

GUIDING PRINCIPLES ON THE USE OF DIGITAL AUDIO RECORDING (DAR)

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Guiding Principles on the Use of DAR

On April 22, 2019, the Wisconsin Supreme Court issued Supreme Court Order 19-01, which established monitored digital audio recording (DAR) as a standard means of taking the record in Wisconsin. These guiding principles provide direction to court reporters, circuit court staff, judges, reserve judges, and court commissioners on how to appropriately use DAR equipment and ensure the integrity of the record. These Guiding Principles also contain policies for the use of alternative means of making the record using DAR in accordance with [SCR 71.01\(3\)](#).

Definitions

- Confidence Monitoring:* The practice of continually assessing the performance of the DAR system to ensure that a sufficient verbatim record is being captured in a manner that will allow for a quality transcript to be completed.
- Court Official:* A circuit judge, a reserve judge, or a court commissioner.
- Court Reporter:* An individual who is responsible for taking the verbatim record of court proceedings as required under Wisconsin Supreme Court rules and state statutes. A court reporter may be a stenographic, digital, or voice reporter who records and transcribes a verbatim record of proceedings in circuit court.
- Digital Court Reporter:* Digital court reporters are court reporters who use audio recording as their primary means of taking the record. Digital court reporters may be the personal appointees of judges under s. 751.02, Wisconsin Statutes. They may also be hired at the statewide or district level to provide coverage of court proceedings or be contracted at a district level to provide per diem coverage of court proceedings.
- FTR:* For the Record software used to capture the verbatim record.

When should DAR be used?

Proceedings with a Digital Court Reporter

Monitored digital audio recording is a recognized method of taking the circuit court record, and digital court reporters may serve as official, statewide, district, or per diem court reporters. Digital court reporters can take the record for any type of proceeding.

Proceedings without a Court Reporter

Under [SCR 71.01\(3\)](#), the Director of State Courts may establish policies for the use of alternative means of making a verbatim record. As provided under [SCR 71.05](#), the person reporting a court activity or proceeding may use alternative means if the following conditions are met:

- (1) After a reasonable effort to locate a court reporter is made, a court reporter is not available;
- (2) The circuit court judge, with the approval of the chief judge of that district, determines that the use of alternative means is necessary.

As court commissioners are not courts of record and proceedings may be reviewed de novo, these hearings do not require the use of a court reporter.

General Responsibilities of the Digital Court Reporter

In general, the digital court reporter is responsible for:

- Testing the equipment to ensure its ability to capture the verbatim record.
- Confidence monitoring throughout the proceeding to ensure the proceedings are being recorded properly.
- Taking log notes, utilizing the Picklist feature, and including appearances, exhibits, and other information to assist with transcription and playbacks.
- Playing back recorded court proceedings as directed by the court official.

System Testing and Confidence Monitoring

Testing of the Equipment

Prior to any court session, an in-person digital court reporter shall test the equipment to ensure that it is working properly. Test the recording quality of each microphone by speaking into the microphone and verifying playback quality by listening to the recording on each audio channel. Report any problems to CCAP so that they can be fixed before the day's proceedings.

Remote Digital Court Reporters should work with local, onsite staff to validate equipment operation.

Outside of hearings, the County should periodically test the system to ensure it is working appropriately.

Confidence Monitoring Generally

All digital court reporters are required to conduct confidence monitoring in order to ensure that an accurate verbatim record is being recorded. Confidence monitoring is the practice of continually assessing the performance of the DAR system to ensure that a sufficient verbatim record is being captured in a manner that will allow for a quality transcript to be completed, as required by [SCR 71.04](#).

Prior to the Start of a Court Proceeding

Prior to the start of a court proceeding, the digital court reporter should observe the visual outputs on the DAR system and conduct an initial confidence check of the audio quality. This should include isolating each channel to verify that all channels are working properly. If there

appears to be a malfunction with the DAR system, the digital court reporter is to immediately notify the court official that the hearing should be stopped due to the problem. The CCAP Call Center should be immediately contacted for assistance and notified that court proceedings are being delayed by the DAR issue.

During a Court Proceeding

During a court proceeding, the digital court reporter should utilize the Picklist as cases are being called, continuously confidence monitor, and log note. If there is, or appears to be, a malfunction with the DAR system, the digital court reporter is to immediately notify the court official that the hearing should be stopped due to the problem. A troubleshooting guide has been developed to help resolve technical issues.

The CCAP Call Center should be immediately contacted for assistance and notified that court proceedings are being delayed by the DAR issue.

Procedures

Off-the-Record Conversations

The recording should be stopped for off-the-record discussions at the direction of the court official. Sidebar and bench conferences are typically a part of the official record and should be recorded unless the court official orders otherwise. The court official should verbally state when the court proceeding is on or off the record in order to eliminate confusion.

Confidential Communications

All on-the-record conversations of attorneys and parties that occur in the courtroom are to be recorded. Microphones are equipped with mute buttons to permit attorneys and parties to communicate confidentially off the record. The court official should notify all participants on how to appropriately conduct confidential discussions.

Interrupting Proceedings

The digital court reporter should immediately notify the responsible court official when the record is not being sufficiently captured.

The digital court reporter should only interrupt proceedings when necessary. A digital court reporter may want to interrupt the proceedings to request the following:

- Request that a party move closer to the microphone.
- Request the correct spelling of names or technical or unfamiliar names.
- Request that a person stop tapping a microphone/shuffling papers.
- Request that parties stop speaking at the same time.
- Request that a party slow down his/her speech pattern.
- Request that a non-verbal response be made audible.
- Request that individuals in the gallery remain quiet.

The below circumstances are additional examples of when a digital court reporter may want to interrupt the proceeding:

- The court official asks someone from the gallery to speak. In order to ensure an accurate verbatim record, the digital court reporter should instruct the individual speaking to approach one of the microphones at counsel table.
- Multiple people are talking at once. The digital court reporter should interrupt the proceedings, asking each person to talk one at a time so that the recording can appropriately pick up the individual voices.
- The attorney fails to unmute the microphone after consulting with his/her client and starts to address the court. The digital court reporter should have the attorney unmute the microphone and repeat what s/he was saying to the court.
- The attorneys wish to participate in a sidebar conversation with the judge but start talking away from the microphone. The digital court reporter should instruct the attorneys to speak into the microphone if the conversation should be on the record.

Log Notes

The primary objective for the creation of log notes is to allow for a simplified search of the electronic record for the playback of testimony both during and after court proceedings as well as the creation of a transcript from the electronic record. Log notes should be entered directly into the DAR system.

The following **minimum** standards must be met for log noting:

- The Call of the Case – As the court official calls the case caption and/or case number, select the correct case(s) from the Picklist.
- Names of Parties Present – each party present should introduce themselves on the record and spell their name. This assists with speaker identification for the transcription.
- Witness Names – before each witness testifies, they need to state and spell their name for the record. The witness oath should also be annotated.
- A court reporter should note each instance of the following:
 - Opening Statement, Direct Examination, Cross-Examination, Redirect Examination, Re-cross Examination, Voir Dire, Examination by the Court Official, Rebuttal and Closing Statement.
 - Objections –Make certain that the speaker is identified for quick search and playback.
 - Exhibits – proper identification of exhibits requires that there is a log note clearly stating that it is offered and received and an identification of what the exhibit is.
 - Orders – identify any orders issued from the bench.
 - Nonverbal actions are noted when they affect the court record. Typical examples include jury in/out, witness reviewing document(s), counsel confer regarding exhibit numbers off the record, and most importantly, when a witness responds either affirmatively or negatively with a nod or shake of the head.

Training

All court reporters using the DAR system must have completed the following:

- CCAP DAR Training
- Training with the Statewide Digital Court Reporter Trainer, Statewide Manager, or Lead Worker

Equipment

Only CCAP-approved DAR hardware and software may be used. Use of nonstandard equipment is prohibited.

Setup and Location

Local staff should work with their district court administrator (DCA) if there are any concerns related to the DAR setup.

Recording and Microphones

When recording the verbatim record, a court reporter can isolate channels to quickly ascertain who is speaking when multiple individuals are talking at the same time. The microphones should capture individuals' voices when they move throughout the courtroom (such as during trial or evidentiary hearings).

Storage of Digital Audio Recordings

Daily Shutdown Procedures

The digital court reporter should sign out of the FTR system, but leave the thin client computer powered on to receive CCAP updates. The DAR thin client should be shut down and restarted weekly to apply updates and refresh the system.

Storage

Digital audio recordings of court proceedings constitute a verbatim record under [SCR 71.03](#). The rule states: "The original stenographic notes, voice recordings, digital audio recordings, or other verbatim record required under [SCR 71.01\(2\)](#), made 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." The clerk of circuit court shall be the custodian of the digital recordings.

Retention

Digital audio recordings shall be retained and maintained in compliance with [SCR 72.01\(47\)](#). Although the audio recordings only need to be retained for 10 years, internal policy is to store them for 50 years after the hearing. Duplicates of the electronic record may be purchased by parties to whom a transcript would be available with the approval of the court official. Care should be taken with confidential proceedings, as only certain parties are entitled to a recording or transcript without approval of the court official.

Signage

Signage is important for litigants, staff, and the public when using digital audio recording systems. Signage provides an important reminder that the proceedings are recorded and that anything spoken may be recorded. The language on the signs should be brief and concise. The following is suggested language that should be placed at each table microphone, podium, and on the court official's bench anytime digital recording equipment is used:

- The court utilizes a digital audio recording system.
- Recording when digital clock is illuminated.
- Silence (not vibrate) your cell phone.
- Speak audibly, clearly, and one person at a time.
- Remain within two feet of a microphone.
- Mute microphone for private conversations.
- Avoid paper shuffling and table tapping.
- Turn away from microphone to cough/sneeze.

The following is suggested language that should be at the entrance door to the courtroom and/or entry to the litigation area:

The court may be digitally recording proceedings. Silence in the gallery and litigation area is required. Remain seated and do not approach the bench until instructed to do so.

Transcript Production

Digital court reporters are responsible for producing the transcript or making copies of the audio recording upon request. If a court reporter is unavailable to produce a transcript, please contact the DCA.

Request for Written Transcripts

The production of transcripts under this section must be in accordance with the Wisconsin Court System Transcript Technical Manual.

The digital court reporter shall be the primary resource for transcript production in matters s/he records for the court. Fees assessed for the certified transcript shall be in accordance with those established by s. 814.69, Wis. Stats.

Request for Digital Audio Recordings

The Director of State Courts has developed policies for copying and charging a fee for a digital audio recording in accordance with [SCR 71.03\(5\)](#).

Under these standards, if a member of the public wishes to purchase a copy of the digital audio recording in a matter that a transcript would be available to them, they may do so. Before providing the digital audio recording copy, the court reporter shall notify the presiding court official of the request to allow for review and redaction of inadvertent conversations. If the desired recorded hearing falls under statutory rules for [confidentiality](#), then the court reporter is to first seek permission from the responsible court official before releasing a copy of the proceedings.

A court reporter should copy only the portion of the audio recording that is related to the request. The court reporter is responsible for the production of a digital audio recording copy of the court proceedings for the branch s/he serves.

The court reporter should inform the requesting party that any digital audio recording copy of a court proceeding is not considered the official record and cannot be used in the same manner as the official certified transcript. A digital audio recording copy allows the requester to review their proceeding and determine whether or not they wish to proceed with their court matter or purchase an official certified transcript.

The current rate set by the Director of State Courts, presently \$10 per digital audio recording copy plus the actual cost of the electronic media and postage, will be paid to the court reporter as a form of their transcript income.

Court Official Responsibilities

When a DAR system is in use, the court official should provide an opening colloquy on courtroom procedures. Court officials should remind participants to stay near microphones, speak up, spell names, and note when court is on and off the record. Court officials should follow the Court Officials DAR Checklist located at the end of these principles.

Technical Support

If there are problems with the DAR system, the digital court reporter shall contact the CCAP Call Center at 1-800-422-7137 for assistance.

COURT OFFICIALS DAR CHECKLIST

- Establish a plan for communication should there be a need for the digital court reporter or monitor to interrupt the proceedings because of concerns regarding the capturing of the record (i.e. muffled voices, microphone not functioning, etc...).
- State verbally when court is on or off the record.
- Open each session of court with an advisory statement such as the following:

“These proceedings are being digitally recorded. Please speak clearly and directly into the microphone. Do not speak over each other. All responses must be made orally. Avoid gesturing or head nodding, as these gestures will not be captured for the record. Please be mindful that rustling of papers at counsel table may be picked up by the microphones and unintentionally obscure the record. If you need to have a side conversation off the record with your client, please speak away from the microphone, mute the microphone, or speak softly so that the device does not accidentally record the conversation. If you mute the microphone, please be sure to unmute when you are done. At any point in time, I may pause the proceedings to ensure that an accurate verbatim record is captured.”
- Remind participants to speak loudly, clearly, and directly into the microphone.
- Ask participants to give their appearance at the beginning of each proceeding and at the start of each day of a continuous, multi-day trial and to spell their full name for the record.
- Remind attorneys to take necessary precautions (i.e. cover or mute the microphone) when they wish to consult with their client during proceedings.
- Remind participants that only one person should speak at a time. Discourage overlapping questions and answers or colloquy.
- Point out to participants that coughing, sneezing, tapping of pens or rustling papers near a microphone may adversely affect the recording.
- Discourage participants from wandering around the courtroom unless wireless microphones are used. If necessary, permit participants to remain seated during proceedings and make sure they are speaking into a microphone.
- When participants have requested to address the Court off the record, be certain to indicate that the court is off the record and state that it is back on the record when proceedings resume.
- Hold on the record bench/side bar conversations at the bench microphone.

- Court officials may hold the mute button for off the record discussions.
- Clarify any nonverbal occurrences such as “witness nodded head,” indicating a “yes” response.
- Identify “this.” A reporter transcribing an audio recording will never know what “this” is unless it is identified on the record.
- Address jurors by name or number for proper identification during voir dire.