
**In re amendment of SCR 71.01,
regarding required court reporting**

**PETITION
09-****

The Director of State Courts, on the recommendation of the Committee of Chief Judges and District Court Administrators, hereby petitions the court to amend SCR 71.01 (2) governing the reporting of court proceedings. This petition is made pursuant to the court’s rulemaking authority under §751.12 and its administrative authority over all courts conferred by Article VII, §3 of the Wisconsin Constitution. Because this petition seeks to clarify controlling law, the Chief Judges request that it be heard early in the 2009-2010 term to avoid inconsistencies between trial courts and to minimize litigation.

In its decision in *State v. Ruiz-Velez*, 2008 WI App. 169, the court of appeals ruled that audible statements contained in videotaped interviews of child sexual assault victims which are replayed for a jury under Wis. Stat. § 908.08 must be reported by the court reporter. In its decision, the court suggested that its ruling applies not only to child sexual assault trials, but to any proceeding in the circuit court during which any audio- or video-recorded statement is replayed. The court’s decision may apply to a variety of other audio recordings that are sometimes played in court – confessions, 911 calls, recordings made by concealed microphones, telephone calls made from the jail, telephone calls made to creditors or to service providers, and others.

The ruling implicates a variety of practical concerns. Until now, it has not been the practice of circuit courts to attempt to make a verbatim record of statements made in such recordings. Such statements were considered evidence,

not testimony. Thus, in proceedings that were conducted before *Ruiz-Velez* was decided, neither the court nor the parties may have made a careful record of what portions of videotapes or audiotapes actually were replayed for the jury or the court.

Furthermore, statements made in such recordings are rarely made in the same carefully-managed circumstances in which a record is made in a courtroom. The quality of the recording medium itself is often too poor to reproduce an audible, intelligible version of every word of every statement. The statements often are obscured by background noise and transmission noise. Those who are speaking rarely identify themselves. The recordings usually consist of conversation, during which speakers talk at the same time or to talk over one another, as people speaking in conversation tend to do.

Thus, it is not practical to require court reporters to make a record of statements made on such recordings as they are played back before a jury or the court. Such a requirement probably would require the court reporter to ask for the recording to be stopped or replayed, perhaps numerous times. Stopping and replaying recorded statements would unduly interfere with the presentation of the evidence. In cases in which the parties dispute the content of the recorded statements, a request by the court reporter that a particular portion of a recording be replayed might itself become evidentiary.

The most common appellate issue with respect to a recording is whether a sufficient foundation has been laid to allow the fact finder to hear it, so that a transcript of the recording itself is often unnecessary to the appeal. The occasional disputes about who said what to whom are exactly the situation where the court reporter will have the most difficulty producing an accurate transcript, and will be most likely to type “unintelligible” for those portions that are not clearly understood. The *Ruiz-Velez* ruling will seldom save the appellate courts from listening to and deciding what is on the exhibit in question.

For these reasons, the Committee of Chief Judges requests that SCR 71.01(2)(e) be created to read as follows:

SCR 71.01 Reporting.

(2) All proceedings in the circuit court shall be reported, except for the following:

- (a) A proceeding before a court commissioner that may be reviewed de novo;
- (b) Settlement conferences, pretrial conferences, and matters related to scheduling;
- (c) In a criminal proceeding, a matter preceding the filing of a criminal complaint.
- (d) If accompanied with a certified transcript, videotape depositions offered as evidence during any hearing or other court proceeding.
- (e) Audio recordings of any type that are played during the proceeding, marked as an exhibit and offered into evidence. If only part of the recording is played in court, the sections played shall be precisely identified in the record.

Respectfully submitted this ____ day of _____, 2009.

A. John Voelker
Director of State Courts