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**Date:** April 05, 2007 05:54 PM

**Author:** Lake, Julie ([jml@martin-lake.net](mailto:jml@martin-lake.net))

**Subject:** attorney use of audiosync file ok?

Is there a COPE opinion out re efficacy of attorneys using reporter's audiosync file in court to show demeanor and tone of opposing attorney, or use just in general by attorney?

Has anyone else run into this, and what policy have you followed?

Thanks.

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**Date:** April 05, 2007 08:36 PM  
**Author:** Candis Bradshaw ([candisbradshaw@gmail.com](mailto:candisbradshaw@gmail.com))  
**Subject:** Been there just two weeks ago ...

Here's an advisory opinion to help: [ncraonline.org/AboutNCRA/cope/Advisory/038.htm](http://ncraonline.org/AboutNCRA/cope/Advisory/038.htm)

I refused to turn it over absent a court order requiring me to do so.

:) Candis

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**Date:** April 06, 2007 07:42 AM  
**Author:** Julia Bammel ([bammelJulia@yahoo.com](mailto:bammelJulia@yahoo.com))  
**Subject:** Just happened

During a recess on a dep this week I had an attorney inquire as to whether she could use my audio file to point out something she was concerned with. She didn't feel the interpreter was letting her witness finish before she began to answer in English.

I was probably overly polite, but I told her in no uncertain terms that I never make my audio available to any party, and absent a court order, this would be no exception. I just told her that my audio may include things not meant for all to hear or that my audio may not contain the entire proceeding. I just said that my transcript is the official record.

Again, ever so politely, I commented that if she was concerned about the situation, when we came off break and went back on the record she could make a note of her concerns on the record. We go back on the record, I look to her, she waves me off and never says a word.

What can I say? If she isn't going to be an advocate for her client during the deposition, I'm certainly not turning my audio over after the fact because she chose not to do her job.

I've been asked several times. I've never had anyone press me on it after I explain my stance.

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**Date:** April 06, 2007 09:58 AM  
**Author:** Jill S. Driscoll ([jilldmail@gmail.com](mailto:jilldmail@gmail.com))

I'm just curious about what will happen when attorneys start bringing their own laptops and making their own recordings of proceedings. I mean, will they be required to disclose that? If they are required and do not disclose, will they be prohibited from utilizing their audio in

the future to make some kind of point?

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**Date:** April 06, 2007 10:37 AM

**Author:** Cindy Johnson ([cjohnson260@yahoo.com](mailto:cjohnson260@yahoo.com))

**Subject:** audio

I've never really thought about it, but I've been seeing digital recorders brought in for years by attorneys while I said nothing. I remember when I was interning wondering what it was about the red plug on the reporter's audio mike that she felt she wouldn't be spotted by someone at a deposition. Never understood that either.

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**Date:** April 06, 2007 11:13 AM

**Author:** Julia Bammel ([bammelJulia@yahoo.com](mailto:bammelJulia@yahoo.com))

**Subject:** Michigan Court Rules

MCR 2.306(2)(b)

While the testimony is being taken, a party, as a matter of right, may also make a record of it by NONSECRET mechanical or electronic means, except that video recording is governed by MCR 2.315. Any use of the recording in court is within the discretion of the court. A person making such a record must furnish a duplicate of the record to another party at the request and expense of the other party.

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**Date:** April 06, 2007 11:58 AM

**Author:** Cindy Johnson ([cjohnson260@yahoo.com](mailto:cjohnson260@yahoo.com))

**Subject:** audio

It does make sense to me that any media, audio or video, should be under a court's supervision and therefore not ever released without a court order no matter who has it.

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**Date:** April 06, 2007 11:58 AM

**Author:** Jill S. Driscoll ([jilldmail@gmail.com](mailto:jilldmail@gmail.com))

I guess I'm foreseeing a time when attorneys will be doing that more and more since it is so simple to do, and then we will be taken out of the equation as far as providing our audio to them. I hope that will make it more important rather than less for reporters to assert themselves when the record is stenographically ungettable.

It sounds like a future can of worms that I hope never gets opened, with each attorney having a dueling audio.

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**Date:** April 06, 2007 12:30 PM

**Author:** Cindy Johnson ([cjohnson260@yahoo.com](mailto:cjohnson260@yahoo.com))

**Subject:** audio

Definitely a can of worms. ick.

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**Date:** April 06, 2007 12:48 PM

**Author:** Jerry Kelley ([JerryKelleyCRR@aol.com](mailto:JerryKelleyCRR@aol.com))

**Subject:** Attorneys audio recording

Jill, it's my opinion that many lawyers have been recording testimony thru their computers for years. There was a recent case where a witness was thought to have recorded his own testimony during grand jury proceedings.

Guide to recording in all 50 states:

[www.rcfp.org/taping/](http://www.rcfp.org/taping/)

Jerry

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**Date:** April 06, 2007 07:51 AM

**Author:** Candis Bradshaw ([candisbradshaw@gmail.com](mailto:candisbradshaw@gmail.com))

**Subject:** I would also explain...

....that video exists for that exact purpose (showing demeanor and tone of parties).

:) Candis

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**Date:** April 06, 2007 12:42 PM

**Author:** Cindy Johnson ([cjohnson260@yahoo.com](mailto:cjohnson260@yahoo.com))

**Subject:** What's available...

[www.pimall.com/nais/piaudiokit.html](http://www.pimall.com/nais/piaudiokit.html)

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**Date:** April 06, 2007 02:33 PM

**Author:** Joe Armstrong ([josepharmstrong@email.com](mailto:josepharmstrong@email.com))

**Subject:** In Court

It's probably a bit different in a court setting, but I have utilized my audio on a few occasions for my judge. On one occasion, they were reading a dep into the record. I don't have to report deps, and I get to leave the courtroom. But I left my audio on while I went to my office. Anyway, one attorney later claimed a certain question was read that was supposed to be redacted and asked for a mistrial. Because I had the audio, I was able to tell my judge that it wasn't read, and she asked me to play it for the attorneys when we went back into court. It worked great in that situation.

Another situation -- and I know there will be major mixed opinions on this -- is for playback for a jury. Although we haven't done it yet, my judge said the next time a jury wants testimony, we may use the audio for that purely in the interest of judicial economy.

The thing is, like it or not, audio, and particularly digital audio, is here to stay. It's not going away, and there will only be improvements. We have the benefit of combining that technology with our own. ER people cannot. They can ONLY offer audio. Why not have an additional service to offer? If attorneys want our transcripts synced with audio, it's just another service.

Perhaps the reason I feel that way is we have sold our judges on realtime. They truly cannot fathom not using a live steno reporter. So I don't have a fear that, well, if you're going to use audio, let's just get rid of the reporter altogether.

Joe

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**Date:** April 06, 2007 04:15 PM

**Author:** Jill S. Driscoll ([jilldmail@gmail.com](mailto:jilldmail@gmail.com))

I agree wholeheartedly with what you're saying. We have gotten where we are by embracing technology and using it to make us better and more instead of less integral to the proceedings. I think the ultimate for the courtroom setting would be to sync the audio and video and when a jury wants to hear testimony again, they could not only hear it but see it, and that would be made all the more simple by having the reporter search for keywords in the text. Yes, I agree. We need to use technology to our every advantage.

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**Date:** April 06, 2007 07:07 PM

**Author:** Candis Bradshaw ([candisbradshaw@gmail.com](mailto:candisbradshaw@gmail.com))

**Subject:** I have played the audio back in a dep...

It was a dep of a Greek orthopedic surgeon, and everyone in the room heard him say, "The claimant was skipping the restrictions." Defense attorney asked him to clarify, and the doc denied that that's what he said. I was asked to read it back, and that's what I read back. The doctor became extremely angry and demanded that that was not what was said. I said, "Please wait a moment." I went back, unplugged my headphones, and played the recording back. He said, "Oh, I did say that. But I meant "The claimant waskeeekeeping the restrictions."" (I put the words together to show how the doc put the two words together.)

The entire exchange was kept on the record, and I used a parenthetical that stated something like this: "Reporter played back pg X, line X to page X, line X of the backup audio recording.")

I wasn't proud of doing it at the time, and I have never done it again. However, I found out later from my client that the judge appreciated the fact that we got that clarified right then and there at the dep rather than the attorneys fighting about it in

court.

:) Candis

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**Date:** April 06, 2007 07:35 PM

**Author:** Cindy Johnson ([cjohnson260@yahoo.com](mailto:cjohnson260@yahoo.com))

**Subject:** playbacks

Well, it's hard not to see audiosync integrated at some point with how we perform reporting, what I disagree with wholly is all the deception going on in forcing the implementation of it being practiced by reporters ahead of whomever may be working on these things through proper channels.

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**Date:** April 06, 2007 08:08 PM

**Author:** Cathryn Bauer ([cathryn@mindspring.com](mailto:cathryn@mindspring.com))

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**Date:** April 06, 2007 08:14 PM

**Author:** Amanda Leigh ([amanda.leigh@tx.rr.com](mailto:amanda.leigh@tx.rr.com))

All I know is, one, I don't provide the audio to anyone at this time; two, there is a firm I know of in CA that does offer as a service the audio to the attorneys. I would imagine there are other reporting firms that do as well (if I do work for one, I'll be charging the firm to the tune of about eight maids a'milking and five golden rings per hour). Right now I destroy my audio as soon as the job's out; and when I read back, I read back, uh-hem.

But I can see how playing back audio can be helpful, as was mentioned above. I think that if I played a portion of the audio during the proceedings (I do strictly depositions), that portion of the audio could be reasonably argued to be marked as an exhibit to the deposition, just like anything that is referred to during the

proceedings. In that case, I would provide that portion of the audio that was played during the proceedings, if requested.

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**Date:** April 06, 2007 09:33 PM

**Author:** Candis Bradshaw ([candisbradshaw@gmail.com](mailto:candisbradshaw@gmail.com))

Amanda,

In my case, I did offer that one little 45-second tidbit to be offered as an exhibit, but they were not interested in it. The record was crystal clear on its own merit (other than you didn't get to hear the Greek doc say "waskeeeeeeeping" instead of "was skipping.") I wish I could have put the "waskeeeeeeeping" in the transcript. I guess that would be an interesting use for [phonetic]. :-)

:) Candis

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