

LEGAL NOTICE NO. 108

REPUBLIC OF TRINIDAD AND TOBAGO

THE EVIDENCE ACT, CHAP. 7:02

RULES

MADE BY THE RULES COMMITTEE UNDER SECTION 14E OF THE
EVIDENCE ACT

THE AUDIO VISUAL RECORDING RULES, 2010

1. These Rules may be cited as the Audio Visual Recording Rules, Citation 2010.

2. (1) These rules shall apply when a law enforcement agent makes Application a visual recording with sound of the statement of a witness.

(2) There is no statutory requirement to visually record the statement of a witness.

3. (1) Nothing in these rules shall be taken as derogating from the General law and practice which governs the detention, treatment and questioning of persons by law enforcement agents.

(2) A reference in these rules to visual recording shall be taken to mean visual recording with audio.

(3) In these rules a reference to—

“law enforcement agent” means a member of a law enforcement agency;

“law enforcement agency” means an agency listed in the Schedule;

Schedule

“master copy” means one of the audio visual recording media used to record the statement of the witness and which is recorded simultaneously with other similar recording media in the presence of the witness;

“recording media” includes any removable, physical audio recording medium (such as magnetic take, optical disc or solid state memory) which can be played and copied;

“working copy” means one of the audio visual recording media, other than the master copy, used to record the statement of the witness and which is recorded simultaneously with the master copy in the presence of the witness and includes a copy made in accordance with rule 16 or 17.

Recording
requirements

4. (1) The camera(s) shall be placed in the room or area where the statement is being recorded so as to ensure maximum coverage of the room or area during the recording of the statement.

(2) The recording medium shall be new and previously unused.

(3) When a statement of a witness is being recorded it shall be done in the presence of at least two law enforcement agents.

(4) When the recording medium is placed in the recorder and switched on to record, the correct date and time, in hours, minutes and seconds, shall be superimposed automatically, second by second, during the whole recording.

Commencement
of recording

5. (1) A statement of a witness shall be voluntary.

(2) Where the witness has agreed to give a voluntary statement, the law enforcement agent conducting the recording shall, without delay and in the presence and sight of the witness—

(a) remove the recording media from the manufacturer's sealed packaging;

(b) load the recording equipment; and

(c) set it to record.

(3) At the commencement of the recording, the law enforcement agent conducting the recording shall—

(a) without delay, inform the witness that he is not obligated to give a statement;

(b) then inform the witness formally about the visual recording by—

(i) explaining that the statement of the witness is being visually recorded;

(ii) giving his name and rank or other form of identification, as the case may be, and that of any other law enforcement agent present in the room or area;

(iii) asking the witness and any other party present (for example, his attorney-at-law) to identify themselves;

(iv) stating the date, time of commencement and place of the recording of the statement; and

(v) informing the witness about what may happen to the recording.

6. The recording procedure shall be adapted as appropriate where the witness is hearing impaired, speech impaired, or English is not his language, and the witness shall communicate in his normal mode. Statements from witnesses with disability

7. (1) Where during the course of a recording, the witness makes any self-incriminating statement, the law enforcement agent conducting the recording shall immediately caution him and where the witness elects not to continue the statement, stop the recording. Stopping the recording

(2) Where the witness elects to continue the statement after having been cautioned the recording shall continue.

(3) Where the recording is stopped under subrule (1), one of the recording media shall be sealed as the master copy and any other recorded copies may be used as working copies for the investigation of any indictable offence.

(4) The master copy mentioned in subrule (3) shall be used in the prosecution of any indictable offence or the summary trial of any indictable offence only with leave of the Court.

8. (1) If the witness raises objections to his statement being audio visually recorded either at the outset or during the recording or during a break in the recording, and gives a reason for his objections, the law enforcement agent conducting the recording shall record the reason for the objection or if no reason is given, make a written note of the objection and in either case shall then turn off the recording equipment. Objections and complaints by the witness

(2) Where the recording is stopped during the recording, the recording media shall be sealed in accordance with rule 13(4).

9. (1) In instances where the recording medium is not of sufficient capacity to record the entire statement of witness, further recording media shall be used. Changing the recording media

(2) Where, under subrule (1), the recording medium is changed, rules 13(3), (4) and 5 shall apply *mutatis mutandis*.

(3) When the recording equipment indicates that the recording medium has only a short time left to record, the law enforcement agent conducting the recording shall inform the witness that—

- (a) the recording medium is coming to an end;
- (b) he is completing this part of the recording; and
- (c) the recording will continue on a new recording medium.

(4) The law enforcement agent shall remove the recording media from the recording equipment and insert the new ones which have been removed from the manufacturer's sealed packaging in the presence of the witness and the recording equipment shall then be set to record.

Taking a
break during
the recording

10. (1) When a break is to be taken during the course of a recording and the room or area is to be vacated by the witness, the fact that a break is to be taken, the reason for it and the time shall be recorded, and the recording equipment shall be turned off and the recording media removed.

(2) Where the recording media are to be removed under sub-rule (1), the procedure for the conclusion of a recording set out in rule 13(2) to (6) shall be followed.

(3) When a break is to be for not more than ten minutes, the fact that a break is to be taken, the reasons for it and the time shall be recorded on the recording media, and the recording equipment shall be turned off but the recording media shall not be removed.

(4) When the recording is recommenced, the recording shall continue on the same recording media and the date and time at which the recording recommences shall be recorded and the law enforcement agent conducting the recording shall confirm that this is a continuation of the statement of the witness that was being recorded at the time of the break.

Failure of
recording
equipment

11. (1) If there is a failure of equipment which can be rectified quickly, the procedures set out in rule 10 shall be followed, with appropriate modifications as the circumstances may reasonably require.

(2) When the recording is resumed, the law enforcement agent conducting the recording shall record and explain what has happened and the time the interview recommence.

(3) If, however, it is not possible to continue recording on that particular recorder and no alternative equipment is readily available, the recording of the statement may continue in writing.

Removing
recording
media from
recording
equipment

12. Where recording media are removed from the recording equipment during the course of an interview, they shall be retained and the procedures set out in rule 13(2) to (6) shall be followed.

Conclusion of
recording

13. (1) After the conclusion of the recording, the witness shall be offered the opportunity to review his recorded statement, and any clarification, addition or alteration he makes shall also be recorded.

(2) At the conclusion of the recording, the time shall be recorded and the recording equipment switched off.

(3) One of the recording media shall be removed from the recording equipment, sealed as the master copy and labelled in the presence of the witness and any other recorded copies shall be used as working copies.

(4) Each recorded media, before it leaves the presence of the witness, shall contain a label showing the date of the recording, the

start and finish time of the recording, and the name and signature of the witness and law enforcement agents.

(5) The label shall be signed by the law enforcement agent conducting the recording, the witness and any other person present during the recording.

(6) If the witness or a third party refuses or is unable to sign the label, a senior officer shall sign it in the presence of the witness, law enforcement agents and any other person who may have been present during the recording.

(7) If the recording is conducted in a place other than a police station, the senior officer present shall make a written note of the refusal or inability to sign the label.

14. (1) Where the statement is recorded by the police, the Commissioner of Police shall make arrangements for the master copies to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purpose.

Master copy
security

(2) Where the statement is recorded by another law enforcement agency, the officer authorized or designated by the head of the law enforcement agency shall make arrangements for the master copies to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purpose

15. Every working copy shall be secured in accordance with arrangements specified by the head of each law enforcement agency.

Working copy
security

16. (1) A law enforcement agent has no authority to break the seal on a master copy which is required for criminal proceedings or appeal proceedings.

Breaking master
copy seal for
criminal
proceedings

(2) Where the master copy has been admitted into evidence and any working copy is not available for any reason, the master copy shall only be accessed and copied by an order of the Court, which shall also specify the number of copies to be made.

(3) The Court shall only grant an order under subrule (2) where it is satisfied that the copy is required for the investigation or prosecution of an indictable offence or the summary trial of an indictable offence or the investigation of some other similar offence.

(4) Where an order is granted under subrule (2), the Registrar of the Supreme Court or his representative or the Chief Magistrate or the Deputy Chief Magistrate, as the case maybe, shall break the seal of the master copy and copy it in the presence of an authorized or designated law enforcement agent.

(5) After the master copy has been copied, it shall be resealed and signed by the Registrar or a representative of the Registrar and the authorized or designated law enforcement agent.

Breaking master
copy seal for
other cases

17. (1) Where, other than any case specified under Rule 16, it is necessary to access and copy a master copy because any working copy is not available for any reason, the person who requires the working copy shall make a written request, with reason, to the head of the relevant law enforcement agency for permission to copy the master copy.

(2) Where the head of the law enforcement agency grants permission under subrule (1), he shall make arrangements for the seal of the master copy to be broken, and for the master copy to be copied and resealed.

Documentation

18. (1) Where under Rule 16 or 17, the seal of the master copy seal is broken, and the master copy is copied and resealed, a record shall be made of the procedure followed, including the date, time and place and persons present.

(2) The breaking, copying and resealing of the master copy may include the process being video recorded.

SCHEDULE

[Rule 3(4)]

LAW ENFORCEMENT AGENCIES

A law enforcement agency include—

Act No. 7 of 2006

(a) the Police Service established under the Police Service Act, 2006;

Chap. 78:01

(b) the Customs and Excise Division established under the Customs Act; and

Chap. 75:01

(c) the Board of Inland Revenue established under the Income Tax Act.

Made by the Rules Committee this 12th day of February, 2010.

I. ARCHIE
Chief Justice

PETER JAMADAR
Judge of the Court of Appeal

CHARMAINE PEMBERTON
Judge of the High Court

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Registrar of the Supreme Court

ALVIN FITZPATRICK
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