
In re amendment of SCR 68.10, 68.12, 70.01, 70.245, 71.01, 71.02, 71.03, 71.04, 71.05 and Wis. Stats. §§ 751.02, 751.025, 757.46, and 757.57, relating to making the record.

**SUPPORTING MEMORANDUM
18-**

The Director of State Courts respectfully petitions the court to amend Supreme Court Rules 68.10, 68.12, 70.01, 70.245, 71.01, 71.02, 71.03, 71.04, 71.05, and Wis. Stats. §§ 751.02, 751.025, 757.46, and 757.57 in order to create alternative solutions to making the record in light of the ongoing shortage of stenographic court reporters.

I. Supreme Court Superintending Authority

The subject matter of the proposed rule changes falls within the power of the Wisconsin Supreme Court to regulate pleading, practice, and procedure in judicial proceedings in all courts. Wis. Stat. § 751.12. The recommended procedural changes bring the rules in line with existing practice and do not abridge, enlarge, or modify the substantive rights of any litigant. The statutes that are the subject of this petition may be amended by court rule or by legislation. They relate directly to the courts' procedures and practice and are purely administrative in function.¹

II. Shortage of Stenographic Court Reporters

The growing shortage of well-qualified stenographic court reporters has placed a significant strain on the courts. Many experienced court reporters are nearing retirement age. The circuit courts currently employ 280 official and district court reporters. Of these, 120 (43%) are 55 or older and could retire now, and 176 (63%) will be eligible in the next 5 years. To keep pace with these retirements, the

¹ Consistent with this, the Court has previously issued orders modifying state statutes that are purely administrative in function, as well as statutes that impact polices and procedures regarding court reporters. *See* S. Ct. Order 18-01, 2018 WI 33 (issued April 11, 2018, eff. July 31, 2018) regarding the redistribution of judicial administrative districts and S. Ct. Order 10-06, 2010 WI 128 (issued November 5, 2010, eff. January 1, 2011) regarding court reporters.

circuit courts would need to hire an average of 35 new reporters per year.² To compound the problem, enrollment at court reporting programs is dropping, both nationally and in Wisconsin.³ The Wisconsin Court Reporters Association has been working for years to encourage enrollment and job placement, but the handful of new graduates each year comes nowhere close to meeting the need.⁴

Wisconsin is not alone; these same shortages are being felt across the country.⁵ The *2013-2014 Court Reporting Industry Outlook Report* by Ducker Worldwide predicted that the decreased enrollment and graduation rates for court reporters, combined with significant retirement rates, will create a shortfall of nearly 5,500 court reporting positions nationwide by 2018. The National Court Reporters Association reports that the number of graduates nationwide from its accredited schools dropped from 263 in 2015 to just 168 in 2017.⁶

III. Making the Record Committee

In fall 2017, the Director of State Courts appointed an advisory Making the Record Committee to make recommendations in light of the ongoing shortage of stenographic court reporters.⁷ The committee was asked to look at ways to optimize the use of current court reporters while planning for a future where stenographic skills are likely to be far less common.⁸

² Numbers reported by the Office of Management Services at the Director of State Courts Office as of December 31, 2018 and based upon the retirement age of 55.

³ *Digital Recording: Changing Times for Making the Record*, Conference of State Court Administrators (December 2009) at <https://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/DigitalRecording-Jan-2010.ashx>

⁴ At the September 2017 Making the Record Committee meeting, the former Human Resources Director in the Office of Management Services reported that Wisconsin court reporter schools graduate only a few individuals on average each year. The minutes of the meeting are available at <http://intranet.wicourts.gov/committees/makingtherecord/docs/0917minutes.pdf>.

⁵ *2013-14 Court Reporting Industry Outlook Report*, Ducker Worldwide at <https://projectsteno.org/the-ducker-report/>.

⁶ *NCRA Annual School Report FY 2016 and FY 2017*, National Court Reporters Association at https://www.ncra.org/docs/default-source/uploadedfiles/education/2017-ncra-annual-school-report_final.pdf?sfvrsn=51092a9a_4

⁷ *Report of the Making the Record Committee*, Director of State Courts Office (August 3, 2018) at <https://www.wicourts.gov/publications/reports/docs/2018mtrrpt.pdf>

⁸ Prior to issuing their final report, the committee reviewed formal comments and suggestions from a number of court reporters and a few judges. The suggestions included raising the per-page rate of pay to make the profession more attractive, and providing additional outreach to students in stenographic programs. Some presented possible disadvantages of digital reporting. One judge sent a letter supporting the continued use of stenographic reporters and one judge commented on a successful use of blended technologies. A few digital court reporters wrote to invite other court reporters and judges to visit

The committee concluded that Wisconsin should move to a blended system of stenographic and digital audio reporting (DAR).⁹ A 50-state survey taken by National Center of State Courts in 2017 found that most state courts use a mixture of stenographic and digital reporting to take the trial court record.¹⁰ Using a blended system, courts can add to their dwindling court reporter pool and offer a greater range of options for court reporters throughout their careers.

IV. Proposed Statutory and Rule Changes

This petition proposes changes to several statutes and Supreme Court Rules to help address the growing court reporter shortage. These changes establish digital audio reporting as an accepted court reporting method, clarify the ability of the chief judge and district court administrator to assign coverage of reported proceedings, clarify that the verbatim record is a public record, and allow the chief judge and district court administrator to assign a court reporter to produce the transcript when the original court reporter is unavailable.

A. APPROVED MEANS OF MAKING THE RECORD

The revisions in Part A:

- authorize the Director to adopt multiple methods of reporting and transcription;
- treat monitored digital audio recording as a standard way to capture the verbatim record and produce a transcript, along with stenographic reporting and voice writing; and
- address public access to the verbatim record.

A1. SCR 71.01 should be amended to establish monitored digital audio recording as a regular method of taking the record.¹¹

their courtrooms and observe how they operate. These communications are posted on the committee website at <http://intranet.wicourts.gov/committees/makingtherecord/docs/commtr.pdf>.

⁹ *Report of the Making the Record Committee* at page 11.

¹⁰ *Making the Record – General Jurisdiction Court, State Organizational Survey*, National Center for State Courts (2017) at <http://intranet.wicourts.gov/committees/makingtherecord/docs/2017ncscchart.pdf>

¹¹ The full text of SCR Chapter 71 with the proposed changes can be found in [Appendix One](#).

SCR 71.01 references alternative methods of making the record but does not list the accepted forms for taking the verbatim record in Wisconsin. Consistent with the committee's research, the changes to SCR 71.01(3) will establish monitored digital audio recording as a regular method of taking the record, not an alternative method. The changes continue to allow the Director of State Courts to approve methods for how the verbatim record is taken, including pilot programs.

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) – (e)]

(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.

A2. SCR 71.02 should be amended for clarity, to be consistent with other statutory language.

Consistent with language related to the duties of the clerk of circuit court in Wis. Stat.

§ 59.40(2)(d)¹² and in the records retention rule, SCR 72.01,¹³ the proposed changes to SCR 71.02(1) and (2) remove the word “recording” and replace it with “minute record.” This change is proposed not only to be consistent with other statutory language and rules, but also because the word “recording” is often confusing in a context where there are also audio recordings.

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.~~

A3. SCR 71.03 should be amended to clarify what the verbatim record is and clarify when the verbatim record is subject to public records law.

¹² According to Wis. Stat. § 59.40(2)(d), the clerk of circuit court shall “[k]eep a minute record and, ... write in that record a brief statement of all proceedings in open court, ...”

¹³ SCR 72.01 uses the phrase “minute record” to describe the notes or minutes prepared by the clerk in subsections (3), (10), (13), (17), (17r), (20), (20r), (24m), (31), (34), (40), and (44).

As used in this petition, the “verbatim record” is the raw material from which the transcript will be made. The proposed changes to the rule clarify that the verbatim record may take the form of stenographic notes, voice recordings, digital audio recordings, and other formats approved by the Director of State Courts. In addition, “in open court” is changed to “on the record” so it is clear that this section applies to both confidential and non-confidential proceedings. SCR 71.03(2) has been created to clarify that the verbatim record or raw material is not the official record of the proceeding; the written transcript is the official record. This proposed change was taken from the Minnesota Rules of Public Access to Court Records, Rule 4, sub. 3(a), Access to Recordings.¹⁴

SCR 71.03(3), (4), and (5) are created to reflect the intersection between public records law and the verbatim record. These sections are added for clarification as this issue comes up often. In addition, with remote monitoring of courtrooms, the digital audio recording is often paired with a video feed so the court reporter can see whether the court is in session and who is speaking. The purpose of the video is simply to further the taking of the audio record. The Director recommends that the video not be treated as a public record under SCR 71.03(3)(e).

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.

¹⁴ Minnesota Rules of Public Access to Court Records, Rule 4, sub. 3(a), Access to Recordings, states “[r]ecordings of proceedings in the district court, including without limitation those used as a back-up to a stenographically recorded proceeding or as the electronic recording, are intended to assist in the preparation of a transcript. The transcript, and not the recording, is the official record of the proceedings...”

(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.

(5) 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.

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

A4. SCR 71.04 should be amended to clarify that the transcript is the official record of the proceeding, delete references to duplicative or outdated text, and clarify that chief judges and district court administrators have the authority to assign a court reporter to prepare a transcript when the original court reporter is unavailable.

The proposed amendment of SCR 71.04 includes a number of clarifying and administrative changes. The changes to subsection (2) recommend deleting a redundant portion of the subsection, which is repeated in sub. (6). Subsection (3m) allows court reporters to prepare transcripts where the verbatim record was taken by another court reporter or where a recording was made by the clerk. Similarly, sub. (6) is modified to delete the phrase “reported by him or her in the action or proceeding” since court reporters may be transcribing someone else’s notes or recording. Subsection (4) is modified to cover both stenography and DAR.

Subsection (10) is modified to include references to both district court administrators (DCAs) and chief judges. Currently, chief judges and DCAs are arranging for other court reporters to prepare a transcript when the original court reporter is unavailable.¹⁵ This modification to SCR 71.04(10) is in line with existing practice across the state. Finally sub. (12) is modified to cross-reference the eFiling rule on transcripts and clarify that court reporters must follow the eFiling rule as it relates to transcripts.¹⁶

¹⁵ Wis. Stat. § 751.025, in its current form, states that a chief judge and district court administrator of the judicial district are responsible for helping find court reporter coverage if a court reporter is not available.

¹⁶ Wis. Stat. § 801.18(15)

Subsection (12) also deletes the outdated language that references electronic transcripts before mandatory eFiling was implemented.

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) – (d)]

(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)-(b)]

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

[(a)-(b)]

(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.~~

A5. SCR 71.05 should be amended to modify the rules on emergency use of unapproved means of making the record.

This section will govern the use of unapproved means of making the record in emergency situations. The proposed changes to SCR 71.05 clarify the limited circumstances in which this may occur. The word “electronic” is replaced with “alternative” to be consistent with the title of the section and provide flexibility in the methods used.

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.~~

B. APPOINTMENT AND ASSIGNMENT OF COURT REPORTERS

The revisions in Part B:

- maintain a judge's personal appointment of a court reporter;
- allow the judicial district to assign court reporters as necessary for coverage and transcription;
- and
- set policies for determining who will transcribe a recording not taken by a court reporter.

B1. Wis. Stat. § 751.02 should be amended to allow for more flexibility for court reporter coverage in the case of vacancies or absences.

The proposed changes to s. 751.02 maintain a judge's appointment of a court reporter. However, language is added to make it clear that this personal appointment does not prevent assignment to another branch if needed for coverage.

751.02 Employees.

The supreme court may authorize the employees it considers necessary for the execution of the functions of the supreme court and the court of appeals and the court reporting functions of the circuit courts and may designate titles, prescribe duties and fix compensation. Compensation and benefits of employees should be consistent with that paid to state employees in the classified service for services involving similar work and responsibility. Each justice and court of appeals judge may appoint and prescribe the duties of a secretary and a law clerk to assist the justice or judge in the performance of his or her duties. Each circuit judge may appoint a court reporter to serve primarily in the court or branch of court to which he or she was elected or appointed if the court reporter is certified as qualified by the director of state courts. The chief judge or district court administrator may assign that court reporter to other courts to assure adequate coverage of all reported proceedings. A person appointed by the supreme court or a justice or court of appeals judge or a circuit judge serves at the pleasure of the court or the justice or judge.

B2. Wis. Stat. § 751.025 should be amended to clarify that coverage of court reporter absences should first be accomplished by existing resources, prior to hiring a private court reporter to provide coverage.

The introductory language in s. 751.025 is deleted to reflect that before a freelance court reporter is hired, the chief judge or district court administrator shall attempt to use any court reporter from another branch to cover the proceedings, not just the court reporter appointed by that judge. Hiring of freelance court reporters is done by the judicial district and not the judge.

751.025 Temporary use of court reporters.

~~If the court reporter appointed by the judge is not available or if an additional court reporter is needed, the judge, in cooperation with the~~ The chief judge ~~and or~~ district court administrator for ~~that~~ the judicial district; shall attempt to locate and use a court reporter from another branch of court before hiring a private court reporter.

B3. SCR 68.12(3) should be amended to provide flexibility to assure coverage of all proceedings.

The proposed changes to SCR 68.12(3) clarify that court reporters may be re-assigned to assure adequate coverage of proceedings in other courts. The judicial district may assign a court reporter to a proceeding to help with coverage. These changes are similar to the proposed changes to Wis. Stat. § 751.02 above and SCR 70.245 below.

SCR 68.12 Staffing.

[(1) – (2)]

(3) Each circuit judge should appoint a full-time court reporter to serve primarily in the branch to which the judge was elected or appointed.

COMMENT

Current law provides for each circuit judge to appoint a court reporter for his or her court or branch of court, s. 751.02, stats. Additionally, where “floating” court reporter positions have been created and assigned to specific judicial administrative districts, the chief judge or district court administrator assigns the court reporter to fill in where needed because of illness, vacations, leaves of absence, or backlog problems.

Historically, the court reporter was the only staff directly responsible to the judge and in many cases assumed a number of clerical and administrative duties for the judge's court. It is wasteful of an important court resource to have court reporters performing tasks other than ~~stenographic recording and transcription~~ taking and transcribing the verbatim record. ~~When a court reporter's services are not required by the appointing judge, the~~ The court reporter shall be available to assist in other circuit court branches as assigned by the chief judge or district court administrator to assure adequate coverage of all reported proceedings.

B4. SCR 70.245(1) should be amended to provide flexibility to assure coverage of all proceedings.

SCR 70.245(1) clarifies that court reporters may be re-assigned to assure adequate coverage of proceedings in other courts. The judicial district may assign a court reporter to a proceeding to help with coverage. These changes are similar to the proposed changes to Wis. Stat. § 751.02 and SCR 68.12 above. The subsection is modified to include references to both district court administrators (DCAs) and chief judges. Currently, chief judges and DCAs are responsible for assuring in-district coverage of court proceedings by court reporters when there is a vacancy or someone is on leave. Court reporter assignments that span across judicial districts may be made by the director of state courts. This modification to SCR 70.245(1) is in line with existing practice across the state.

SCR 70.245 Assignment of court reporters.

In order to effectively manage court reporting resources within each judicial administrative district, an official court reporter appointed by circuit court judges under s. 751.02, stats., may be assigned in any of the following ways:

(1) The chief judge or district court administrator may assign any official court reporter, as needed, to any court within the district, to assure adequate coverage of all reported proceedings. Interdistrict assignments may be made with the approval of the director of state courts.

C. PROPOSED CHANGES TO OTHER RULES RELATING TO COURT REPORTING

The following statutes and Supreme Court Rules were revised to clarify language related to court reporters and the record, in order to be consistent with the language in the above recommendations:

- “Reporter is changed to “court reporter” in the following sections:
 - SCR 68.10(5)(h)
 - SCR 68.12(3) (Comment)
 - SCR 70.01(4)
 - SCR 71.03 (title)
 - SCR 71.04(3)
 - SCR 71.04(6)
 - SCR 71.04(7)
 - SCR 71.04(9)
 - SCR 71.04(10)(a)
 - SCR 71.04(10m)(a)
 - SCR 71.04(10m)(b)
 - SCR 71.04(10m)(c)
 - SCR 71.04(10m)(d)
 - Wis. Stat. § 751.02

- Wis. Stat. § 757.46
 - Wis. Stat. § 757.57(2)
 - Wis. Stat. § 757.57(5)
- Wis. Stat. § 757.57(5) and SCR 71.04(6) are amended to clarify that court reporters may be called upon to transcribe proceedings where they were not the original reporter, consistent with SCR 71.04(3m) and (10)(a). Transcription of “testimony and proceedings reported by him or her” has been changed to “verbatim record in the action or proceeding.”

V. Conclusion

The court system needs to adapt to meet the infrastructure needs of the courts in the face of changing circumstances and advancing technologies. While it is still a priority for the judicial branch to attract and retain well-qualified court reporters, there are simply not enough qualified candidates to meet the need. The proposed changes to Supreme Court Rules and statutes help broaden the vision of how court reporting can be accomplished in Wisconsin by incorporating digital audio recording into court reporting practices and ensuring that all reported proceedings can be covered appropriately. These critical changes assure that the court system can continue to carry out the administration of justice, both today and in the future.

Respectfully submitted this ____ day of January, 2019.

Judge Randy Koschnick
Director of State Courts

APPENDIX ONE

Rule Petition Proposed Changes to Supreme Court Rule Chapter 71

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.

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.

(5) 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.

(6) 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.~~