montgomery County.

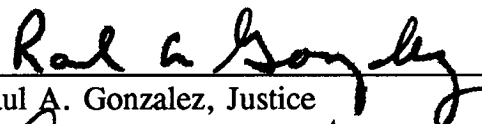
Any court in Montgomery County using these rules shall comply with Texas Rule of Civil Procedure 3a(5).

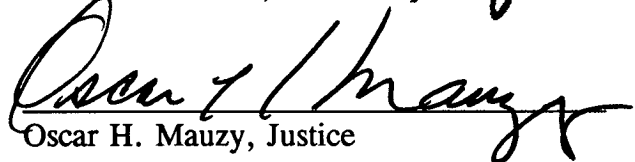
SIGNED AND ENTERED this 9<sup>th</sup> day of November, 1990.

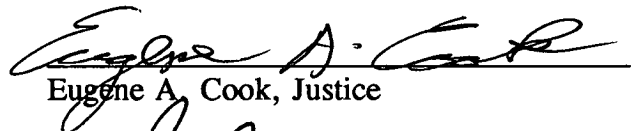
  
Thomas R. Phillips, Chief Justice

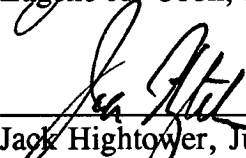
\_\_\_\_\_  
Franklin S. Spears, Justice

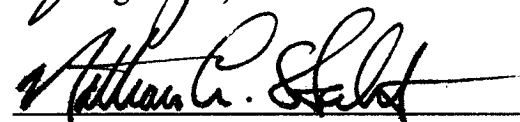
  
C. L. Ray, Justice

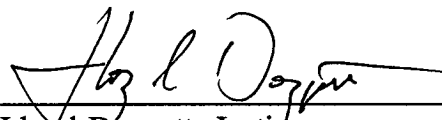
  
Raul A. Gonzalez, Justice

  
Oscar H. Mauzy, Justice

  
Eugene A. Cook, Justice

  
Jack Hightower, Justice

  
Nathan L. Hecht, Justice

  
Lloyd Doggett, Justice

**RULES GOVERNING THE PROCEDURE FOR  
MAKING A RECORD OF COURT PROCEEDINGS  
IN MONTGOMERY COUNTY BY ELECTRONIC RECORDING**

1. **Application.** The following rules govern the procedures in the courts of Montgomery County in proceedings in civil matters in which a record is made by electronic tape recording, and appeals from such proceedings.

2. **Duties of Court Recorders.** No stenographic record shall be required of any civil proceedings electronically tape recorded. The court shall designate one or more persons as court recorders, whose duties shall be:

a. Assuring that the recording system is functioning and that a complete, distinct, clear and transcribable recording is made;

b. Making a detailed, legible log of all proceedings while recording, indexed by time of day, showing the number and style of the proceeding before the court, the correct name of each person speaking, the nature of the proceeding (e.g., voir dire, opening, examination of witnesses, cross-examination, argument, bench conferences, whether in the presence of the jury, etc.), and the offer, admission or exclusion of all exhibits;

c. Filing with the clerk the original log and a typewritten log prepared from the original;

d. Filing all exhibits with the clerk;

e. Storing or providing for storing of the original recording to assure its preservation as required by law;

f. Prohibiting or providing for prohibition of access by any person to the original recording without written order of the presiding judge of the court;

g. Preparing or obtaining a certified cassette copy of the original recording of any proceeding, upon full payment of any charge imposed therefor, at the request of any person entitled to such recording, or at the direction of the presiding judge of the court, or at the direction of any appellate judge who is presiding over any matter involving the same proceeding, subject to the laws of this state, rules of procedure, and the instructions of the presiding judge of the court;

h. Performing such other duties as may be directed by the judge presiding.

3. **Statement of Facts.** The statement of facts on appeal from any proceeding of which an electronic tape recording has been made shall be:

a. A standard cassette recording, labeled to reflect clearly the contents of the cassette, and numbered if more than one cassette is required, certified by the court recorder to be a clear and accurate copy of the original recording of the entire proceeding;

b. A copy of the typewritten and original logs filed in the case certified by the court recorder; and

c. All exhibits, arranged in numerical order and firmly bound together so far as practicable, with a list in numerical order and a brief identifying description of each.

4. **Time for Filing.** The court recorder shall file the statement of facts with the court of appeals within fifteen days of the perfection of an appeal or writ of error. No other filing deadlines as set out in the Texas Rules of Appellate Procedure are changed.

5. **Appendix.** Each party shall file with his brief an appendix containing a written transcription of all portions of the recorded statement of facts and a copy of all exhibits relevant to the error asserted. Transcriptions shall be presumed to be accurate unless objection is made. The form of the appendix and transcription shall conform to any specifications of the Supreme Court.

6. **Presumption.** The appellate court shall presume that nothing omitted from the transcriptions in the appendices is relevant to any point raised or to the disposition of the appeal. The appellate court shall have no duty to review any part of an electronic recording.

7. **Supplemental Appendix.** The appellate court may direct a party to file a supplemental appendix containing a written transcription of additional portions of the recorded statement of facts.

8. **Paupers.** Texas Rule of Appellate Procedure 40(j)(1) shall be interpreted to require the court recorder to transcribe or have transcribed the recorded statement of facts and file it as appellant's appendix.

9. **Accuracy.** Any inaccuracies in transcriptions of the recorded statement of facts may be corrected by agreement of the parties. Should any dispute arise after the statement of facts or appendices are filed as to whether an electronic tape recording or any transcription of it accurately discloses what occurred in the trial court, the appellate court may resolve the dispute by reviewing the recording, or submit the matter to the trial court, which shall, after notice to the parties and hearing, settle the dispute and make the statement of facts or transcription conform to what occurred in the trial court.

10. **Costs.** The expense of appendices shall be taxed as costs at the rate prescribed by law. The appellate court may disallow the cost of portions of appendices that it considers surplusage or that do not conform to any specifications prescribed by the Supreme Court.

11. **Other Provisions.** Except to the extent inconsistent with these rules, all other statutes and rules governing the procedures in civil actions shall continue to apply to those proceedings of which a record is made by electronic tape recording.