



Supreme Court of Wisconsin

OFFICE OF COURT COMMISSIONERS

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April 10, 2019

Honorable Randy R. Koschnick
Director of State Courts
16 East State Capitol
Madison, WI 53701

Re: Rule Petition 19-01, Making the Record

Dear Judge Koschnick:

I write in regards to rule petition 19-01. As you know, the court conducted a public hearing on this petition on April 8, 2019. In the ensuing closed administrative rules conference the court discussed the petition and voted, tentatively, to approve the petition with some modifications. Specifically, the court opted to remove any reference or apparent reference to the Wisconsin Public Records Law, Wis. Stat. § 19.31, in proposed Supreme Court Rule (SCR) 71.03(3)-(5). The court requests you review these modifications, and provide the court with a written response.

The court also requests the petitioner review the proposed modification of SCR 71.03(5) and provide some additional explanation or authority for this provision. As modified, it would read: "Any words spoken in the courtroom that are off the record, privileged, or otherwise not part of a proceeding, hearing or trial of a specific case ~~are not a "record" as defined in s. 19.32(2), stats.,~~ ~~and~~ are not part of the verbatim record of the case."

A redlined copy of the Appendix One to the Petitioner's Supporting Memorandum, reflecting the court's tentative changes, is attached for your review. The petition requested an effective date of July 1, 2019, which requires that a final order issue by May 1, 2019. The court will conduct a closed administrative rules conference on April 17, 2019. If the petitioner can submit a written response to the court by Monday, April 15, 2019, the court may be able to discuss the matter on April 17, 2019, schedule permitting. If you have any questions, please don't hesitate to contact me.

Very truly yours,

Julie Anne Rich
Supreme Court Commissioner

cc: Chief Justice Patience D. Roggensack
Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice Annette K. Ziegler
Justice Rebecca G. Bradley
Justice Daniel Kelly
Justice Rebecca F. Dallet
Katherine J. Carpenter

APPENDIX ONE (As tentatively revised by the Supreme Court on 4/8/19)

SCR 71.01 Reporting.

- (1) ~~“Reporting” means making a verbatim record.~~
- (2) ~~All~~ A verbatim record of all proceedings in the circuit court shall be ~~reported~~ made, 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 and audiovisual recordings of any type, if not submitted under par. (d), 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 part played shall be precisely identified in the record. The court may direct a party or the court reporter to prepare the transcript of a recording submitted under this paragraph.
- (3) ~~The director of state courts shall develop rules for the use of alternative means of making a verbatim record. The verbatim record may be made by stenographic reporting, voice reporting, monitored digital audio recording, or other means approved by the director of state courts. The director of state courts shall develop policies for the use of alternative means of making a verbatim record.~~

SCR 71.02 Recording Minute record.

- (1) In this rule, ~~“recording”~~ section, “minute record” means ~~the making of~~ a record comprised of notes or minutes prepared by the clerk or other person directed by the court.
- (2) ~~There shall be a recording~~ The circuit court shall keep a minute record of all court proceedings as provided by statute. In initial appearances, a recording of the minute record shall include the court’s advice and the defendant’s reply shall be made by the clerk or other person directed by the court.

SCR 71.03 Reporters’ Court reporters’ notes, digital audio recordings, and other verbatim record.

- (1) The original stenographic notes of all court reporters, voice recordings, digital audio recordings, or other verbatim record required under SCR 71.01 (2), made in open court on the record or pursuant to an order of the court, constitute part of the records of the court in which made and are not the property of the court reporter.
- (2) The verbatim record is intended to assist in the preparation of a transcript. The transcript, and not the verbatim record, is the official record of the proceedings.
- (3) ~~Unless restricted by statute or court rule, the verbatim record is subject to public inspection upon request.~~ The verbatim record includes all of the following:
 - (a) The original notes of a stenographic court reporter.
 - (b) The original voice recording of a voice writer.
 - (c) An audio recording of any part of a proceeding that is on the record and made as the primary means of taking the verbatim record.
- (4) ~~Except by order of the court, supplemental material made in support of the verbatim record is not subject to public inspection. Supplemental material includes an audio recording made as a backup to stenographic reporting or a video recording made in support of a digital audio recording.~~

~~(54) Any words spoken in the courtroom that are off the record, privileged, or otherwise not part of a proceeding, hearing, or trial of a specific case are not a "record" as defined in s. 19.32 (2), Stats., and~~ are not part of the verbatim record of the case.

~~(65) The director of state courts shall develop policies for copying and charging a fee for an audio recording under sub. (3) (c).~~

SCR 71.04 Transcripts.

~~(1) Reporters' notes or other verbatim record~~ The verbatim record required under SCR 71.01(2) need not be transcribed unless required by this rule, any statute or court order.

(2) The original transcript of any proceeding, whether complete or partial, shall be filed with the court and shall be the official record of the proceedings. The cost of such transcript shall be borne as provided in this rule and in s. 814.69, stats. ~~Any unedited, uncertified transcript furnished pursuant to 71.04(9)(b) is not the official record.~~

(3) A court may order ~~the~~ a court reporter to transcribe and file all or any part of the testimony and proceedings in any action or proceeding in the court.

~~(3m) A court reporter may transcribe any proceeding as needed when the verbatim record was made by another court reporter or other person.~~

(4) Except when requested by a party or by a guardian ad litem appointed in the proceedings, ~~reporters' notes or other~~ the verbatim record of proceedings a proceeding under ch. 48, 767 ~~and or 938 of the statutes, Stats.,~~ shall be transcribed only upon order of the court.

(5) (a) When a defendant is sentenced to a state prison, the original transcript of any portion of the proceedings relating to the prisoner's sentencing shall be filed with the court and a certified duplicate shall be filed at the institution within 120 days from the date that the sentence is imposed.

(b) The original transcript of all other testimony and proceedings upon order of the court shall be filed with the court and a certified duplicate shall be delivered to the prisoner within 120 days of the prisoner's request made to the clerk of court.

(c) The original transcript of all other testimony and proceedings upon order of the court shall be filed with the court and a certified duplicate shall be delivered to the institution within 120 days of its request made to the clerk of court.

(d) Filing and delivering transcripts under this rule is the responsibility of the clerk of court.

(6) Except as provided in sub. (4), every court reporter, upon the request of any party to an action or proceeding, shall make a typewritten transcript, and as many duplicates thereof as the party requests, of the ~~testimony and proceedings reported by him or her~~ verbatim record in the action or proceeding, or any part thereof specified by the party, the transcript and duplicate thereof to be duly certified by him or her to be a correct transcript thereof. Any unedited, uncertified transcript furnished pursuant to SCR 71.04 (9) (b) is not the official record.

(7) In any action in which the court orders a compulsory reference, the court may direct the court reporter ~~thereof~~ to attend the referee's hearing, report the testimony and proceedings and furnish a typewritten transcript thereof to the referee.

(8) (a) For purposes of this rule a page other than the final page of a transcript shall consist of any 25 or more consecutive typewritten lines, double-spaced, on paper 8-1/2 inches in width by 11 inches in length, with a margin of not more than 1-1/2 inches on the left and five-eighths of an inch on the right, exclusive of lines disclosing page numbering; type shall be standard pica with 10 letters to the inch. Questions and answers shall each begin a new line. Indentations for speakers or paragraphs shall be not more than 15 spaces from the left margin.

(b) A court reporter shall include an index immediately following the title and appearance page(s) for each transcript of a proceeding in which testimony is taken or in which an index would be helpful in locating distinct segments of a proceeding, such as:

1. Jury voir dire;
2. Opening statements;
3. Witness names in chronological order of appearance, including all witnesses on direct, cross, redirect, recross, rebuttal, and surrebuttal examinations; and witnesses subject to witness voir dire; and examination by the court;
4. The numbers and a description of each exhibit offered and received;
5. Closing arguments;
6. Instructions and verdict given to the jury;
7. Receipt of the verdict or rendering of the court's decision;
8. Polling of the jury; and
9. Sentencing.

(9) A court reporter may make a special charge, pursuant to an arrangement with the requesting party, for furnishing any of the following:

(a) Typewritten transcripts of testimony and proceedings from day to day during the progress of any trial or proceedings.

(b) Unedited and typewritten or electronic draft versions of testimony or proceedings.

(10) (a) If a transcript of any court proceeding is required to be provided under a statute, rule, or court order and the original court reporter is unavailable to the court having jurisdiction in the matter to be transcribed, the ~~court~~ chief judge or district court administrator may order that another court reporter prepare the transcript.

(b) A court reporter who prepares a transcript under par. (a) shall certify that it is a verbatim transcript of the proceedings as recorded in the ~~notes or other~~ verbatim record of the original court reporter.

(c) A court reporter who prepares a transcript under par. (a) shall receive fees as if he or she were the original court reporter under sub. (11) and section 814.69 of the statutes.

(10m)

(a) If before trial the court approves a stipulation by all parties, an independent, freelance court reporter may take the official record, or a portion of the official records, upon taking the official oath of office.

(b) If after trial the court approves a stipulation by all parties, an independent, freelance court reporter's record of proceedings may be the official record or a portion of the official record.

(c) Before approving a stipulation under par. (a) or (b), the court shall consider the availability of an official court reporter, including the ability of the official court reporter to meet requests for providing daily transcripts.

(d) An independent, freelance court reporter authorized under par. (a) or (b) shall comply with all of the requirements under this chapter relating to the production of an official record and transcripts and charges for transcripts.

(11) For all transcripts furnished under this rule, the court reporter shall be entitled to receive fees as prescribed in section 814.69 of the statutes.

(12) ~~Upon request and payment for a certified paper copy of a transcript, a court reporter may provide an electronic copy of the transcript. A reporter may charge an additional \$10 for the electronic copy of the transcript. In electronically filed cases, a court reporter shall comply with the provisions of s. 801.18 (15), Stats.~~

(13) A court reporter may certify a transcript that has been redacted in accordance with s. 801.19 or s. 801.21, stats., by stating that the redacted version is a verbatim transcript from which information has been redacted or sealed in accordance with those rules or as ordered by the circuit court.

SCR 71.05 Alternative means of reporting.

(1) The person reporting a court activity or proceeding may use ~~electronic~~ alternative means not approved by the director of state courts under SCR 71.01 if any of the following conditions is met:

~~(a) The chief judge of that district gives prior approval in high volume court proceedings where transcripts are requested infrequently.~~

(b) After a reasonable effort to locate a court reporter is made, a court reporter is not available.

(c) The circuit court judge, with the approval of the chief judge of that district, determines that the use of ~~electronic~~ alternative means is necessary and the alternative means chosen are appropriate.

(2) ~~The electronic~~ Any record made by alternative means shall be maintained in compliance with SCR 72.05 for the length of time required in SCR 72.01(47) or for the time required for the case type under SCR 72.01, whichever is shorter.

(3) If a transcript of any proceeding ~~that is electronically recorded~~ reported under sub. (1) is required, the court shall order that a transcript be prepared. The court reporter who prepares the transcript under this subsection shall certify that it is a verbatim transcript of the ~~electronic recording of the proceeding~~ verbatim record. Transcripts under this subsection shall comply with SCR 71.04.

~~(4) The director of state courts shall promulgate standards governing the use of electronic reporting.~~